

### Report to

Licensing & Regulatory Committee  
Cabinet  
Council

5<sup>th</sup> February 2008  
12<sup>th</sup> February 2008  
19<sup>th</sup> February 2008

### Report of

Director of City Services

### Title

Licensing Act 2003 – Legislative Reform Order - Proposal to Introduce a Simplified Process for Minor Variations to Premises Licences and Club Premises Certificates

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## 1 Purpose of the Report

- 1.1 The purpose of this report is to advise members of the contents of the consultation document (attached as Appendix A) and a proposed response to the Department for Culture, Media & Sport (DCMS) (attached as Appendix B).

## 2 Recommendations

- 2.1 Licensing & Regulatory Committee is asked to consider the DCMS document and draft response appended to this report and to forward its views to Cabinet for consideration.

Appropriate comments made by the Licensing and Regulatory Committee at their meeting on 5<sup>th</sup> February 2008 will be conveyed to Cabinet on 12<sup>th</sup> February.

- 2.2 The Cabinet is asked to consider the DCMS document and the draft response, together with any comments from Licensing & Regulatory Committee and Scrutiny Board 3 and recommend to Council that it adopt the draft response, subject to any amendments that Cabinet may wish to make.

- 2.3 Council is asked to take account of the recommendations from Cabinet and approve the draft response appended to the report, amended as necessary in light of those recommendations.

### **3 Information/Background**

- 3.1 DCMS are seeking comments on a proposal to amend the Licensing Act 2003 to provide for a new 'minor variations' process. The plan is to reduce the administrative burden on businesses and non-commercial organisations.
- 3.2 The proposed changes fit around the Governments drive for 'Better Regulation' in terms of simplifying regulatory oversight of business activities and with the general thrust of the 'Hampton Review' recommendation of reducing the administrative burden of regulation.
- 3.3 This was identified in the DCMS Simplification Plan, published in December 2006, as one area of regulation where the Department could reduce the administrative burden on businesses and non-commercial organisations.
- 3.4 There is perhaps some conflict with the desire of local communities to exercise greater control over the licensing of the sale of alcohol and the links that are seen between inappropriate alcohol consumption and crime / anti-social behaviour. This is locally embedded for us in the Community Safety Strategy and Alcohol Harm Reduction Strategy.
- 3.5 The Legislative and Regulatory Reform Act 2006 enables a Minister of the Crown, with the approval of Parliament to make a legislative reform order to remove or reduce a burden falling directly or indirectly on any person. Section 34 of the Licensing Act provides that the holder of a premises licence may apply for a variation of the licence. A variation is required for any change to the licence, including changes to any feature shown on the plan of the premises. Section 84 of the Act makes comparable provision in relation to club premises certificates.
- 3.6 The Government proposes that the 2003 Act is amended to make provision for a new 'minor' variations process. This would allow applicants to make small alterations to their licences or certificates for a reduced fee and without having to advertise the variation or copy it to all responsible authorities.

#### The Current Process for Variations

- 3.7 Currently, to apply for a variation, the licence holder must complete a prescribed variation application form and send it, together with the prescribed fee, the original licence or certificate and plan of the premises and the revised plan (if appropriate) to the licensing authority. They must also copy all documents to up to nine 'responsible authorities' (public bodies such as the police, fire authority, health & safety etc.,) and advertise the application in the local paper or newsletter and place a notice with details of the application at or on the relevant premises.
- 3.8 As long as the application to vary would not have the effect either of extending the period for which the licence has effect, or varying substantially the premises to which the licence relates, the licensing authority must grant the application unless it receives relevant representations (objections) from interested parties (residents and businesses in the vicinity of the premises) or from any of the other responsible authorities. Variations received by the licensing authority within the past 12 months have not been to extend the period for which the licence has effect or to vary substantially the premises to which the licence relates, as these variations require a new premise licence application. Representations must relate to the four licensing objectives:

- The prevention of crime and disorder
  - Public Safety
  - The prevention of public nuisance
  - The protection of children from harm
- 3.9 If representations are received, the licensing authority must hold a hearing to consider them (unless all parties agree that this is unnecessary) and take any steps it considers necessary for the promotion of the licensing objectives, including adding or modifying the conditions of the licence or certificate or rejecting all or part of the application. These requirements are similar to those for a full application and place similar administrative burdens and costs on applicants, local authorities and responsible authorities.
- 3.10 However, a significant number of applications to vary (approximately 30% nationally) are for 'minor' changes (such as the re-location of a bar, moving safety equipment to a more appropriate location, or adding the performance of dance to a licence that already permits all other regulated entertainment), which are less likely to impact on the four licensing objectives.
- 3.11 The average cost of a variation is estimated to be approximately £610, which is charged on the same basis as for a full licence application. This figure includes application fees (approximately £225 per premise) and other related fees detailed in paragraph 2.7 of the consultation document at appendix A of the report. However, additional costs may apply to some variations, which include a professionally drawn revised plan of the premises and/or obtaining legal help, which, if added, could raise the average cost of a variation to £950 (excluding fees) or £1170 (including fees).
- 3.12 Nationally, on average, there are 20,000 variation applications per year (Coventry City Council received 69 applications for a variation in the last 12 months) across all licensing authorities of which, approximately 30% (6000) would likely to be captured by a minor variations process. This figure does not translate directly into numbers of businesses or clubs affected by the burden, because some business may submit several applications to vary (e.g. if they are carrying out a major refit). Applicants will range from large retail stores and national pub chains; to sports and working mens' clubs; to village halls staffed by volunteers and small off-licences.
- 3.13 DCMS considers that the current procedure for varying a licence constitutes a burden under section 1 of the Legislative and Regulatory Reform Act 2006, within the scope of all four definitions in section 1 as follows:
- a financial cost
  - an administrative inconvenience
  - an obstacle to efficiency, productivity or profitability
  - a sanction, criminal or otherwise, for doing or not doing anything in the course of an activity

#### The Proposed Process for Variations

- 3.14 DCMS have outlined the two options for removing the identified burden in the consultation document and a further option to do nothing.

### 3.15 Option 1

Amend the Act to introduce a new process for minor variations, broadly defined as any variation that does not impact adversely on the promotion of the licensing objectives. Leave licensing authorities to decide whether a variation is 'minor' within the broad parameters described above and having regard to general criteria and case studies provided in the statutory Guidance made under the 2003 Act. Licensing authorities required to consult relevant responsible authorities as they judge necessary, depending on the individual circumstances of the variation.

### 3.16 Option 2

Amend the Act to introduce a new minor variations process as Option 1, but constrain licensing authority discretion by specifying on the face of the Act which variations should be included in, and/or excluded from, a minor variation process.

3.17 A narrow definition could be as suggested at point 7.13 of appendix A "any change to the layout of the premises". However the definition could be widened as suggested at point 7.14 and 7.15 of appendix A to include other types of variation, such as changes to the licensing hours (a supermarket applying to bring its licensing hours up to the general opening hours in which it retails other goods), licensable activities and conditions attached to the licence. Licensing authorities required to consult relevant responsible authorities, as they judge necessary, depending on the individual circumstances of the variation.

3.18 In theory, this option leaves less room for error by specifying what is and/or is not a minor variation for the purposes of the Act and thereby constraining local authority discretion. However there is a recognised difficulty of defining a minor variation in such a way that it would not exclude at least some variations that could pose no risk to the promotion of the licensing objectives. The Government therefore considers that whether this option strikes a fair balance will depend on how a minor variation is defined.

3.19 Half the variation applications processed by the licensing authority in the past 12 months would fall into the minor variation definition however this would be increased if the definition of minor was widened to the extent detailed at point 7.15 of appendix A of the report, which could include the extension of hours.

### 3.20 Option 3

No change to existing procedures

3.21 This option is the preferred option of both the Licensing Authority and West Midlands Police as detailed in the consultation response at appendix B of the report. Concerns have been expressed in respect of removing the requirement to advertise a variation, which enables local residents to submit representations, removing the requirement to enable all Responsible Authorities to check and monitor variation applications, the definition of 'minor' variations and the administrative burden being increased on the licensing authority.

### Interested Parties

3.22 The Licensing Act supports a number of key aims and purposes, which includes the necessary protection of local residents, whose lives can be blighted by disturbance

and anti-social behaviour of some people visiting licensed premises of entertainment.

- 3.23 Local people are starting to show a much greater understanding of their rights to make objections and seek reviews and are becoming engaged in the licensing process. If Option 1 or 2 was introduced residents would not be made aware of changes to the premises licences for those business operating in their area and more importantly would not be able to make representations which could lead to extra conditions being volunteered by the Premises Licence Holder or the application being considered by the Licensing and Regulatory Sub Committee.
- 3.24 Local Councillors play an important role in the Licensing Act process. They can make representations in writing and at a hearing on behalf of an interested party such as a resident or local business if specifically requested to do so. They can also make representations as an interested party in their own right if they live, or are involved in a business, in the vicinity of the premises in question. Again if Option 1 or 2 was introduced then local Councillors would not be able to make such representations for minor variations.

#### Low Risk Variations

- 3.25 The consultation document dismisses the idea of introducing a legal definition of minor on the grounds that it is impossible to legislate for all eventualities. It recommends that any variation that will not impact adversely upon the licensing objectives should be treated as minor and proposes to leave this assessment to licensing officers.
- 3.26 In making that assessment the licensing authorities overheads would remain the same or could even increase as a result of additional officer time taken to make that assessment and appropriate visits to the premises being made. Under the proposals for Option 1 and 2 there would be an increase in workload in respect of making the assessment copying the application to Responsible Authorities and producing an amended licence.
- 3.27 The consultation document suggests that the new proposed system would be a solution to the problem of a succession of very minor variations to a premises licence slipping through the net. As such, these have no adverse effect on the licensing objectives when taken individually, but do have such an impact when taken collectively. The document proposes that licensing authorities look at individual variation applications to determine whether or not they can be classified as 'minor', however neglects to provide a mechanism for the assessment of cumulative effect.

#### Administrative Burden

- 3.28 Finally there would be no reduction in our regulatory work as the officer resource required for a variation (both a minor or substantial) or a full application is the same. The administration process is identical in so far that application checks, liaison with Responsible Authorities, facilitating mediation and processing new/amended licences is necessary.
- 3.29 A lower fee would be paid to cover the same administration process undertaken by the licensing team (excluding the potential of arranging a hearing but including duplicating and sending applications to all Responsible Authorities). This fee could

be as little as £23, which is the current fee for changing the Designated Premises Supervisor where the police are the only Responsible Authority informed.

