



LICENSING ACT 2003

Minor Variations to Premises Licences and Club Premises Certificates Purpose of the Minor Variations Process

The purpose of the minor variation process is to save time, money and regulatory resources by allowing small variations that could not impair the promotion of the licensing objectives to be made to premises licences and club premises certificates through a simplified and less costly procedure.

Under this process, the applicant is not required to advertise the variation in a newspaper or copy it to Responsible Authorities. However, they must display it on a white notice at the premise. The notice must be displayed for a period of ten working days starting on the working day after the minor variation application was given to the Licensing Authority.

Overview of the Process - How Does the Minor Variation Process Work?

The holder of a premises licence or club premises certificate can apply to the Licensing Authority for a minor variation to the licence or certificate using the prescribed form. The fee payable to the Licensing Authority in respect of a minor variation application is £89.00.

In determining an application the Authority must consult such of the Responsible Authorities, as it considers appropriate. The Responsible Authorities are:

- Police
- Health and Safety
- Environmental Control
- Local Planning Authority
- Fire & Rescue Authority
- Local Safeguarding Children Board
- Trading Standards
- Licensing Authority (Compliance)
- Primary Care Trust

The Authority must take into account any relevant representations made concerning the application by those Authorities or by an interested party, provided in the case of the latter that the comments are made, in writing, within ten working days following the date of receipt of the application by the Authority. Relevant representations must be about the likely effect of the grant of the application on the promotion of the licensing objectives.

The 2003 Act lays out the four licensing objectives, which are:

- Prevention of crime and disorder
- Public safety
- Prevention of public nuisance
- Protection of children from harm

The Licensing Authority must grant an application only if it considers that none of the variations proposed in the application could have an adverse effect on the promotion of any of the licensing objectives. In any other case the Authority must reject the application.

This procedure is in contrast to the normal procedure for the variation of a premises licence or club premises certificate, where the applicant must give notice of the application to each Responsible Authority, and where the application must be referred to a licensing hearing (consisting of Councillors) in the event that a Responsible Authority or interested party makes a relevant representation.

In the case of minor variations, there is no right to a hearing, but the Licensing Authority must take any representations into account in arriving at a decision. An application may not be made under the minor variation provisions if the effect of the variations proposed in it would be to:

- extend the period for which a premises licence has effect;
- to vary substantially the premises to which a premises licence or club premises certificate relates;
- to specify (in a premises licence) an individual as the Designated Premises Supervisor (DPS);
- to authorise the sale or supply of alcohol or to authorise the sale by retail or supply of alcohol at any time between 11 p.m. and 7 a.m. or increase in the amount of time on any day during which alcohol may be sold by retail or otherwise supplied; or
- to disapply the mandatory conditions concerning the supervision of alcohol sales by a personal licence holder and the need for a Designated Premises Supervisor who holds a personal licence at community premises.

Variations of these kinds must be made through the alternative variations procedure set out in the 2003 Act.

If the Licensing Authority grants an application under the minor variation provisions it must notify the applicant in writing specifying:

- the variations which are to have effect; and
- the time when they are to have effect.

If an application is refused, the Authority must notify the applicant, in writing, giving its reasons for the refusal. The Authority is required to reach its determination within a period of fifteen working days starting on the first working day after the Authority receives the application, otherwise the application is rejected and the Authority must return the application fee. However, the Licensing Authority and the applicant may agree instead that the undetermined application should be treated as a new application and that the fee originally submitted will be treated as a fee for the new application.

Minor variations will generally fall into four categories:

- minor changes to the structure or layout of a premises;
- small adjustments to licensing hours;
- the removal of out of date, irrelevant or unenforceable conditions or addition of volunteered conditions;

- the addition of certain licensable activities.

In all cases the overall test is whether the proposed variation could impact adversely on any of the four licensing objectives.

Changes to the Structure and / or Layout of Premises

Many small variations to layout will have no adverse impact on the licensing objectives and so can be subject of a minor variation application. However, changes to layout must be made using the full variation process if they could potentially have an adverse impact on the promotion of the licensing objectives, for example by:

- increasing the capacity for drinking on the premises ;
- affecting access between the public part of the premises and the rest of the premises or the street or public way, e.g. block emergency exits or routes to emergency exits;
- impeding the effective operation of a noise reduction measure such as an acoustic lobby.

The Licensing Authority will consider the combined effect of a series of applications for successive small layout changes (for example, as part of a rolling refurbishment of a premises) which in themselves may not be significant, but which cumulatively may impact adversely on the licensing objectives.

Licensable Activities

An application to remove a licensable activity will normally be approved as a minor variation.

Variations to add the sale by retail or supply of alcohol to a licence are excluded from the minor variations process and must be treated as full variations in all cases.

The addition of live or recorded music to a licence may impact on the public nuisance objective, but this will depend on many factors. The Licensing Authority will consider factors such as proximity to residential areas and any noise reduction conditions volunteered by the applicant. It is very much the Government's intention that applications to vary a licence for live music should benefit from the minor variations process unless there is likely to be an adverse impact on the licensing objectives.

Similarly, in some circumstances, the addition of other types of regulated entertainment, such as the performance of plays or exhibition of films, to a licence may have no adverse impact on the licensing objectives.

