



House of Commons
Regulatory Reform Committee

**Draft Legislative
Reform (Minor
Variations to Premises
Licences and Club
Premises Certificates)
Order 2009**

Second Report of Session 2008–09

*Report, together with formal minutes and
written evidence*

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The Regulatory Reform Committee

The Regulatory Reform Committee (previously the Deregulation and Regulatory Reform Committee) is appointed to consider and report to the House on draft Legislative Reform Orders under the Legislative and Regulatory Reform Act 2006. Its full remit is set out in S.O. No. 141, which were approved on 4 July 2007.

Current membership

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Paragraph (3) of Standing Order No.141 requires us to consider any draft legislative reform order against the following criteria:

... whether the draft legislative reform order —

- (a) appears to make an inappropriate use of delegated legislation;
- (b) serves the purpose of removing or reducing a burden, or the overall burdens, resulting directly or indirectly for any person from any legislation (in respect of a draft Order under section 1 of the Act);
- (c) serves the purpose of securing that regulatory functions are exercised so as to comply with the regulatory principles, as set out in section 2(3) of the Act (in respect of a draft Order under section 2 of the Act);
- (d) secures a policy objective which could not be satisfactorily secured by non-legislative means;
- (e) has an effect which is proportionate to the policy objective;
- (f) strikes a fair balance between the public interest and the interests of any person adversely affected by it;
- (g) does not remove any necessary protection;
- (h) does not prevent any person from continuing to exercise any right or freedom which that person might reasonably expect to continue to exercise;
- (i) is not of constitutional significance;
- (j) makes the law more accessible or more easily understood (in the case of provisions restating enactments);
- (k) has been the subject of, and takes appropriate account of, adequate consultation;
- (l) gives rise to an issue under such criteria for consideration of statutory instruments laid down in paragraph (1) of Standing Order No 151 (Statutory Instruments (Joint Committee)) as are relevant;
- (m) appears to be incompatible with any obligation resulting from membership of the European Union.

Publications

The Reports and evidence of the Committee are published by The Stationery Office by Order of the House. All publications of the Committee (including press notices) are on the Internet at www.parliament.uk/regrefcom. A list of Reports of the Committee in the present Session of Parliament is at the back of this volume.

Committee staff

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Summary

The draft Legislative Reform (Minor Variations to Premises Licences and Club Premises Certificates) Order 2009 was laid before Parliament on 8 December 2008. It proposes a streamlined procedure for applying to make minor changes to the licences of licensed premises which would dispense with the requirements to advertise such proposed changes and to consult in all cases with responsible authorities such as the police. Instead, licensing authorities would have discretion on whether to consult the responsible authorities.

The draft Order essentially defines minor variations as those that are not substantial and that licensing authorities consider could not have an adverse effect on the promotion of the four statutory licensing objectives, which the Licensing Act 2003 (the 2003 Act) defines as: prevention of crime and disorder; public safety; prevention of public nuisance; and protection of children from harm. There would be extensive statutory guidance to assist licensing authorities in determining when applications submitted under the minor variations procedure should be approved.

The test of whether the licensing objectives could be affected is a stringent one. If it is not met, the full variation process would apply. Furthermore, the proposal was modified following consultation so that the only applications that could be made in relation to alcohol under the expedited procedure would be those that either reduce the hours of sale of alcohol or change them within the hours of 7am and 11pm without there being any consequent net increase in selling hours during that period. **We are satisfied that this addresses the main point of concern that was raised in consultation.**

However, we believe that when a minor variation is being considered, it should be a requirement that a notice describing the proposed variations be attached to the outside of the premises concerned for a minimum of two weeks. This would provide an appropriate safeguard for local communities whose members might then contact licensing authorities if the matter raised any concerns.

The Government has proposed that the Order be dealt with under the negative resolution procedure. However, in order that the amendment we suggest might be incorporated into the final text, we recommend that the procedure on the draft Order be upgraded to super-affirmative. Given the general sensitivity surrounding licensing issues, this would serve the additional purpose of ultimately allowing the House a vote on the Order.

1 Introduction

1. The draft Legislative Reform (Minor Variations to Premises Licences and Club Premises Certificates) Order 2009 and Explanatory Document (ED) were laid before Parliament on 8 December 2008 by the Department for Culture, Media and Sport (DCMS) under section 14(1) of the Legislative and Regulatory Reform Act 2006 (LRRRA). A number of written questions about the draft Order were put by us to the DCMS, the responses to which are annexed to this Report.