- 3.30 Options 1 and 2 would result in cost savings of £1.5 - £2.8 million/year, depending on which option is taken forward. (According to the consultation document) Fees are set by the Secretary of State at a level, which allows the recovery of the legitimate and efficient costs to the licensing authority of administering the Act. The fee for a minor variation therefore could be expected to be significantly lower than the current graduated fees charged for variations.
- 3.31 However it is possible that the administrative burden on the licensing authority may be the same as at present, or greater if the licensing authority is required to 'copy' the variation applications and circulate them to the responsible authorities. The cost of this copying and circulation is currently born by the applicant – i.e. the licensed trade with their variation fee.
- 3.32 There would also need to be changes to the Regulations prescribing forms, advertising procedures etc., primarily the Licensing Act 2003 (Premises Licences and Club Premises Certificates) Regulations 2005 in order to accommodate the new procedures.
- 3.33 These concerns have been highlighted in a proposed letter of response to DCMS as attached at appendix B. In addition consultation has taken place with Responsible Authorities and members of the Licensing Forum. Their views and comments have been included at appendix B of the attached report.
- 3.34 Scrutiny Board 3 on 16<sup>th</sup> January 2008 endorsed this report and the proposed response to DCMS.

#### **4 Proposal and Other Option(s) to be Considered**

- 4.1 The DCMS Consultation document was released on 28<sup>th</sup> November 2007, giving local authorities up to 20<sup>th</sup> February 2008 to discuss and respond. Consequently the timescale is tight to review comments and seek approval through Council.
- 4.2 Subject to the results of the consultation, any amendments to the Licensing Act will be made through a Legislative Reform Order, which would require Parliamentary consideration. This procedure can last up to 60 days, which includes scrutiny by the Regulatory Reform Committee in the House of Commons and the Delegated Powers and Regulatory Reform Committee in the House of Lords. After this period the Minister may only make the order if it is approved by a resolution of each House of Parliament and has not been vetoed by either or both relevant Committees.

#### **5 Other specific implications**

	<b>Implications (See below)</b>	<b>No Implications</b>
Best Value		✓
Children and Young People		✓
Climate change & Sustainable development		✓
Comparable Benchmark Data		✓

	Implications (See below)	No Implications
Corporate Parenting		✓
Coventry Community Plan		✓
Crime and Disorder		✓
Equal Opportunities		✓
Finance	✓	
Health and Safety		✓
Human Resources	✓	
Human Rights Act		✓
Impact on Partner Organisations	✓	
Information and Communications Technology		✓
Legal Implications	✓	
Neighbourhood Management		✓
Property Implications		✓
Race Equality Scheme		✓
Risk Management		✓
Sustainable Development		✓
Trade Union Consultation		✓
Voluntary Sector – The Coventry Compact		✓

## 6. Financial Implications

- 6.1 Prior to the implementation of legislation Central Government made a Commitment to Local Authorities that fees would cover the costs of undertaking the Implementation of the Act.
- 6.2 An independent fee review (Elton Review) has now been completed and has provided various recommendations to the Secretary of State. The Review identified that there has been an excess of cost over income during the implementation of the Act. This concluded that the total which should be refunded by Central Government to Local Government is £43m for the three year implementation period, 2004/05 to 2006/07.
- 6.3 The Review also recommends an increase in fees by 7% for a three-year period up to 2009/10. Fees will continue to be set nationally and applied locally with the fee levels continuing to be based on the non-domestic rateable value. The Government has not yet responded to the report.
- 6.4 This change in minor variation applications will reduce the annual levels of income to the licensing authority by approximately £10,500 per annum (dependant on minor variation classification and the fee set by Government for a minor variation)

Income for variation applications received in 2007 was £21,575 which could be reduced in future years to £10942 if the new fee for minor variation was set at £23 or £11348 if set at £37.

**7. Human Resources**

7.1 Licensing duties are carried out by the Licensing Team located in Environmental Health. At present there are 7 full time permanent officers in the team to meet the administrative, inspection and enforcement demands of the licensing functions. The long term size of the team will depend upon workload demands and income levels for the various licensing functions. (Licensing Act 2003, Gambling Act 2005, Sex Establishments, Street Collection, Lotteries, Motor Salvage, Scrap Metal, House to House Collections)

**8. Impact on Partner Organisations**

8.1 All Responsible Authorities and members of the Licensing Forum have been given the opportunity to comment on the guidance review.

**9. Monitoring**

9.1 We will monitor the consultation results and inform Councillors of the outcome.

**10. Timescale and Expected Outcomes**

10.1 The response must be with DCMS by 20<sup>th</sup> February 2008. It is proposed to obtain full Council approval for the response on 19<sup>th</sup> February 2008.

	Yes	No
<b>Key Decision</b>		✓
<b>Scrutiny Consideration (if yes, which Scrutiny meeting and date)</b>	✓ Scrutiny Board 3 <b>16<sup>th</sup> January 2008</b>	
<b>Council Consideration (if yes, date of Council meeting)</b>	✓ 19th February 2008	



List of background papers

Proper officer: Stephen Pickering, Director of City Services

Author: Davina Blackburn, Principal Licensing Officer Telephone ext 3067  
 Public Protection, Environmental Health  
 (Any enquiries should be directed to the above)

Other contributors:

Mark Smith, Legal Services ext 3037  
 Lynne Bowell, Human Resources, City Services Directorate ext 4862  
 Elaine Tierney, Lead Accountant, City Services Directorate ext 3726  
 Usha Patel, Committee Officer, Customer & Workforce Services ext 3198

Papers open to Public Inspection

**Description of paper**

DCMS: Legislative Reform Order:  
 Proposal to Introduce a Simplified Process for  
 Minor Variations to Premises Licences and Club  
 Premises Certificates

Licensing Act 2003  
 Licensing Act 2003 section 182 guidance

[http://www.culture.gov.uk/Reference library/  
 Consultations/](http://www.culture.gov.uk/Reference_library/Consultations/)

[http://www.culture.gov.uk/what we do/Alcohol  
 entertainment/](http://www.culture.gov.uk/what_we_do/Alcohol_entertainment/)

Or from  
 Licensing Team, Environmental Health,  
 Broadgate House

Papers Not open to Public Inspection

**NIL**



Simon Richardson  
Licensing Minor Variations Team  
Tourism, Licensing and Economic Impact Division  
6<sup>th</sup> Floor  
2-4 Cockspur Street  
London  
SW1Y 5DH

Our reference CS/LIC/DPH  
20<sup>th</sup> February 2008

Dear Sir/Madam

**CONSULTATION ON THE PROPOSAL TO INTRODUCE A SIMPLIFIED PROCESS FOR MINOR VARIATIONS TO PREMISES LICENCES AND CLUB PREMISES CERTIFICATES**

I am writing to confirm that Coventry City Council at its full Council meeting on 19<sup>th</sup> February 2008 considered the contents of the above mentioned Consultation Paper, which sought the Council's views on the proposal to simplify the process for minor variations for Premises Licences and Club Premises Certificates.

Full Council agreed that this letter together with the attached document be submitted as a formal response to the Consultation Document: -

The City Council, whilst welcoming the proposal to reduce the financial burden for businesses under the current procedure for varying a Premises Licence and Club Premises Certificates, has concern that insufficient consideration has been given to the following issues : -

**Cumulative effect of Minor Variations**

The City Council believes that the adoption of Option 1 or 2 could create a situation where a number of minor variations could be made to a premises licence without responsible authorities or interested parties being able to raise objections. As such, each of these minor variations may have no adverse effect on the licensing objectives when taken individually, but do have an impact when taken collectively. The consultation document proposes that licensing authorities look at individual variation applications to determine whether or not they can be classified as 'minor', however neglects to suggest a mechanism for the assessment of cumulative effect.

**City Services Directorate**  
Public Protection

Environmental Health  
Commercial Services  
Broadgate House  
Broadgate  
Coventry  
CV1 1NH

Telephone 024 7683 1874  
Fax 024 7683 2154  
[www.coventry.gov.uk](http://www.coventry.gov.uk)

**Please contact licensing team**  
**Direct line 024 7683 1874**  
**Fax 024 7683 2154**  
[davina.blackburn@coventry.gov.uk](mailto:davina.blackburn@coventry.gov.uk)

## **Interested Parties**

Coventry City Council notes that the Licensing Act supports a number of key aims and purposes, which includes the necessary protection of local residents, whose lives can be blighted by disturbance and anti-social behaviour of some people visiting licensed premises of entertainment.

Whilst many of the variations, which maybe classed as a minor variation, go unchallenged, indications are that local residents have a keen interest and understanding of their right to make objections and seek reviews and pleasingly, in Coventry, residents are becoming increasingly engaged in the licensing process. If Option 1 or 2 was introduced, residents would not be made aware of changes to the premises licences for those business operating in their area and more importantly, would not be able to make representations which could lead to additional conditions being agreed by the Premises Licence Holder; or the application being considered by the Licensing and Regulatory Sub Committee of the Council.

## **Role of the ward Councillor**

Coventry City Council believes that local ward councillors play a crucial role in the Licensing Act process and routinely engage in the process, making representations in writing and at hearings on behalf of an interested parties such as residents or local businesses. Ward councillors also make representations as an interested party in their own right if they live, or are involved in a business, in the vicinity of the premises in question. If Option 1 or 2 were introduced, then local ward councillors would not be able to make such representations for minor variations, weakening their role as ward councillor.

## **Costs/Workload**

Coventry City Council questions paragraph 1.12 of the consultation document which states that "Fees are set by the Secretary of State at a level which allows the recovery of the legitimate and efficient costs to the licensing authority of administering the Act. The fee for a minor variation could therefore be expected to be lower than the current graduated fees charged for minor variations".

The City Council was disappointed to note that the Government has made no response to the Elton Review recommendation that there be an increase in fees by 7% for a three-year period up to 2009/10. Additionally, no account appears to have been taken of the possible increased cost to the licensing authority in administering a new minor variations process. If Option 1 or 2 are chosen, consultation should be carried out with the Local Government Association (LGA) and the Local Authorities Co-ordinators of Regulatory Services (LACORS) before any fees are set.

## **Alternative Options**

Coventry City Council considers that alternative options for reducing the financial burden should be considered which could include investigating alternative measures to inform local residents of applications as opposed to the current requirement to advertise in a local newspaper.