In considering applications to add licensable activities the Licensing Authority will normally consider the following factors:

- the nature of the licensable activity;
- proximity of the premises to residential areas;
- any licence conditions volunteered by the applicant to mitigate the impact of the activity;
- whether alcohol is sold at the premises when the licensable activity is taking place; and whether it will continue to be sold during the extended period. For example, a pub that applies to stay open an extra hour after the sale of alcohol has ended to sell hot drink and food could be considered to benefit the promotion of the licensing objectives;

- track record of the premises – whether positive or negative. For example, any complaints or enforcement action related to the licensing objectives, or conversely any evidence of good practice in carrying on the licensable activity, e.g. under temporary event notices;
- proximity and density of public houses, nightclubs, etc. if customers from these premises are likely to be attracted to the proposed licensable activity in large numbers. For example, people visiting a takeaway after leaving a public house.

This is not an exhaustive list and Licensing Officers will bring their own experience and knowledge of licensing to bear when considering applications.

Licensing Hours

Variations to:

- extend licensing hours for the sale or supply of alcohol for consumption on or off the premises between the hours of 23.00 and 07.00; or
- to increase the amount of time on any day during which alcohol may be sold or supplied for consumption on or off the premises

are excluded from the minor variations process and will be treated as full variations in all cases.

Applications to reduce licensing hours for the sale or supply of alcohol, or to move (without increasing) the licensed hours between 07.00 and 23.00 will normally be processed as minor variations.

Applications to vary the time during which other licensable activities take place will be considered on a case by case basis with reference to the likely impact on the licensing objectives. In arriving at a decision, the Licensing Authority will normally consider the following factors:

- the nature of the licensable activity;
- the extent of additional hours sought and whether it will involve later opening or opening between 23.00 and 07.00;
- proximity of the premises to residential areas;
- any licence conditions already in place to mitigate the impact of the activity;
- any additional conditions volunteered by the applicant;
- arrangements for dispersal, i.e. when people leave the premises is there potential for noise and disturbance near the venue? Is the only means of dispersal a single route through residential areas?
- whether the proposed extension applies only on the weekend or also during week days;
- whether there will be new admittances during that period;
- track record of the establishment whether positive or negative, e.g. complaints related to the licensing objectives, any enforcement action or conversely any evidence of good practice in carrying on the licensable activity, e.g. under temporary event notices;
- whether the premises is already open during the extended period for other licensable activities;
- proximity and density of public houses, nightclubs, etc. if customers from these premises are likely to be attracted to the proposed licensable activity in large numbers. For example, people visiting a takeaway after leaving a public house.

These factors are not an exhaustive list and Licensing Officers will bring their own experience and knowledge of licensing to bear when considering applications.

Licensing Conditions

a) Imposed Conditions – The Licensing Authority cannot impose its own conditions on the licence through the minor variations process. If the Licensing Officer considers that the proposed variation would impact adversely on the licensing objectives unless conditions are imposed, the application will be refused.

b) Volunteered Conditions - Applicants may volunteer conditions as part of the minor application process. These conditions may arise from their own risk assessment of the variation, or from informal discussions with Responsible Authorities or the Licensing Authority.

For instance, there may be circumstances when the licence holder and a Responsible Authority (such as the Police or Environment Team) agree that a new condition should be added to the licence. For example, that a nightclub adds the provision of late night refreshment to its licence to ensure a longer period of dispersal. Such a change would not normally impact adversely on the licensing objectives and could be expected to promote them by preventing crime and disorder or public nuisance. In these circumstances, the minor variation process may provide a less costly and onerous means of amending the licence than a review, with no risk to the licensing objectives. However, this route should only be used where the agreed variations are minor and the licensee and the Responsible Authority have come to a genuine agreement. The Licensing Authority will be alert to any attempts to pressure licensees into agreeing to new conditions where there is no evidence of a problem at the premises and, if there is any doubt, will discuss this with the relevant parties.

c) Amending or Removing Existing Conditions - Licence or club certificate conditions will normally have been volunteered or imposed to mitigate any possible adverse impact on the licensing objectives. In most cases, therefore, any application to remove or change the wording of a condition will be treated as a full variation. However, there may be some circumstances when the minor variation process is appropriate. Premises may change over time and the circumstances that originally led to the condition being attached or volunteered may no longer apply. For example, there may be no need for door supervision if a bar has been converted into a restaurant. Equally some embedded conditions may no longer apply.

There may also be cases where it is necessary to revise the wording of a condition that is unclear and/or unenforceable. This would be acceptable as a minor variation as long as the purpose of the condition and its intended effect remain unchanged. Such a change could be expected to promote the licensing objectives by making it easier for the licensee to understand and comply with the condition and easier for the Licensing Authority to enforce it.

The information and guidance contained in this leaflet is provided for information purposes only. However, in attempting to simplify the law, certain requirements have been omitted. Full details of what you must do are in the legislation itself. Every reasonable effort is made to make the information and commentary accurate and up to date, but Cornwall Council assumes no responsibility for its accuracy and correctness, or for any consequences of relying on it. Laws can and do change. This information was accurate when produced, but may have changed since. We must advise that only the Courts can give an authoritative opinion on statute law.

The information and commentary does not, and is not intended to, amount to legal advice to any person on a specific case or matter. You are strongly advised to obtain specific personal advice from a solicitor or licensing consultant about your case or matter and not to rely entirely on the information or comments in this leaflet.