2 Background

What is a premises licence required for?

2. Except for temporary activities, which are dealt with in separate provisions, anything that the 2003 Act defines as a licensable activity requires either a premises licence or, in the case of a club, a club premises certificate.¹ Licensable activities are:

- a) The sale by retail of alcohol;
- b) The supply of alcohol by or on behalf of a club to, or to the order of, a member of a club;
- c) The provision of regulated entertainment;
- d) The provision of late night refreshment.²

3. Regulated entertainment is defined as entertainment or the provision of entertainment facilities.³ Entertainment includes performances of plays, exhibition of films, indoor sporting events including boxing, performance of live music, playing of recorded music and dance performances.

The current procedure for applying to vary a licence

4. Section 84 of the 2003 Act sets out the current procedure for varying club premises certificates, and section 34 deals with licensed premises that are not clubs.⁴ An application is required for any change to the licence as issued, including changes to physical features shown on the premises plan, such as (relatively significantly) a change in the position of an entrance but (far less significantly in most cases) a change to a storage facility. There is a fee of between £100 and £1905 depending on rateable value,⁵ copies must be provided to up to

1 This is the situation in relation to premises themselves. There are further requirements on individuals.

2 See 2003 Act, section 1. There is a separate list for clubs, which is contained in section 1(2). Late night refreshment is defined in Schedule 2 of the 2003 Act and can be summarised as the sale of hot food or drink to members of the public between the hours of 11pm and 5am for consumption on or off the premises.

3 2003 Act, Schedule 1

4 In this context, "club" means a members' club, rather than a nightclub to which the public are admitted

5 But see the impact assessment at Annex A to the ED for why an application can in practice cost much more than this

nine responsible authorities such as the fire and rescue services,⁶ and the application must be advertised in the local paper or newsletter. Applications must be considered within 28 days and objections can be made on the basis of the four licensing objectives. If objections are received, there must be a hearing to determine the application, with any appeal against the outcome being made to the local magistrates. The current full application process equates essentially to that for submitting a licence application from scratch. Indeed, as pointed out in the ED, some licence holders have made full reapplications in cases to which the Order would apply.⁷

3 What the draft Order proposes

5. The Government estimates that some 30% of applications to vary are for changes to licensed premises that may be considered minor. The ED cites relocation of a bar as an example.⁸

6. The draft Order would remove the requirement to advertise applications and to copy them to the responsible authorities. Instead, licensing authorities would copy applications to those responsible authorities that they considered appropriate, and take into account any views received in response. Local residents would not have the right to make representations, nor would there be any hearing, but the general right of any party to seek review of any licence would remain.⁹ There would be a shortened period of 15 days for considering applications and a reduced, flat fee of £73. There would be no right of appeal, but applicants would be free to submit a full application if their application under the minor variations procedure were rejected.

4 Preconditions and tests for LROs

7. The LRRRA sets out tests for a legislative reform order (LRO) made pursuant to section 1 of the LRRRA. In addition, our standing orders require us to consider whether LROs give rise to issues under the criteria for consideration of statutory instruments in Standing Order No. 151 (such as whether the draft Order purports to have retrospective effect) and whether the draft Order purports to make an inappropriate use of delegated legislation.

8. In the present case, we do not consider that any issues arise under Standing Order No. 151, nor that matters of constitutional significance arise. This report therefore addresses only the other criteria: whether a burden exists, whether the proposal is proportionate and strikes a fair balance between the public interest and any adversely affected parties, whether there is removal of necessary protection, whether the

6 The full list of statutory responsible authorities is: The Chief Officer of Police, the local fire and rescue authority, the local environmental health authority, the local health and safety enforcement agency, the Maritime and Coastguard Agency, the relevant child protection body, the local planning authority, the local weights and measures authority (trading standards) and any other licensing authority in whose area any part of the premises is situated.

7 See ED page 23

8 ED page 4, paragraph 14

9 See 2003 Act, sections 51-53

continued exercise of reasonable rights and freedoms is prevented, and whether the Order is appropriate for delegated legislation.

5 Consultation

Options presented on consultation

9. A first-stage consultation on the broad intent of the proposals took place between 31 November 2007 and 20 February 2008, with a short second-stage consultation on the draft Order, guidance, proposed fee and application form during August 2008. Three options were presented in the first consultation. The first, which was the option recommended by the Government, corresponded to that now being proposed (except that it did not contain the provisions for excluding certain alcohol-related applications). The second suggested modifying the law to provide for specific definitions of minor variations. The third was to leave the position as it is.