The consultation document dismisses the idea of introducing a legal definition of 'minor variation' on the grounds that it is impossible to legislate for all eventualities. It recommends that any variation that will not impact adversely upon the licensing

objectives should be treated as minor and proposes to leave this assessment to licensing officers.

In making that assessment the Council's overheads would remain the same or could even increase as a result of additional officer time taken to make that assessment, with appropriate visits to the premises being made. Under the proposals for Option 1 and 2 there would be an increase in workload and therefore cost, in respect of making this assessment, copying the application to Responsible Authorities and producing an amended licence.

### **Coventry City Council preference is Option 3**

Coventry City Council concludes that the current process for administering variations provides a robust licensing system and alternative measures to reduce the financial burden to businesses should be investigated further.

I hope these comments are helpful. In the meantime, a copy of this letter has been sent to the LGA and LACORS, for their information.

Yours faithfully,



*Director of City Services*  
Stephen Pickering  
*Head of Service*  
Andy Vaughan  
Head of Street Services and Public  
Protection

**Licensing Act 2003 – Consultation on Proposal to introduce a Simplified Process for Minor Variations to Premises Licences and Club Premises Certificates**

DCMS Question	Response from:	Summary of Responses	Licensing Authority Response	Response to DCMS
<p>1. Do you agree that the requirement for licence holders to apply for a variation to make small, low risk changes to their licences represents a burden as defined in Section 1 of the Legislative and Regulatory Reform Act 2006?</p>	<p>Responsible Authorities: Police</p> <p>Health &amp; Safety</p>	<p>It is agreed there is a financial consideration but feel it is necessary to satisfy the promotion of the licensing objectives</p> <p>Given the wide description of a burden by the Act any financial cost or element of administration will be a burden even if it is at a low level</p>	<p>The financial burden in respect of advertising the application in a local newspaper could be removed by taking away this requirement and introducing alternative measures to inform local residents. Application fee however is still necessary to cover the admin costs of processing the application which includes, application checks, liaison with Responsible Authorities, facilitating mediation, updating the public register and producing an amended licence.</p>	
<p>2. Do you agree with this broad definition of a 'minor variation', if not, please explain why and give an alternative.</p>	<p>Responsible Authorities: Police</p> <p>Health &amp; Safety</p>	<p>Agreed to a point. Certain variations are not minor e.g alcohol sales</p> <p>Disagree, the re-arranging of internal layout can have significant implications for structural and public safety</p>	<p>Agree that a minor variation should include changes to the layout of premises, which may not when taken individually have a detrimental impact on the four licensing objectives. However the consultation document has not indicated an adequate process for ensuring no adverse effect on the licensing objectives when a succession of minor amendments are individually submitted by the same premises however when taken collectively there would be an impact on the licensing objectives. Additionally if the definition of minor variation was broader to cover an increase in hours then this could not be defined as a minor variation.</p>	
<p>3. Do you agree that the risk to the promotion of the four licensing objectives from minor variations to licences does not justify the current level of</p>	<p>Responsible Authorities: Police</p> <p>Health &amp; Safety</p>	<p>Disagree with this comment</p> <p>Disagree</p>	<p>Disagree</p>	

control afforded by sections 34-36 and 84-86 of the Licensing Act 2003?				
4. Do you agree that Option 3 – No Change- should be rejected? If not, please give your reasons.	Responsible Authorities: Police  Health & Safety	The current system of full consultation by the licensing authority is a system that is working perfectly well. It provides a safeguard where all parties are made aware of any changes  The no change option should still be considered as the system is now working. La's have put a lot of resource to ensure the current system is efficient as possible, additional changes will therefore be a waste.	The current Member's Code of Conduct provides a limited right for Councillors with a prejudicial interest to make representations, give evidence or answer questions at a licensing hearing provided they are otherwise entitled to do so under the Licensing Act 2003. (i.e if they are an interested party themselves or they have been asked to represent an interested party). If Option 1 or 2 was therefore adopted Councillors rights under the Act would be further limited in terms of objecting or representing constituents for minor variations.  The consultation document suggests that the new proposed system would be a solution to the problem of a succession of very minor variations to a premises licence slipping through the net. As such, these have no adverse effect on the licensing objectives when taken individually, but do have such an impact when taken collectively. The document proposes that licensing authorities look at individual variation applications to determine whether or not they can be classified as 'minor', however neglects to provide a mechanism for the assessment of cumulative effect.  Option 3 is therefore the preferred option as the current administrative process is required to ensure a robust licensing system.	
5. Do you agree that licensing authorities should only be	Responsible Authorities: Police	Disagree	Disagree	

required to consult relevant RA's as they judge necessary, depending on the individual circumstances of the variation application	Health & Safety	Disagree, Licensing staff do not have the expertise to determine who is a RA and therefore likely to send to all RA's to make sure, therefore merely transferring the administration from the applicant to the licensing authority.		
6. If not, what arrangements do you think should be in place, and why?	Responsible Authorities: Police  Health & Safety	Consider that the current arrangements should remain in place as outlined in response to 4 above. Keep existing arrangements	The current process ensures that both Responsible Authorities and Interested Parties are informed of changes, which may have an impact on the promotion of the four licensing objectives.	
7. Do you agree that there should be no right of appeal against a licensing authority if it rejects a request to process a variation through the minor variations process? If not, please explain why?	Responsible Authorities: Police  Health & Safety	I see no problem with a right of appeal being kept  Agree, although could lead to judicial review which is even more expensive and time consuming should an applicant be not satisfied with the decision	Agree	
8. Do you agree that licensing authorities should have 10 working days to consider minor variation applications and either agree the variation or require the applicant to submit it to the full variation process?	Responsible Authorities: Police  Health & Safety	Submit to the full variation process of 28 days Yes, if the process has to be adopted	Submit to the full variation process of 28 days	
9. If not, what period do you think would be appropriate?	Responsible Authorities: Police  Health & Safety	As question 8  N/A	As question 8	
<b>DCMS Question</b>	<b>Respondent</b>	<b>Summary of Comments</b>	<b>Licensing Authority Response</b>	<b>Response to DCMS</b>
10. Do you agree that the full 28 days should apply if the licensing authority decides that a variation should be processed through the full procedure? If not, please explain why.	Responsible Authorities: Police Health & Safety	Yes Yes	Yes	
11. Do you agree that the applicant should be required to	Responsible Authorities: Police	Agree	Agree	



copy the application to all RAs, including those previously consulted, if the variation is referred to the full procedure? If not, please explain why.	Health & Safety	Yes		
12. Do you agree that licensing officers should be able to make decisions on minor variations (where appropriate) rather than the licensing committee? If not, please explain why?	Responsible Authorities: Police Health & Safety	Agree Yes	Agree	
13. Do you agree that the required changes identified under Options 1 and 2 cannot be achieved by non-legislative means? If you consider that the change can be given effect by non-legislative means, please provide your reasons.	Responsible Authorities: Police Health & Safety	Agree Yes	Agree	
14. Do you agree that the proposal to introduce a new process for minor variations to licences is proportionate to the policy aims set out above?	Responsible Authorities: Police Health & Safety	Disagree Disagree, a succession of minor variations could be used instead of significant variation to achieve the same effect for the business	Disagree	
15. Do you agree that Option 1 strikes a fair balance between the public interest and the interests of those affected adversely by the proposal? If not, please explain why.	Responsible Authorities: Police  Health & Safety	Disagree the balance proposed would remove the ability for full consideration by Responsible Authorities  Disagree it should be for RA's to determine if they have an interest in an application	Disagree as this would remove the option of interested parties being able to object and the ability for full consideration by all Responsible Authorities	
16. Do you agree that whether this Option strikes a fair balance between the public interested parties and the interests of those affected adversely by the proposal will depend on how a minor variation is defined? If not, please explain why.	Responsible Authorities: Police  Health & Safety	Minor variation is down to interpretation and it is only right and fair all parties are able to comment  Yes, what constitutes a minor variation must be absolutely specific to avoid inconsistency in interpretation	Minor variation is down to interpretation and it is only right and fair all parties are able to comment	

DCMS Question	Respondent	Summary of Comments	Licensing Authority Response	Response to DCMS
17. How do you think a minor variation should be defined in order to strike a fair balance? Please be specific and refer to the four types of variation discussed above and the different approaches outlined in paragraph 7.10.	Responsible Authorities: Police  Health & Safety	Minor variation such as name and address changes is already catered for in the Act. Any other variations should be subject to current conditions  As per 16	Minor variation such as name, address changes and a change of Designated Premises Supervisor is already catered for in the Act. Any other variation should be subject to current conditions	
18. Do you agree that Option 1 would not remove any necessary public protection, but would remove unnecessary protection afforded by the current variations process?	Responsible Authorities: Police  Health & Safety	Disagree  Disagree	Disagree	
19. Do you agree that, although Option 2 would not remove any necessary protection, it is likely to afford a higher level of protection than is necessary if minor is defined too narrowly? If not, please explain why.	Responsible Authorities: Police  Health & Safety	Totally disagree with option 2. Prescriptive variations would give rise to unnecessary complications.  Disagree, Option 2 may remove some necessary protection as licensing staff will be left to judge who is a relevant RA	Disagree with option 2. Prescriptive variations would give rise to unnecessary complications	N/A
20. Do you agree that Option 1 is the best option?	Responsible Authorities: Police	No	No	
21. If not, which option would you like to see adopted?	Responsible Authorities: Police  Health & Safety	Remain with current arrangements  Option 3	The current Member's Code of Conduct provides a limited right for Councillors with a prejudicial interest to make representations, give evidence or answer questions at a licensing hearing provided they are otherwise entitled to do so under the Licensing Act 2003. (I.e. if they are an interested party themselves or they have been asked to represent an interested party). If Option 1 or 2 was adopted Councillors rights under the Act would be further limited in terms of objecting or representing constituents for minor variations.	

			<p>In addition see attached report para 3.20 to 3.29 for full response to this question</p> <p>Option 3 is therefore the preferred option as the current administrative process is required to ensure a robust licensing system.</p>	
22. Do you consider that there are other options that should be explored which are not identified in this consultation document?	<p>Responsible Authorities: Police</p> <p>Health &amp; Safety</p>	<p>No</p> <p>Yes, allow a small number of clearly prescribed minor variations that do not effect the licensing objectives, the licence holder to notify the licensing section of these without the need for consultation of RAs</p>	<p>Yes – current arrangements for the submission of plans and advertising an application could be explored further.</p>	
23. Do you agree with the costing and underlying assumptions in the Impact Assessment at Annex B? If not, please explain why and give alternatives.	<p>Responsible Authorities: Police</p> <p>Health &amp; Safety</p>	<p>I do not disagree with costings. Current arrangements should continue</p> <p>Unable to comment on costings</p>	<p>Yes</p>	
<b>DCMS Question</b>	<b>Respondent</b>	<b>Summary of Comments</b>	<b>Licensing Authority Response</b>	<b>Response to DCMS</b>
General comments	<p>Responsible Authorities: Community Safety Team</p>	<p>If Option 1 adopted then we need to retain some flexibility locally but would also want to be assured that Coventry is playing on a level field to the rest of the region. I.e not being too soft on what is judged as minor but also not being overly beurocratic.</p> <p>Local criteria agreed with RA's should be sufficient and that criteria should be regularly reviewed in order to be sufficiently flexible on emerging issues</p>	<p>Refer to attached letter</p>	



department for  
**culture, media  
and sport**

# Legislative Reform Order: Proposal to Introduce a Simplified Process for Minor Variations to Premises Licences and Club Premises Certificates

Licensing Act 2003

Our aim is to improve the quality of life for all through cultural and sporting activities, support the pursuit of excellence, and champion the tourism, creative and leisure industries.

## Summary of Proposal and Options for Implementation

### Proposal

1. The Government proposes to amend Parts 3 and 4 of the Licensing Act 2003 ('the 2003 Act') to make provision for a simplified process for 'minor' variations (changes) to premises licences and club premises certificates.

### Options for implementation

2. This consultation document discusses 3 options. At this stage, the Government prefers Option 1. The options are:

**Option 1\*:** Amend the Act to introduce a new process for minor variations, broadly defined as any variation that does not impact adversely on the promotion of the licensing objectives. Leave licensing authorities to decide whether a variation is 'minor' within the broad parameters described above and having regard to general criteria and case studies provided in the statutory Guidance made under the 2003 Act. Licensing authorities required to consult relevant responsible authorities as they judge necessary, depending on the individual circumstances of the variation.

**Option 2:** Amend the Act to introduce a new minor variations process as above, but constrain licensing authority discretion by specifying on the face of the Act which variations should be included in, and/or excluded from, a minor variations process. Licensing authorities required to consult relevant responsible authorities, as they judge necessary, depending on the individual circumstances of the variation.

**Option 3:** No change.

\*This is the Government's preferred option.

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# Chapter 1: Introduction and Purpose

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1.1 The Legislative and Regulatory Reform Act 2006 (the 2006 Act) enables a Minister of the Crown, with the approval of Parliament, to make a legislative reform order to remove or reduce a burden falling directly or indirectly on any person.

1.2 The burden may be a financial cost, or an administrative inconvenience, or an obstacle to efficiency, productivity or profitability, or a sanction, criminal or otherwise: or involve a combination of these elements.

1.3 An order may not impose, abolish or vary any tax. This proposal does not have any impact on tax whatsoever.

1.4 Under section 3 of the 2006 Act, before presenting to Parliament a proposal to make a legislative reform order the Minister of the Crown must be satisfied that:

- the policy objective intended to be secured by the order could not be satisfactorily secured by non-legislative means;
- the effect of the provision is proportionate to the policy objective;
- the provision, taken as a whole, strikes a fair balance between the public interest and the interests of any person adversely affected by it;
- the provision does not remove any necessary protection;
- the provision does not prevent any person from continuing to exercise any right or freedom which that person might reasonably expect to continue to exercise; and
- the provision is not of constitutional significance.

1.5 The Minister can recommend one of three alternative procedures for Parliamentary scrutiny dependent on the size and importance of the LRO. The negative resolution is the least onerous and therefore may be suitable for LROs delivering small regulatory reform. The super-affirmative procedure is the most onerous involving the most in-depth Parliamentary scrutiny. Although the Minister can make the recommendation, Parliamentary Scrutiny Committees have the final say about which procedure will apply.

- Negative Resolution Procedure – This allows Parliament 40 days to scrutinise a draft LRO after which the Minister can make the LRO if neither House of Parliament has resolved during that period that the LRO should not be made.
- Affirmative Resolution Procedure – This allows Parliament 40 days to scrutinise a draft LRO after which the Minister can make the LRO if it is approved by a resolution of each House of Parliament.



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- Super-Affirmative Resolution Procedure – This is a two stage procedure during which there is opportunity for the draft LRO to be revised by the Minister.

1.6 This allows Parliament 60 days of initial scrutiny, when the Parliamentary Committees may report on the draft LRO, or either House may make a resolution with regard to the draft LRO.

1.7 If, after the expiry of the 60 day period, the Minister wishes to make the LRO with no changes, he must lay a statement. After 15 days, the Minister may then make an LRO in the terms of the draft, but only if it is approved by a resolution of each House of Parliament.

1.8 Under each procedure, the Parliamentary Scrutiny Committees have the power to recommend that the Minister not make the LRO. If one of the Parliamentary Committees makes such a recommendation, a Minister may only proceed with it if the recommendation is overturned by a resolution of the relevant House.

1.9 The Department for Culture, Media and Sport believes that the negative resolution should apply to this LRO on the grounds that this is a minor change to the Act and one which would have no impact on the licensing objectives.

### **The legislative burden**

1.10 Section 34 of the Licensing Act 2003 provides that the holder of a premises licence may apply to the relevant licensing authority for variation of the licence. A variation is required for any change to the licence, including changes to any feature shown on the plan of the premises. Section 84 of the Act makes comparable provision in relation to club premises certificates.

1.11 The only exception is a variation to a premises licence to specify an individual as premises supervisor which is subject to a simplified, notification process under section 37 of the Act. There is no equivalent of this in relation to club premises certificates.

### **The Government's proposal**

1.12 The Government proposes that the 2003 Act is amended to make provision for a new 'minor' variations process. This would allow applicants to make small alterations to their licences or certificates for a fee and without having to advertise the variation or copy it to all responsible authorities. These measures would result in cost savings of £1.5 - £2.8 million/year, depending on which option is taken forward. Fees are set by the Secretary of State at a level which allows the recovery of the legitimate and efficient costs to the licensing authority of administering the Act. The fee for a minor variation could therefore be expected to be lower than the current graduated fees charged for variations. The fee would be set by the Secretary of State by negative resolution statutory instrument under sections 55 (premises licences) and 92 (clubs) of the 2003 Act, which would be prepared and enacted to come into force at the same time as the amendments introduced by the legislative reform order. There would also need to be changes to the Regulations prescribing forms, advertising procedures etc (primarily the Licensing Act 2003 (Premises licences and club premises certificates) Regulations 2005) in order to accommodate the new procedures. These would be introduced in a similar way to the new fees.

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1.13 The Order would extend to England and Wales and would not impact on Scotland or Northern Ireland.

1.14 This consultation document contains a series of questions to which responses are invited. A list of all questions can be found in Chapter 10.

1.15 Comments are also invited on the impact assessment attached to this consultation document at Annex B.

1.16 The consultation document follows the format recommended by the Cabinet Office for all such proposals. The criteria applicable to all UK consultations under the Cabinet Office Code of Practice on Consultation is at Annex C.

**How to respond**

1.17 The closing date for making responses to this consultation is 20 February 2008. If you would like to respond to this consultation, please e mail your response to [licensingconsultation@culture.gov.uk](mailto:licensingconsultation@culture.gov.uk)

If you prefer, you may submit a hard copy by post to:

Simon Richardson

Licensing Minor Variations Team

Tourism, Licensing and Economic Impact Division

6<sup>th</sup> Floor

2-4 Cockspur Street

London SW1Y 5DH

1.18 If you have any queries about this consultation you can contact the Licensing Team at the above address or by telephone on 020 7211 6322 or 020 7211 6380.

1.19 However, if you have any questions or complaints about the process of consultation on this paper, please contact Mythily Manickavasagar, Consultation Co-ordinator, Strategy Division, Department for Culture, Media and Sport, 2-4 Cockspur Street, London SW1Y 5DH.  
[mythily.manickavasagar@culture.gsi.gov.uk](mailto:mythily.manickavasagar@culture.gsi.gov.uk)

1.20 A summary of consultation responses, as well as copies of all responses, will be made available on the DCMS website within three months after the consultation has closed. It is assumed, therefore, that your reply can be made publicly available. In addition, all information in responses, including personal information, may be subject to publication or disclosure under freedom of information legislation. If a correspondent requests confidentiality, this cannot be guaranteed and will only be possible if considered appropriate under the legislation. Any such request should explain why confidentiality is necessary. Any automatic confidentiality disclaimer generated by your IT system will not be considered as such a request unless you specifically include a request, with an explanation, in the main text of your response.

# Chapter 2: The Burden

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## The relevant legislative provisions

2.1 Under sections 34 and 84 of the 2003 Act, any holder of a licence or club certificate wishing to vary their licence or certificate must submit an application to the relevant licensing authority.

2.2 To apply for a variation, the licence holder must complete a prescribed variation application form and send it, together with the prescribed fee, the original licence or certificate and plan of the premises and the revised plan (if appropriate) to the licensing authority. They must also copy all documents to up to nine 'responsible authorities' (public bodies such as the police, fire and rescue authority, etc - see paragraph 4.2 below for a full list), advertise the application in the local paper or newsletter and place a notice with details of the application at or on the relevant premises.

2.3 As long as the application to vary would not have the effect either of extending the period for which the licence has effect or varying substantially the premises to which the licence relates, the licensing authority must grant the application unless it receives relevant representations from interested parties (residents and businesses in the vicinity of the premises) or from any of the responsible authorities. Representations must relate to the four licensing objectives:

- the prevention of crime and disorder;
- public safety;
- the prevention of public nuisance;
- the protection of children from harm.

2.4 If representations are received, the licensing authority must hold a hearing to consider them (unless all parties agree this is unnecessary) and take any steps it considers necessary for the promotion of the licensing objectives, including adding to or modifying the conditions of the licence or certificate or rejecting all or part of the application.

2.5 These requirements are similar to those for a full application and place similar administrative burdens and costs on applicants, local authorities and responsible authorities.

2.6 However, a significant number of applications to vary (approximately 30%) are for minor changes (such as the re-location of a bar, moving safety equipment to a more appropriate location, or adding the performance of dance to a licence for a town square that already permits all other regulated entertainment) which are unlikely to impact in any significant way on the four licensing objectives.