Consideration of points made in consultation

First-Stage Consultation

10. There were 108 responses to the first consultation. Most respondents preferred the Government's recommended option, but the ED points out that a significant (35%) minority—including all residents associations—preferred the other options on the basis that Option 1 could generate inconsistencies of practice. Other concerns raised by consultees included the removal of the right of residents and responsible authorities to object as part of the application procedure, and the possibility of excessively wide interpretations of what constitutes a minor variation.

11. On the other hand, consultees also mentioned that the disproportionate expense of the current system in dealing with insubstantial changes was causing short cuts to be taken. Some physical alterations that should be the subject of approval are not being reported at all. Furthermore, as observed in the initial consultation document, a succession of small changes made without approval might be minor in themselves, while cumulatively having an impact on the licensing objectives.¹⁰ By contrast, the proposed guidance would expressly require licensing officers to consider the effect of cumulative changes.¹¹ In other current cases, changes are dealt with by means of informal letter arrangements with local authorities or by incorrect use of the low-cost procedure that applies when a premises licence is lost.¹²

12. We believe that the extensive guidance should largely be able to deal with inconsistencies in practice—particularly as, unlike primary legislation, it can be updated regularly in the light of practice and experience. The proposed guidance addresses the issues of how to decide on applications for extensions of licensing hours and for addition of

10 See paragraph 3.8 of the initial consultation document

11 Paragraph 8.42 of the draft guidance

12 See Annex 1, at the response to question 6

new licensing activities, which were two further matters that concerned consultees. **We recommend that the guidance be regularly reviewed to ensure that licensing officers receive the appropriate steer, in order to provide proper protection against misuse of the new procedure.** We asked specifically about the matter of sex encounter establishments and we note that the Government intends to bring forward new legislation dealing with that area.¹³

13. There is clearly a case for not involving every responsible authority in every application and for leaving the decision on whom to involve to licensing officers, provided that licensing officers are properly equipped to make that decision. In any event, as mentioned above, premises and club licences are always subject to review under section 51 of the 2003 Act. The significance of that is that there will remain a procedure by which both responsible authorities and also local residents and communities can challenge a licensing officer's decision on a minor variation application notwithstanding removal of the right to make representations at the application stage and the scrapping of automatic referral to the responsible authorities. It is important, however, that that right be exercisable effectively and promptly. The Local Authorities Coordinators of Regulatory Services has observed that review processes can be extremely lengthy taking into account the possibilities of appeal.¹⁴ **We therefore encourage the DCMS regularly to review the ease of use and degree of public awareness of the section 51 procedure.**

14. It was clear from consultation responses that many of the principal concerns about the application of the proposal to extension of licensing hours related to the possible risks associated with extending opportunities for drinking. We therefore welcome the exclusions in relation to alcohol made as a result of the first-stage consultation.

15. The estimates for the savings that are anticipated from introducing the revised procedure are set out at length in the ED.¹⁵ The figures were the subject of a certain amount of criticism, for instance on the basis that they do not properly take into account the extra costs that would result from wrongly handled applications. On the other hand, certain consultees pointed out that the costs of applying under the current system might if anything have been understated. **On balance, we agree that there is strong evidence that the current application procedure represents a burden as defined in section 1 of the Legislative and Regulatory Reform Act 2006.**

Second-Stage Consultation

16. There were 83 responses to the second-stage consultation. Two residents association consultees objected to the second stage having taken place in what they regarded as the "dead days" of August. We agree that, in a matter such as the present one, which was of potential concern to communities rather than exclusively to businesses, that timing was regrettable. However, it appears not to have had a substantial effect on the number or quality of responses.

13 See Annex 1, at the response to question 5

14 This observation was made in response to the consultation on the draft Legislative Reform (Supervision of Alcohol Sales in Church and Village Halls &c.) Order 2009

15 See ED paragraphs 17 to 20.

17. The second-stage consultation asked about the appropriate timescale for dealing with applications. Ten days was proposed, but as a result of the second consultation the time period was extended to 15 days. We agree that this is more realistic, while still being substantially faster than the 28 day period that applies to full applications.