## Administrative burdens and costs

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## 2.7 Applicants must:

- complete and send an application form with a copy of the licence or certificate, the original plan (and amended plan, if appropriate) to the relevant licensing authority (£15-£80);
- pay a fee (£100–£1905, depending on the rateable value of the premises);
- copy all documents to up to nine responsible authorities (£20-£40);
- advertise the proposed change in a local newspaper/circular (£200-£400);
- display a brief summary of the application on an A4 size notice on or immediately outside the premises (£5-£10, although this would increase for larger premises required to display multiple notices).

The average cost of a variation (including fees, which are charged on the same basis as for a full licence application and average approximately £225 per premises) is estimated to be approximately **£610**.

The average cost of a variation excluding fees is approximately **£385**.

However, the following additional costs may apply to some variations:

- supplying a revised plan of the premises (where applying for changes to layout) – £25-£500 (e.g. if the plan has to be professionally drawn);
- obtaining professional legal help – £100-£500 (although in a small number of cases, legal fees may be as high as £1500).

If these costs are added, the average cost of a variation could rise to £950 (excluding fees) or £1170 (including fees).

The range of possible costs for a variation (excluding fees) is therefore **£385 - £950**.

## Who is affected by the burden?

2.8 On average, there are 20,000 variation applications per year across all licensing authorities of which, approximately 30% (6000) would be likely to be captured by a minor variations process. This figure does not translate directly into numbers of businesses or clubs affected by the burden, because some premises may submit several applications to vary (e.g. if they are carrying out a major refit of a store). However even if this was reduced by say 5% to take account of multiple applications, it would still mean that 5700 premises per year are affected by the burden at a total annual cost of £2.3m – £4.3m. Applicants will range from large retail stores and national pub chains to sports, working mens' and political clubs to village halls staffed by volunteers and small off-licences. A significant proportion of these premises will be small or medium sized enterprises.

## The definition of a burden

2.9 Under section 1 of the Legislative and Regulatory Reform Act 2006, 'burden' means any of the following:

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- a financial cost;
- an administrative inconvenience;
- an obstacle to efficiency, productivity or profitability;
- a sanction, criminal or otherwise, for doing or not doing anything in the course of any activity.

2.10 The Government considers that the current procedure for varying a licence in section 34 of the Act constitutes a burden within the scope of all four of the definitions in section 1.

**Qu.1: Do you agree that the requirement for licence holders to apply for a variation to make small, low risk changes to their licences represents a burden as defined in section 1 of the Legislative and Regulatory Reform Act 2006?**

# Chapter 3: Options for Removing the Identified Burden

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## Definition of a minor variation

3.1 A minor variations process would remove the identified burden from holders of licences and certificates, but would also take away the right of local residents and businesses and responsible authorities (except in some cases – see paragraphs 4.2 – 4.7 below) to be made aware of and to make representations on minor variations, as defined. The definition of a minor variation is therefore central to this proposal.

3.2 The purpose of the Licensing Act is to promote the four licensing objectives described earlier, and representations made by interested parties and responsible authorities on an application to vary a licence or certificate are only ‘relevant’ if they relate to one or more of these objectives. It follows that a very broad definition of a ‘minor’ variation would be ‘any change to a premises licence or club premises certificate which will not impact adversely on the promotion of the licensing objectives’. A definition of this kind would require the licensing authority to form a view as to whether the variation proposed would have an adverse impact on the promotion of the objectives. It would therefore only apply where the authority could conclude in advance that there was no such impact. It would not be satisfied if the authority became aware of any risk that the promotion of the licensing objectives would be adversely affected by the variation proposals. In such a case, the authority would not be able to conclude that the test was met, and would therefore have to reject the application. In that event, the licence-holder or club would need to proceed under the standard variation procedure described in Chapter 2 above.

**Qu.2: Do you agree with this broad definition of a ‘minor variation’? If not, please explain why and give an alternative.**

3.3 However, views differ on whether licensing authorities should be left to determine for themselves what is or is not a minor variation within this broad definition, or whether their discretion should be limited, or even removed entirely, by defining ‘minor’ more narrowly on the face of the Act, e.g. by specifying what should be included, and/or excluded, from a minor variations process.

3.4 We think therefore that the main options are as follows:

**Option 1:** Amend the Act to introduce a new process for minor variations, broadly defined as any variation that does not impact adversely on the promotion of the licensing objectives. Leave it to licensing authorities to decide whether a variation is ‘minor’ within the broad parameters described above and having regard to general criteria and case studies provided in the statutory Guidance made under the 2003 Act.

**Option 2:** Amend the Act to introduce a new minor variations process as above, but constrain licensing authority discretion by specifying on the face of the Act which variations should be included in and/or excluded from a minor variations process.

**Option 3:** No change

3.5 Chapters 5 - 8 discuss how the preconditions set out in paragraph 1.4 above might be met in relation to Options 1 and 2. This section considers Option 3.

### **Option 3: No change**

3.6 The aim of the current variations process is to ensure that licence holders do not make changes to their licences or certificates which might have an adverse affect on the four licensing objectives. The requirement to advertise the proposed variation and to copy it to all responsible authorities ensures that interested parties and responsible authorities have an opportunity to make representations on the proposal and present their views at a formal hearing. Two years into the new licensing regime, there is good evidence of residents and local businesses actively participating in, and influencing, licensing decisions and this is one of the main successes of the Act.

3.7 However, as stated earlier, a significant proportion of small changes to licences could be expected to have little or no impact on the licensing objectives. For example, a pub adding late night refreshment in line with its licensing hours for the sale of alcohol and the provision of regulated entertainment; or a restaurant wishing to show performances of live acoustic guitar during the early evening. In these cases licence and club certificate holders are required to go through the full variation process, with the ensuing costs and administrative burden, when there are no risks to the licensing objectives and interested parties and responsible authorities could be expected to have little or no interest in the proposed changes. The current system costs licence and club certificate holders £2.3 - £4.3 million per year - money which could be ploughed back into businesses, clubs, village halls, etc. to provide better facilities and services to customers and the wider community.

3.8 One consequence of the current system is that some businesses make minor changes to their premises without applying for a variation. This may be because they are unaware of the legal requirements, but cost is also a factor, particularly for small businesses. This affects the effective operation of the licensing regime in that:

- the licence holder decides whether a change is minor or not. Inevitably some changes with an adverse impact on the licensing objectives will slip through the net;
- several small changes over a period of time may be 'minor' in themselves, but may cumulatively have an impact on the licensing objectives;
- when a licensed property is sold, the licence will not be up to date.

3.9 The Government considers that the current variations process represents an unnecessary burden on licence holders and undermines the Act by encouraging holders of licences and club certificates to break the law. As such the Government is minded to reject Option 3.

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**Qu.3: Do you agree that the risk to the promotion of the four licensing objectives from minor variations to licences does not justify the current level of control afforded by sections 34-36 and 84-86 of the Licensing Act 2003?**

**Qu.4: Do you agree that Option 3 – No Change – should be rejected? If not, please give your reasons.**



# Chapter 4: Other Issues

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4.1 This section considers other issues which are relevant to Options 1 and 2.

## **Consultation with responsible authorities**

4.2 Currently, holders of licences or certificates must copy applications to vary to up to nine 'responsible authorities' (RAs) at a cost of between £20 and £40 depending on the nature of the variation, size of plan, etc. RAs may make representations to the licensing authority on the application if they have concerns relating to the licensing objectives. They will usually comment on issues within their particular area of expertise, but are not limited to doing so. Statutory RAs are currently:

- the chief officer of police;
- the local fire and rescue authority;
- the local authority with responsibility for environmental health;
- the local enforcement agency for the Health and Safety at Work etc Act 1974 (either the local authority or the Health and Safety Executive);
- the Maritime and Coastguard Agency;
- the relevant child protection body;
- the local planning authority;
- the local weights and measures authority (trading standards);
- any licensing authority, other than the relevant licensing authority, in whose area any part of the premises is situated.

4.3 The requirement to consult all RAs has been identified as part of the burden on business and therefore any minor variation process should aim to remove or reduce it. In theory, if a variation is captured by the minor variations process it should not, by definition, impact on the licensing objectives and there should be no need to consult RAs. However, a requirement to consult a few 'core' RAs may provide additional assurance to residents and other interested parties that variations that pose any risk to the licensing objectives will not slip through the net. There will also be some cases where the licensing authority needs to seek the expert views of the relevant RA in order to arrive at an informed decision. The question is whether applicants should be required to consult specific RAs in all cases, or only relevant RAs as they judge necessary.

4.4 The requirement to consult a specific RA has some precedent in licensing law. For example, the police authority is the sole consultee for the notification of a temporary event. However, the wide range of variation applications means that it is very difficult to identify one or more RAs who will always be appropriate and useful consultees in every case. It would be of little value, for instance, and a waste of their resources, to consult the police on a small change to the layout of a restaurant or to consult the environmental health authority on the removal of an out of date condition relating to door security. This would also add a needless layer of bureaucracy and cost into what should be a simplified process.

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4.5 The Government therefore recommends that the decision on whether to consult one or more RAs should be left to the discretion of the licensing authority, depending on the individual circumstances of the variation. It is anticipated that this would only be necessary for a small number of minor variations and will therefore result in minimal bureaucracy and cost. This is particularly relevant to Option 1, where the licensing authority would have wide discretion, but may also apply to Option 2, depending on how 'minor' is defined.

4.6 To reduce the administrative burden on applicants, the Government also recommends that, under a minor variations process, the responsibility to copy application papers to RAs should be transferred from the applicant to the licensing authority.

4.7 This requirement should provide added assurance to residents and other interested parties that variations with possible implications for the licensing objectives will not 'slip through the net' without imposing an unnecessary administrative burden on licence holders, RAs and licensing authorities.

**Qu.5: Do you agree that licensing authorities should only be required to consult relevant RAs as they judge necessary, depending on the individual circumstances of the variation application?**

**Qu.6: If not, what arrangements do you think should be in place, and why?**

**Appeals**

4.8 Under the current variation process, the applicant may appeal to the magistrates' court if their application is rejected. A few stakeholders have suggested that applicants should have similar recourse if the licensing authority rejects their request to have a variation considered through the 'minor' process and requires a full variation application. This is particularly relevant to Option 1 where the licensing authority would have a wide decision-making power, but may also apply to Option 2 if the licensing authority retains some degree of discretion.

4.9 However, the Government's view is that the same conditions do not apply because the decision by the licensing authority to process the application as a full variation is only an interim decision. In other words, it is not rejecting the variation, merely referring it for a different level of consideration. In any event, it could be anticipated that applicants will normally contact the licensing authority first if they are in doubt about whether a variation is likely to be minor or not. A right to appeal would also add an unnecessary layer of bureaucracy to a simplified process and place additional burdens on the courts system.

4.10 Exceptionally, applicants in a particular area may be concerned that the licensing authority is not enforcing the minor variations process in a way that is consistent with the law. In this case, applicants may either seek judicial review or making a complaint to the Local Government Ombudsman. However, it is anticipated that this situation will arise very rarely and the statutory Guidance should provide sufficient detail to ensure that licensing authorities understand and follow the new process.

4.11 The Government therefore recommends that there should be no right of appeal if the licensing authority rejects a request to consider a variation through the minor process.

**Qu.7: Do you agree that there should be no right of appeal against a licensing authority if it rejects a request to process a variation through the minor variations process? If not, please explain why.**

### **Timescales**

4.12 On receipt of a minor variation application, the licensing authority will need time to consider the application, and consult one or more relevant RAs if necessary before either: approving the variation; or referring it to the full variation process. Licensing authorities may require more time to consider applications under Option 1 than under Option 2 (depending on how it is defined), but comprehensive Guidance should help to expedite the process. The Government recommends that, for both options, a period of ten working days should be sufficient for the licensing authority to arrive at a decision.

4.13 In the event that the licensing authority decides a variation should go through the full variation process, the Government considers that that process should be unchanged: that is, that residents and RAs should still be given a full 28 days to consider the application and make representations if necessary. It also considers that the applicant should be required to copy the application to all RAs, including any who may have been consulted previously by the licensing authority.

**Qu.8: Do you agree that licensing authorities should have 10 working days to consider minor variation applications and either agree the variation or require the applicant to submit it to the full variation process?**

**Qu.9: If not, what period do you think would be appropriate?**

**Qu.10: Do you agree that the full 28 days should apply if the licensing authority decides that a variation should be processed through the full procedure? If not, please explain why.**

**Qu.11: Do you agree that the applicant should be required to copy the application to all RAs, including those previously consulted, if the variation is referred to the full procedure? If not, please explain why.**

### **Decision-making**

4.14 The Government recommends that the decision as to whether a variation is minor or not should be able to be taken by licensing officers rather than the licensing committee. Whether there is any risk to the promotion of the licensing objectives should be clear from the terms of the application. There should not be any such thing as a “borderline” case going through the minor variation process, as by definition there must be an absence of any risk to the promotion of the objectives for the procedure to apply. An application that required detailed consideration by the licensing committee would, virtually by definition, be a case to which the procedure should *not* apply.

**Legislative Reform Order: Proposal to Introduce a Simplified Process for Minor Variations to Premises Licences and Club Premises Certificates**

**Qu.12: Do you agree that licensing officers should be able to make decisions on minor variations (where appropriate) rather than the licensing committee? If not, please explain why.**

## Chapter 5: Could the proposal be achieved through non-legislative means?

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5.1 The requirements for holders of licences and certificates to submit applications to vary their licences derive from primary legislation. They cannot be changed through secondary legislation (other than legislative reform orders).

5.2 Although the Secretary of State is empowered to issue Guidance to licensing authorities under section 182 of the 2003 Act, licensing authorities only have to 'have regard to it' and it cannot effect changes to primary legislation or regulations made under the 2003 Act or seek to influence the decisions of prosecuting authorities. In addition, the police and other RAs need have no regard to it.

5.3 The Government is satisfied that a minor variations process for changes to licences which do not impact on the licensing objectives cannot be achieved by means of:

- any voluntary agreements between central government, licensing authorities and the police;
- changes to the statutory Guidance that the Secretary of State issues under section 182 of the 2003 Act; or
- changes to the regulations made by the Secretary of State under their powers in the 2003 Act.

5.4 The Government is therefore satisfied that the change proposed in Options 1 and 2 cannot be achieved by non-legislative means.

**Qu.13: Do you agree that the required changes identified under Options 1 and 2 cannot be achieved by non-legislative means? If you consider that the change can be given effect by non-legislative means, please provide your reasons.**

# Chapter 6: Is the proposal proportionate to the policy objective?

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6.1 Premises regulated under the Act range from village and community halls, political and sports clubs, small shops, cinemas and concert halls to large retailers and pub chains. These businesses, organisations and clubs make an important contribution to the national and local economies and, in many cases, also contribute to cultural and community life by hosting live music, plays, cinema and other activities.

6.2 The current variations process places an unnecessary burden on licence and certificate holders who wish to make small, low risk changes to their licences or certificates and diverts money which could be used to expand and improve their businesses or promote grass roots sport in the case of sports clubs, or to provide a greater range of cultural activities and entertainment in the case of village and community halls.

6.3 The Government believes that the introduction of a minor variations process limited to low risk, minor changes which will not impact adversely on the licensing objectives represents a targeted and proportionate approach.

6.4 In addition to Government policy set out above, there are important public protection objectives and other policy aims inherent in the licensing regime. It is in order to address those considerations that the Government is consulting on different options for delivering the proposals to introduce a minor variations process. These are discussed later in this consultation document.

**Qu.14: Do you agree that the proposal to introduce a new process for minor variations to licences is proportionate to the policy aims set out above?**

# Chapter 7: Does the proposal strike a fair balance between the public interest and the interests of any person affected adversely by it?

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## What is the public interest?

7.1 The public interest lies in the protection of:

- people living in the vicinity of licensed premises who may be disturbed by alcohol related crime and disorder and public nuisance;
- the wider public who may be directly affected by alcohol related crime and disorder and public nuisance;
- the vulnerable (e.g. children);
- customers who may be at risk from inadequate or non-existent public safety measures in licensed premises; and
- society which is damaged by crime and disorder and public nuisance.

7.2 However, there is also a public interest in ensuring that licensed premises and clubs – particularly small and medium sized enterprises and voluntary organisations – are economically viable and can continue to provide a wide range of services to the community. This means removing unnecessary administrative and cost burdens and releasing money that could be used to improve businesses and facilities and provide better services to customers and the wider community. Clubs and village and community halls for instance, are at the centre of local communities and provide a wide range of sporting, cultural and educational activities. Commercial enterprises such as pubs provide jobs and inward investment that contribute to the economic vitality of an area, while cinemas, concert halls and other entertainment facilities enrich our cultural life.

7.3 It could also be argued that there is a public interest in allowing decisions that affect local people to be taken by the local authority rather than remotely by central Government. The recent local government White Paper commits the Government to devolving more decisions to local level and sets out the benefits, such as the ability to adapt policies to specific local circumstances.

7.4 Whether or not a fair balance is achieved between the identified public interest and the interests of those who may be adversely affected by the proposal depends on the level of risk likely to occur under a minor variations process. In other words, how likely is it that variations that will impact adversely on the licensing objectives will 'slip through the net'.

**Does Option 1 strike a fair balance?**

Option 1: Amend the Act to introduce a new process for minor variations, broadly defined as any variation that does not impact adversely on the promotion of the licensing objectives. Leave licensing authorities to decide whether a variation is 'minor' within the broad parameters described above and having regard to general criteria and case studies provided in the statutory Guidance made under the 2003 Act. Licensing authorities required to consult relevant responsible authorities as they judge necessary, depending on the individual circumstances of the variation.

7.5 This option might be expected to carry a slightly higher risk than Option 2 because it gives greater discretion to the licensing authority. There may also be concerns that it would lead to inconsistencies in interpretation between different licensing authorities and a resulting lack of clarity for interested parties, responsible authorities and the trade. However, in practice, the risk is likely to be minimal.

7.6 In the two years that the Act has been in place, licensing officers have accumulated valuable experience which should allow them, in the majority of cases, to arrive independently at informed and balanced decisions. To guide and support them in these decisions, the Government would provide a comprehensive supplement to the statutory Guidance to the Act which would set out general criteria and examples to illustrate when the minor variations process should apply, along the lines of the text at paragraphs 7.13 – 7.20 below. The requirement to consult relevant responsible authorities if necessary would provide a further filter to ensure that all cases were processed appropriately.

7.7 Of course no system can ever operate with 100% perfection, and it is still conceivable (although extremely unlikely) that a variation posing a risk to the promotion of the licensing objectives might, exceptionally, fall into the minor variations process. However, if problems arose at a later stage in relation to the licensing objectives, interested parties and responsible authorities could request a review of the licence or club premises certificate at any time.

7.8 The small level of residual risk under Option 1 must be weighed against the benefits to the public interest. It is likely that this option, in allowing licensing authorities to exercise their discretion and informed judgement, would capture more properly "minor" variations than Option 2, resulting in a correspondingly greater reduction in administrative burdens and greater cost savings estimated at £2.2 – 2.8m per year. Clear and comprehensive statutory Guidance would ensure consistency across licensing authorities, particularly around key areas such as licensing hours.

7.9 The Government therefore considers that the minimal risks to those who may be adversely affected by the proposals in Option 1 are balanced by the benefits to the wider public interest.

**Qu.15: Do you agree that Option 1 strikes a fair balance between the public interest and the interests of those affected adversely by the proposal? If not, please explain why.**

**Does Option 2 strike a fair balance?**

Option 2: Amend the Act to introduce a new minor variations process as above, but constrain licensing authority discretion by specifying on the face of the Act which variations should be included in, and/or excluded from, a minor variations process. Licensing authorities required to consult



relevant responsible authorities, as they judge necessary, depending on the individual circumstances of the variation.

7.10 In theory, this option leaves less room for error by specifying what is and/or is not a minor variation for the purposes of the Act and thereby constraining local authority discretion. This could be achieved by:

- a **positive** definition that specifies which types of variation will be treated as minor for the purposes of the Act, e.g. certain small changes to layout;
- a **negative** definition that specifies variations that should be *excluded* from a minor variations process, e.g. extensions to licensing hours; or
- a **combination (or various combinations)** of the two, e.g. a small change to the layout of a premises is a minor variation, except where this affects fire exits, etc.

7.11 It could be argued that Option 2 would provide greater assurance for interested parties that inappropriate variations will not slip into the minor variations process, and ensure a more consistent approach across all licensing authorities (although it could be argued that differences in interpretation are justified if they reflect different local conditions).

7.12 However, these potential benefits must be balanced against the fact that any definition of a minor variation, however carefully it is framed, will always exclude some variations that would not have an adverse impact on the licensing objectives and include some that do, to the detriment of the public interest, as defined.