18. We note that the proposed application form does not expressly set out the licensing objectives. **We recommend that the licensing objectives be set out in the application form so that applicants are clear about what they are.**

19. **In light of the above, we believe that the proposals have been the subject of adequate consultation and that the proposals have taken proper account of the consultation. We also believe that the draft Order meets most of the tests imposed by the Act referred to in paragraph 8, although there is a small matter of appropriate protection which we will now consider.**

6 Committee amendment

20. Whilst in most respects we are satisfied with the Order, we believe that an amendment to provide an added safeguard for local communities should be introduced. Accordingly, we recommend that when a minor variation is being considered it should be a requirement that a notice describing the proposed variation be attached to the outside of the premises concerned for a minimum of two weeks. This would allow for licensing authorities to be contacted if the matter raised any concerns.

7 Conclusions

21. The Government has recommended that the draft Order be proceeded with under the negative resolution procedure. **However, in order that the amendment we suggest might be incorporated into the final text, we recommend that the procedure on the draft Order be upgraded to super-affirmative. Given the general sensitivity surrounding licensing issues, this would serve the additional purpose of ultimately allowing the House a vote on the Order.**

Formal Minutes

Tuesday 27 January 2009

Members present:

Andrew Miller, in the Chair

Gordon Banks
Lorely Burt
John Hemming

Judy Mallaber
Dr Doug Naysmith

Draft Report (Draft Legislative Reform (Minor Variations to Premises Licences and Club Premises Certificates), proposed by the Chairman, brought up and read.

Ordered, That the Chairman's draft Report be read a second time, paragraph by paragraph.

Paragraphs 1 to 21 read and agreed to.

Summary agreed to.

A Paper was appended to the Report as an Annex.

Resolved, That the Report be the Second Report of the Committee to the House.

Ordered, That the Chairman make the Report to the House.

[Adjourned to a date and time to be fixed by the Chairman.]

Annex

Responses from Department of Culture, Media and Sport to Inquiry Manager of the Committee requesting information

Question 1 – Cost of Reviews

“The LRO would remove the automatic right of residents and responsible authorities such as the police to be informed of an application and to object to it, although the right for anyone to request that a licence be reviewed at any time would remain. Please provide statistics on the costs involved in review applications, their duration, and the frequency with which there is a need to obtain legal advice, including not just average figures but some indication of the spread of costs.

There is no standard cost of a review, or any available estimates of duration. The length of a review hearing, which is the key cost driver, depends on the number of individual interested parties and responsible authorities that wish to attend the hearing and speak on the issues. Accordingly, a review hearing might take several days, and involve adjournments, or might be completed within a couple of hours. However, prior to the implementation of the Licensing Act 2003, the Department for Culture Media and Sport (DCMS), together with the Local Government Association (LGA), estimated that the average cost of a review hearing to a licensing authority would be around £1200 in 2008-09. This assumed that the Licensing Authority would require the input of its legal department in most hearings. In order to generate this average, the Local Government Association surveyed over 150 of its members, of which 133 provided usable data. While we have no details of the individual ranges, we know that average costs varied between different types of authority. These variations are shown in the table below:

Authority type	Average cost of Committee hearings (average ££s)
City Councils	1,094
District Council	706
Borough Councils	840
Metropolitan Boroughs	1,273
London	1,771
Wales	1,533
TOTAL average	1,202

Interested parties and responsible authorities are not charged a fee for making representations. Their costs are discretionary and will usually be limited to expenses connected to their own attendance at hearings, should they choose to do so. These costs apply equally whether the hearing is a consequence of representations received during an application for a licence or variation, or of a review. Our understanding is that interested parties obtain legal advice in connection with their representations only on very rare occasions. It is also open to interested parties to draw evidence to the attention of responsible authorities, and thereby provoke a application for review.

The timescale from an interested party making a representation to the last decision will also vary from case to case. However, the basic timescales are governed by regulations:

- representations have to be made in a maximum of 28 days after the application for review is lodged¹⁶.
- the authority has to advertise the review application for a minimum of 28 days after it receives the application¹⁷
- after the period for representations has closed, the authority has another 20 working days in which to commence the hearing, unless all parties agree that a hearing is unnecessary¹⁸
- the hearing itself may last for a single day, or more or less depending on the complexity of the issues, the amount of evidence etc.
- after the hearing is concluded the authority has five working days to make its decision.