7.13 For example, the evidence suggests that the majority of minor variations (approximately 70%) under the new process would consist of small changes to layout. A conservative definition of a minor variation could therefore be 'any change to the layout of a premises', with some caveats e.g. where this does not result in increased capacity for drinking or block fire exits. This very narrow definition would minimise risk of error and ensure a high degree of consistency across licensing authorities, but it could result in inappropriate variations being dealt with through the minor variations process if the list of caveats were not 100% comprehensive - a result very difficult to achieve, given the inability to know all possible cases in advance. It would also exclude a significant number of variations (the remaining 30%) that would have no adverse impact on the four licensing objectives.

7.14 The definition could be widened to include other types of variation, such as changes to licensing hours, licensable activities and conditions, but similar difficulties would be likely to arise as the following paragraphs illustrate.

## **Licensing hours**

7.15 The extension of licensing hours in pubs, clubs and other premises can be controversial where there are public concerns about the potential impact on crime and disorder and public nuisance. However, this is not always the case and there may be circumstances when changing or extending licensing hours could have no adverse impact on the licensing objectives. For example:

- an isolated rural pub in a remote location applying to open for one hour longer at night;
- a bar extending its licence for selling late night refreshment in order to offer patrons hot food, tea and coffee during wind down time after alcohol sales have stopped;

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- a cinema applying to stay open an hour later in the evening to show longer films;
- a village hall extending an alcohol licence restricted to evening events in order to allow the sale of mulled wine at a church Christmas fete or wine to be provided at a pensioners' Christmas lunch;
- a supermarket applying to bring its licensing hours up to the general opening hours in which it retails other goods.

Equally, some applicants may apply to reduce their licensing hours, for example to remove onerous conditions.

**Licensable activities**

7.16 Although the public and media tend to focus on alcohol licensing, in fact the Licensing Act covers a very wide range of licensable activities from the sale and supply of alcohol to a performance of dance, music or film, boxing matches or the provision of late night refreshment. The variety of activities means that it is difficult to generalise when it comes to what should or should not be included in a minor variations process.

7.17 For instance, the addition of live or recorded music may impact on the public nuisance objective, but this may depend on the nature of the music – for instance, there would be a difference between an acoustic 'open mic' night attracting amateur musicians and a small audience and an amplified rock band with a large following. There are many cases where live music in particular will have little or no impact on the licensing objectives.

7.18 Equally, the addition of other types of regulated entertainment to a licence may have little or no impact on the licensing objectives. For instance, if a village hall has all the appropriate equipment, has undertaken health and safety checks and carried out a fire risk assessment, then adding the performance of plays or the exhibition of films to a licence is unlikely to impact adversely on the licensing objectives. In fact it would be enriching the local community by widening the range of activities available.

**Licensing conditions**

7.19 Licence or club certificate conditions must relate to the licensing objectives and, on that basis, it could be argued that they should not be included in any minor variations process. However, premises change over time and the circumstances that originally led to the condition being attached or volunteered may no longer apply. There may be no need for door supervision for example if a bar has been converted into a restaurant. Equally changes in legislation may invalidate certain conditions. For instance, the recent Regulatory Reform (Fire Safety) Order 2005 annulled all fire safety related conditions imposed on licences.

7.20 There may also be a small number of cases where a condition has not been expressed clearly (although this is strongly discouraged in the Guidance to the Act). This is most likely to have happened during the transition period when licensing authorities were under pressure to convert existing licences and certificates by the statutory deadline.

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7.21 The above examples illustrate the difficulty of defining a minor variation in such a way that it would not exclude at least some variations that could pose no risk to the promotion of the licensing objectives. The percentage excluded will vary depending on how a minor variation is defined. If we interpret 'minor' conservatively as any small change to layout that does not impact on the licensing objectives, this would exclude around 30% of low risk variations, reducing maximum cost savings by £0.7m - £0.8m. At the other extreme, a more liberal definition that only excluded changes to licensing hours for the sale of alcohol for consumption on the premises is likely to exclude around 5% of low risk variations, reducing potential cost savings by only £0.1m.

7.22 The Government therefore considers that whether this option strikes a fair balance will depend on how a minor variation is defined. A conservative definition is unlikely to strike a fair balance because the reduction in risk would be outweighed by the exclusion of a significant proportion of variations that would have no impact on the licensing objectives, to the detriment of the public interest. A more generous interpretation may strike a fair balance by reducing risk to an acceptable level, but excluding only 5% of potential minor variations.

**Qu.16: Do you agree that whether this Option strikes a fair balance between the public interest and the interests of those affected adversely by the proposal will depend on how a minor variation is defined? If not, please explain why.**

**Qu.17: How do you think a minor variation should be defined in order to strike a fair balance? Please be specific and refer to the four types of variation discussed above and the different approaches outlined in paragraph 7.10.**

# Chapter 8: Would an Order remove any necessary protection?

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8.1 Options 1 and 2 would be delivered by means of a legislative reform order (LRO) made under the Legislative and Regulatory Reform Act 2006.

## How do the current arrangements contribute to public protection?

8.2 As discussed earlier, the variations process directly influences the protection of:

- people living in the vicinity of licensed premises who may be disturbed by alcohol related crime and disorder or public nuisance;
- the wider public who may be directly affected by alcohol related crime and disorder and public nuisance;
- the vulnerable (children and people with alcohol dependence);
- customers who may be at risk from inadequate or non-existent public safety measure in licensed premises; and
- society which is damaged by crime and disorder and public nuisance.

The question to consider is whether the introduction of a minor variations process will remove necessary public protection.

## What is necessary public protection in this context?

8.3 The current variations process provides a mechanism to ensure that interested parties and responsible authorities are made aware of a proposed change in a licence or certificate and can make representations if they feel that the proposal will adversely affect the licensing objectives. Those objectives define both the scope of the representations they can make, and the range of measures a licensing authority is able to take in response to them. Thus the measure of public protection afforded by the Act is inextricably linked to the licensing objectives, and where those objectives are not in play there cannot, by definition, be a loss of protection under the Act.

8.4 The proposals discussed in this paper are intended to remove unnecessary protection – which has resulted in an administrative burden on holders of licences or club certificates - but retain a ‘necessary’ level of protection by ensuring that variations posing any risk to the licensing objectives will continue to be subject to the full variation process. The only risk of a loss of protection would be from inappropriate cases being handled under the minor variation procedure. The Government considers that provided the definition of a minor variation is sufficiently robust (see 3.2 above), and that comprehensive Guidance is provided to aid licensing authorities in their decisions, there should be no appreciable risk of this happening.

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Option 1: Amend the Act to introduce a new process for minor variations, broadly defined as any variation that does not impact adversely on the promotion of the licensing objectives. Leave licensing authorities to decide whether a variation is 'minor' within the broad parameters described above and having regard to general criteria and case studies provided in the statutory Guidance made under the 2003 Act. Licensing authorities required to consult relevant responsible authorities as they judge necessary, depending on the individual circumstances of the variation.

8.5 As detailed in paragraphs 8.3 and 8.4 above, the Government considers that this option will not result in the removal of any necessary public protection.

8.6 However, it would have the benefit of removing *unnecessary* public protection by allowing low risk variations that are currently subject to the full variation requirements to be considered through a minor variations process.

**Qu.18: Do you agree that Option 1 would not remove any necessary public protection, but would remove unnecessary protection afforded by the current variations process?**

Option 2: Amend the Act to introduce a new minor variations process as above, but constrain licensing authority discretion by specifying on the face of the Act which variations should be included in, and/or excluded from, a minor variations process. Licensing authorities required to consult relevant responsible authorities, as they judge necessary, depending on the individual circumstances of the variation.

8.7 As discussed in Section 7, the level of protection afforded by Option 2 and whether it removes any necessary protection will depend on how a minor variation is defined. A conservative definition could be assumed to provide greater public protection by ensuring that only small changes to layout are subject to a minor variations process. However, it would also exclude up to 30% of low risk variations unnecessarily. At the other end of the scale, a more generous definition would only exclude around 5% of low risk variations, but is still likely to provide a 'necessary' level of public protection.

8.8 The Government considers that, although this option would not remove any necessary protection, it would retain a higher level of protection than is necessary (as defined in paragraphs 8.3-8.4) if 'minor' is defined too narrowly.

**Qu.19: Do you agree that, although Option 2 would not remove any necessary protection, it is likely to afford a higher level of protection than is necessary if minor is defined too narrowly? If not, please explain why.**

## Chapter 9: Summary conclusions?

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9.1 The Government considers that Option 3, which would involve no change to the current arrangements, is a viable option only if the deregulatory measures proposed in this consultation document are unacceptable for any reasons relating to the four statutory licensing objectives. The licensing objectives should be paramount in any consideration.

9.2 The Government's view is that it would be more proportionate and involve minimal risks to the statutory objectives to provide arrangements which are more suitable and a lighter burden for licence and club certificate holders wishing to make small alterations to their licences or certificates that will have no adverse impact on the licensing objectives. **The Government therefore favours rejecting Option 3.**

9.3 The arguments for and against **Option 2** differ significantly depending on how it is defined. A conservative definition restricting the minor variation process to layout would deliver a high degree of consistency and minimise the chance that high risk variations would slip through the net. However, this would be offset by the difficulty of including all possible caveats in advance, and the likely exclusion of around 30% of low risk variations that would otherwise be included in the minor variation process, reducing cost savings by £0.7m-£0.8m. The Government considers that this is an overly cautious approach and misses the opportunity to reduce the administrative burden on licence holders and free up resources that could be ploughed back into enhanced services to the community.

9.4 At the other end of the scale, a liberal definition of Option 2 would offer some degree of consistency around high risk variations, but would only exclude around 5% of low risk variations and reduce cost savings by £0.1m. However, the Government considers on balance that the same degree of assurance and consistency could be ensured under **Option 1** by providing strong recommendations in the statutory Guidance in relation to high risk variations such as licensing hours. This would minimise the risk of these variations falling into the minor variation process whilst ensuring the maximum cost savings for licence holders. The discretion given to licensing authorities to judge each variation on its own merits is also more consistent with the general principles of the Licensing Act and with current Government policy to devolve decision-making to a local level.