These are maximum timescales, so generally they will represent the longest time the process will take. But the authority may extend the times in some circumstances¹⁹ and hearings can be adjourned²⁰ Subject to that, the timescales would give an overall process lasting just over two months. There is also the possibility of an appeal to the magistrates' court once a decision has been given.

Question 2 – Live Music and Reviews

“Do the majority of licence reviews relate to live music venues? What are the numbers and percentages for different grounds of licence review?”

The most common ground for a review of a premises licence or club premises certificates is the prevention of crime and disorder. Statistics on the number of reviews, and the grounds for review, are published in the DCMS Statistical Bulletin²¹.

The grounds for a review can be one (or more) of the four licensing objectives (the prevention of crime and disorder; public safety; the prevention of public nuisance; and the protection of children from harm). Unfortunately, statistics indicating what activities take place at each premises are not available.

Reason for completed review - England and Wales in 2007/08

Total	Percentage	
Crime & Disorder	628	62%
Protection of Children	396	39%
Public Nuisance	408	40%
Public Safety	174	17%

Note: more than one reason may apply to each review, so the percentages will not add to 100%

However, public nuisance is a factor in 40% of reviews, and it can be reasonably assumed that reviews which are provoked by incidents connected to regulated entertainment, including live music are more likely to be made on public nuisance grounds than the other grounds²². The Live Music Forum (LMF)²³, reporting in

16 SI 2005/42, regulation 22

17 SI 2005/42, regulation 38

18 SI 2005/44, Schedule 1 and regulation 9

19 SI 2005/44, regulation 11

20 SI 2005/44, regulation 12

21 Statistical Bulletin on Alcohol, Entertainment and Late Night Refreshment April 2007 – March 2008. <http://www.culture.gov.uk/images/research/AE-Statistics-bulletin-2008.pdf> . See pages 22 and 31):

22 This does not imply that objections on public nuisance grounds relate only to live music: Noise from smokers, beer gardens or customers leaving the premises could also cause concerns.

July 2007, estimated that 68% of objections to live music authorisation during the transition process related to the noise level of the music²⁴. The other sources of objection to live music (such as noise from customers leaving the gig) are, likewise, more likely to be related to public nuisance than the other licensing objectives. The LMF also looked at how often complaints about noise made under the Environmental Protection Act 1990 were related to live music. It estimated that only about 3.5% of such complaints related to live music (compared with 45% for domestic sources of music)²⁵. It should be noted that this estimate is based on data from only one licensing authority. However, it does indicate that the proportion of reviews that relate to live music may only be a small proportion of the 40% figure.

Question 3 – Representations and Applications

“How many representations are currently made by residents in relation to what DCMS would classify as minor variations, or if those figures are not available, how many are made in total? Please also provide statistics on the breakdown of different types of application (e.g. physical alterations as compared with extension of hours).”

There were 12,400 new applications for premises licences and 11,100 applications for variations in 2007-08. The equivalent figures for Club Premises Certificates are 200 and 530²⁶. These applications resulted in 5,200 hearings²⁷. Therefore, around 21% of applications resulted in valid representations.

We do not know how many representations were made in respect of these applications (because each hearing may have been instigated by a number of representations), nor what proportion of representations are made by each class of responsible authority or interested party (such as residents). Although we do not have statistics on the breakdown of different types of application as requested, discussions with licensing stakeholders in advance of the first stage consultation indicated that around 30% of current variations would be minor variations under the new process, and 70% of these would relate to changes in layout.²⁸

Under the LRO a minor variation will be one which, by definition, cannot have any adverse impact on the promotion of the licensing objectives. Where a plausible case can be made that a variation would have such an impact (i.e. the proposals *could* have an adverse impact on the objectives) the application would not fall within the minor variation provisions and the authority would be obliged to reject it. We therefore think it is reasonable to infer that the number of representations currently made by residents in relation to “minor variations” is very small.

Question 4 – Specific Definitions of Minor Variations

“Why was the option of providing specific definitions of minor variations rejected?”

Ministers considered that providing specific definitions of ‘minor variations’ on the face of the Act would artificially exclude some variations that would not have an impact on the licensing objectives and include some that do. This issue was explored in the first stage consultation on Minor Variations. For example, a variation to extend licensing hours would not normally be classed as a ‘minor variation’. However, there are examples, such as a bar offering tea and coffee (late night refreshment) after alcohol sales have stopped, that might be ‘minor’ in the circumstances. It would be impractical to cover every possible circumstance in legislation. Following the initial consultation, Ministers agreed that only variations to add the sale or supply of alcohol to a licence or extend the hours during which it could be sold or supplied should be specifically excluded from the minor variations process because of the concerns that had been expressed to them. The

23 http://www.culture.gov.uk/images/publications/lmf_chp2background.pdf See page 20 of the PDF version for a summary of the Live Music Forum and its terms of reference

24 http://www.culture.gov.uk/images/publications/lmf_chp3impactlicensingact.pdf See page 33 of the PDF version. The LMF estimates were derived from the Ipsos-Mori Report “The experience of smaller establishments in applying for live music authorization” (December 2006) <http://www.culture.gov.uk/images/research/licensingurvey2006reportFinal.pdf>, page 31, and relate to application where the premises that did not have a Public Entertainment Licence under former regime. <http://www.culture.gov.uk/images/research/licensingurvey2006reportFinal.pdf>

25 LMF report, page 34.

26 Statistical Bulletin on Alcohol, Entertainment and Late Night Refreshment, pages 19-20.

27 Ibid. page 24.

28 “Consultation on proposal to introduce a simplified process for minor variations to premises licences and club premises certificates” (November 2007), pages 22 and 39. http://www.culture.gov.uk/reference_library/consultations/5139.aspx

additional statutory Guidance to the Act provides local authorities with detailed advice on the issues that should be taken into account in deciding what variations are minor.

Question 5 – Additional Exclusions

“Why did the Department dismiss the possibility of retaining the current definition of a “minor variation” but with a number of additional exclusions to cover matters that particularly concerned consultees, rather than relying wholly on guidance? In particular, why could the definition not exclude particularly controversial matters such as extension of licensing hours at sex encounter establishments, extension of existing music or dancing licensing hours beyond 11pm, and first-time applications to allow playing of music?”

As described above (Question 4), DCMS has indeed agreed to exclude most alcohol-related variations in response to the concerns of consultees. In many cases the extension of music and dancing beyond 11pm, or the addition of the playing of music to a licence, will not fall within the definition of a minor variation. This would be most likely where, for example, the extension would coincide with a pre-existing authorisation to sell or supply alcohol. But there may also be cases in which such an extension could not impact adversely on the licensing objectives, and we would not want these to be excluded from the benefits of the new process. The draft Guidance (sections 8.49 and 8.51) lays out factors to consider in such cases.

Sex encounter establishments are a specific statutory category of premises governed by Schedule 3 of the Local Government (Miscellaneous Provisions) Act 1982. These provisions apply only in London boroughs that have resolved to adopt them. They are narrowly drawn provisions and contain specific exemptions, including premises that already hold authority to put on regulated entertainment under the Licensing Act 2003. Accordingly, for example, virtually no lap-dancing establishments are currently licensed under the 1982 Act because they hold premises licences covering regulated entertainment under the 2003 Act. However, in the context of lap-dancing, for example, while the Licensing Act 2003 regulates the performance of dance, it contains no provisions which enable the content of the dance to be censored by the licensing authority. In addition, the four licensing objectives restrict the scope of any representations involving such clubs.

Sex encounter establishments are not mentioned because the Government is proposing to exclude these from the scope of the regulated entertainment provisions in the Licensing Act 2003, instead making them subject to a modified version of the provisions currently found in Schedule 3 to the Local Government (Miscellaneous Provisions) Act 1982. This was foreshadowed in public comments by the Home Secretary in September 2008 and in the Queen’s Speech and will be put forward as part of the Policing and Crime Bill.

The Government considers that the Licensing Act 2003 cannot be satisfactorily amended to provide a remedy for the concerns expressed by residents about premises, such as lap-dancing clubs, and that the appropriate way forward is to amend the terms of the 1982 Act.

Question 6 – Informal Minor Variations Procedure

“To what extent do some licensing authorities already offer an informal minor variations procedure?”

We have anecdotal evidence that many authorities operate an informal mechanism for making small changes to licences, sometimes charging the fee formally meant to cover the theft or loss of the original licence or certificate (£10.50). Such a procedure is, strictly speaking, irregular and subject to challenge, and is it therefore difficult to obtain information about the extent to which it occurs. We do know that these ‘de facto’ minor variations procedures vary substantially from authority to authority, which applicants claim is confusing, especially those such as national pub chains that operate across authorities. One of the benefits of the minor variations process is that it will impose a consistent approach and provide clarity for applicants.

Question 7 – Responsible Authorities

“What is the Department’s view of the argument that the 2003 Act does not permit assessment of applications against the licensing objectives to be made only by licensing officers and licensing authorities without there necessarily being any reference to responsible authorities?”

The current provisions of the Licensing Act 2003 would not allow applications for the grant or variation of licences and certificates to be determined without affording responsible authorities and interested parties the opportunity to make representations. There are some exceptions, under which only the police need to be

given such an opportunity in respect of the crime prevention objective. Examples would include, the transfer of the premises licence to a new holder and the variation of the licence to enable it to specify a new designated premises supervisor. In addition, the system of permitted temporary activities again requires reference only to the police in connection with the crime prevention objective.

If amended by the draft Legislative Reform Order, the Licensing Act 2003 will allow licensing authorities to determine an application for a minor variation, but only after having consulted such responsible authorities as it considers appropriate and taken their comments into account.

In deciding whether there is a need to consult responsible authorities, and if so which ones, the authority will be bound by the duty in section 4 of the Act to promote the licensing objectives. It will also be bound by this duty in considering what conclusions ought to be reached in view of any comments made by the responsible authorities. In addition, the definition of a “minor variation” excludes any proposal that could have any adverse impact upon the promotion of any of the licensing objectives. The authority will also be required to take into account the relevant statutory Guidance, a draft of which was included with the Explanatory Document. It will also be bound by general public law principles of decision-making, and be required to be sensitive to the interests of local residents and others to whom it is democratically accountable. Finally, it will also be subject to the scrutiny of the Local Government Ombudsman in the carrying out of these functions.

In trying to craft an expedited procedure for minor variations the Department was mindful of the importance of the role of responsible authorities under the present system, and has sought to balance the need for scrutiny by them with the need for a system which is significantly quicker and simpler than the existing variations process. The Department considers that the approach taken in the draft Order, in view of the safeguards outlined above, reflects the correct balance.

Question 8 – Site Visits

“What percentage of applications are likely to involve site visits by licensing officers? Please provide a clearer justification for the estimated average time for a licensing officer to deal with an application (and hence the anticipated application fee, which is based on that time).”

None. If a variation is truly “minor” as defined in the draft Order it should not require a site visit for the purposes of the minor variation. Its requiring a site visit would be a very strong indication that it should go through the full variation process instead.

For the fee estimate, we assumed a cost per hour of £32.12 for administrative work and £68.85 for professional work.

We assumed that the necessary tasks and average time taken were as follows:

Task	Time Taken (min)	Administrative or Professional (%)	Estimated Average Cost (£)	Total Cost Each Activity (£)
Reading application form	15	75/25	6.02/ 4.30	10.32
Checking Plan	15	75/25	6.02/ 4.30	10.32
Contacting RAs, if necessary	15	100/00	8.03	8.03
Replying, (if refused, with reasons)	15	50/50	4.02 / 8.61	12.63
Processing Payment	15	100/0	8.03	8.03

Filing Records/ Changing Register	15	100/0	8.03	8.03
Producing the Licence	15	100/0	8.03	8.03
Licence Checking and Dispatch	15	100/0	8.03	8.03
Total	120			73.42

During the second stage consultation, which included a question on the precise fee²⁹, the majority of respondents, including the majority of licensing authorities, considered that the fee was about right.

29 "Licensing consultation - proposals to introduce a new minor variations process, and remove certain requirements at community premises" (August 2008), page 19: http://www.culture.gov.uk/reference_library/consultations/5349.aspx

List of Reports from the Committee during the current Parliament

Session 2008-09

First	Draft Legislative Reform (Insolvency) (Advertising Requirements) Order 2009	HC 181
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Session 2007-08

First	Draft Legislative Reform (Local Authority Consent Requirements) (England and Wales) Order 2007	HC 135
Second	Draft Legislative Reform (Health and Safety Executive) Order 2008	HC 398
Third	Draft Legislative Reform (Consumer Credit) Order 2008	HC 939
Fourth	Draft Legislative Reform (Local Authority Consent Requirements) (England and Wales) Order 2008	HC 940
Fifth	Getting Results: the Better Regulation Executive and the Impact of the Regulatory Reform Agenda	HC 474-I and II
Sixth	Draft Legislative Reform (Lloyd's) Order 2008	HC 1090