### **The Government therefore prefers Option 1.**

**Option 1: Amend the Act to introduce a new process for minor variations, broadly defined as any variation that does not impact on the promotion of the licensing objectives. Leave it to licensing authorities to decide whether a variation is 'minor' within the broad parameters described above and having regard to general criteria and case studies provided in the statutory Guidance made under the 2003 Act. Licensing authorities required to consult relevant responsible authorities as they judge necessary, depending on the individual circumstances of the variation.**

**Qu.20: Do you agree that Option 1 is the best option?**

**Qu.21: If not, which Option would you like to see adopted?**

**Qu.22: Do you consider that there are other options that should be explored which are not identified in this consultation document?**

# Chapter 10: Summary of Questions?

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**Qu.1: Do you agree that the requirement for licence holders to apply for a variation to make small, low risk changes to their licences represents a burden as defined in section 1 of the Legislative and Regulatory Reform Act 2006?**

**Qu.2: Do you agree with the broad definition of a ‘minor variation in paragraph 3.2? If not, please explain why and give an alternative.**

**Qu.3: Do you agree that the risk to the promotion of the four licensing objectives from minor variations to licences does not justify the current level of control afforded by section 34-36 and 84-86 of the Licensing Act 2003?**

**Qu.4: Do you agree that Option 3 – No Change – should be rejected? If not, please give your reasons.**

**Qu.5: Do you agree that licensing authorities should only be required to consult relevant RAs as they judge necessary, depending on the individual circumstances of the variation application?**

**Qu.6: If not, what arrangements do you think should be in place, and why?**

**Qu.7: Do you agree that there should be no right of appeal against a licensing authority if it rejects a request to process a variation through the minor variations process? If not, please explain why.**

**Qu.8: Do you agree that licensing authorities should have 10 working days to consider minor variation applications and either agree the variation or require the applicant to submit it to the full variation process?**

**Qu.9: If not, what period do you think would be appropriate?**

**Qu.10: Do you agree that the full 28 days should apply if the licensing authority decides that a variation should be processed through the full procedure? If not, please explain why.**

**Qu.11: Do you agree that the applicant should be required to copy the application to all RAs, including those previously consulted, if the variation is referred to the full procedure? If not, please explain why.**



**Qu.12: Do you agree that licensing officers should be able to make decisions on minor variations (where appropriate) rather than the licensing committee? If not, please explain why.**

**Qu.13: Do you agree that the required changes identified under Options 1 and 2 cannot be achieved by non-legislative means? If you consider that the change can be given effect by non-legislative means, please provide your reasons.**

**Qu.14: Do you agree that the proposal to introduce a new process for minor variations to licences is proportionate to the policy aims set out above?**

**Qu.15: Do you agree that Option 1 strikes a fair balance between the public interest and the interests of those affected adversely by the proposal? If not, please explain why.**

**Qu.16: Do you agree that whether this Option strikes a fair balance between the public interest and the interests of those affected adversely by the proposal will depend on how a minor variation is defined? If not, please explain why.**

**Qu.17: How do you think a minor variation should be defined in order to strike a fair balance? Please be specific and refer to the four types of variation discussed in Chapter 7 and the different approaches outlined in paragraph 7.10.**

**Qu.18: Do you agree that Option 1 would not remove any necessary public protection, but would remove unnecessary protection afforded by the current variations process?**

**Qu.19: Do you agree that, although Option 2 would not remove any necessary protection, it is likely to afford a higher level of protection than is necessary if minor is defined too narrowly? If not, please explain why.**

**Qu.20: Do you agree that Option 1 is the best option?**

**Qu.21: If not, which option would you like to see adopted?**

**Qu.22: Do you consider that there are other options that should be explored which are not identified in this consultation document?**

**Qu.23: Do you agree with the costing and underlying assumptions in the Impact Assessment at Annex B? If not, please explain why and give alternatives.**

# Annex A: List of consultees

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Action in Rural Sussex  
Action with Communities in Rural England  
Alcohol Concern  
Arts Council in England  
Arts Council of Wales  
Association of Chief Police Officers  
Association of Circus Proprietors of Great Britain  
Association of Convenience Stores  
Association of Directors of Social Services  
Association of Inland Navigation Authorities  
Association of Licensed Multiple Retailers  
Association of Show and Agricultural Organisations  
Bar Entertainment and Dance Association  
BII  
British Beer & Pub Association  
British Board of Film Classification  
British Holiday and Home Parks Association  
British Hospitality and Restaurant Association  
British Marine Federation  
British Retail Consortium  
Business in Sport and Leisure  
Campaign for Real Ale  
Central Council for Physical Recreation  
Charity Commission  
Chartered Institute of Environmental Health  
Chief Fire Officers' Association  
Children's Society  
Chinese Takeaway Association UK  
Cinema Exhibitors Association  
Circus Arts Forum  
Civic Trust

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Commission for Rural Communities  
Committee of Registered Clubs Associations  
Community Matters  
(DEFRA) Rural Communities Buildings Network  
English Heritage  
Enterprise Directorate, Department for Business, Enterprise and Regulatory Reform  
Federation of Licensed Victuallers  
Federation of Licensed Victuallers (Wales)  
Federation of Private Residents' Association  
Federation of Small Businesses  
Federation of Wholesale Distributors  
Fire and Rescue Authorities in England  
Fire and Rescue Services in Wales  
Greater London Authority  
Guild of Bangladeshi Restaurateurs  
Guild of Master Victuallers  
Historic Houses Association  
Independent Street Arts Network  
Institute of Licensing  
Justices Clerk Society  
Licensing Act Active Residents Network  
Licensing Authorities in England and Wales  
Local Authorities Co-ordinators of Regulatory Services  
Local Government Association  
London Councils  
Magistrates Association  
Maritime and Coastguard Agency  
Musicians Union  
National Association of Kebab Shops  
National Association of Local Councils  
National Campaign for the Arts  
National Farmers' Retail & Markets Association  
National Federation of Fish Friers  
National Federation of Retail Newsagents  
National Neighbourhood Watch Association  
National Operatic and Dramatic Association  
National Organisation of Residents Associations

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National Village Halls Forum  
Open all Hours  
Passenger Boat Association  
Patersons Licensing Acts  
Police Federation  
Police Superintendents' Association  
Rural Shops Alliance  
Society of Local Council Clerks  
Society of London Theatre and Theatrical Management Association  
Tourism for All  
Trading Standards Institute  
United Kingdom Film Council  
United Kingdom Warehousing Association  
Welsh Assembly  
Welsh Local Government Association  
Welsh Music Foundation  
Wine Spirits Trade Association

**Respondents are invited to contact us with the names of any other stakeholders groups not on this list who they feel might be able to contribute.**

# Annex B: Impact Assessment

## Summary: Intervention & Options

<b>Department /Agency:</b> Department for Culture, Media and Sport		<b>Title:</b> Impact Assessment of the proposal to introduce a simplified process for minor variations to licences	
<b>Stage:</b> Consultation		<b>Version:</b> 1.1	<b>Date:</b> 12/11/2007
<b>Related Publications:</b> Licensing Act 2003, Consultation paper on the proposal to introduce a simplified process for minor variations to licences under the Licensing Act 2003			

**Available to view or download at:**

<http://www.culture.gov.uk>

**Contact for enquiries:** Amanda Stevens

**Telephone:** 020 7211 6322

**What is the problem under consideration? Why is government intervention necessary?**

A licensing system is required to regulate certain 'licensable' activities, including the sale of alcohol, the provision of regulated entertainment and the provision of late night refreshment, so that the risks to the core licensing objectives (prevention of crime and disorder, public safety, prevention of public nuisance and protection of children from harm) are minimised.

Under the current system, a significant proportion of small changes to licences could be expected to have little or no impact on the licensing objectives. However, licence holders are currently required to go through the full variation process, with the ensuing costs and administrative burden, when the risks to the licensing objectives are minimal and interested parties and responsible authorities have little or no interest in them. This means that there is an imbalance between compliance costs and the benefits in terms of risk reduction. Government intervention is needed to correct this imbalance by reducing compliance costs for small, low risk changes to licences.

**What are the policy objectives and the intended effects?**

The policy objective is to promote the four licensing objectives at the lowest administrative cost. The intended effects are:

- a significant reduction in the current administrative burden on licence holders
- an increase in the number of applicants submitting small changes to licences to the licensing authority. This should ensure that licensing (and other) authorities have up to date records of premises to inform their enforcement strategies.

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What policy options have been considered? Please justify any preferred option.

Option 1: Define a 'minor variation' as any change to a licence that will impact on the four licensing objectives. Give licensing authorities complete discretion within this broad definition, to decide what is or is not a minor variation, subject to consultation with responsible authorities (the police, etc) if necessary.

Option 2: Restrict or remove licensing authority discretion by specifying what is, and/or is not, a minor variation on the face of the Act. Consult responsible authorities as necessary.

Option 3. No change

When will the policy be reviewed to establish the actual costs and benefits and the achievement of the desired effects? Spring 2011, three years after implementation.

**Ministerial Sign-off** For consultation stage Impact Assessments:

***I have read the Impact Assessment and I am satisfied that, given the available evidence, it represents a reasonable view of the likely costs, benefits and impact of the leading options.***

Signed by the responsible Minister:

.....Date:

## Summary: Analysis & Evidence

<b>Policy Option:</b> Option 1	<b>Description:</b> Introduce a new minor variations process and give licensing authorities discretion to decide whether a variation is 'minor', broadly defined as any variation that does not impact on the promotion of the licensing objectives, having regard to statutory Guidance.
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<b>COSTS</b>	<b>ANNUAL COSTS</b>		Description and scale of <b>key monetised costs</b> by 'main affected groups'
	<b>One-off</b> (Transition)	<b>Yrs</b>	
	£		
	<b>Average Annual Cost</b> (excluding one-off)		
	£0	<b>Total Cost (PV)</b>	<b>£0</b>
Other <b>key non-monetised costs</b> by 'main affected groups' The proposal will require licensing authorities to consult relevant responsible authorities as they judge necessary, depending on the individual circumstances of the variation. However, any such costs in administering the system would be recoverable through a fee payable by the applicant to the licensing authority, so there would be a neutral impact on costs.			

<b>BENEFITS</b>	<b>ANNUAL BENEFITS</b>		Description and scale of <b>key monetised benefits</b> by 'main affected groups'  Potential Annual Savings to all licence and certificate holders of £2.2m-£2.8m per year.
	<b>One-off</b>	<b>Yrs</b>	
	£		
	<b>Average Annual Benefit</b> (excluding one-off)		
	<b>£2.5m (£2.2m-£2.8m)</b>	<b>Total Benefit (PV)</b>	<b>£20.8m (£18.3m-</b>
Other <b>key non-monetised benefits</b> by 'main affected groups' Responsible authorities are currently consulted on all low risk, 'minor' variations. Under these proposals they would only be consulted on a small number of borderline minor variations, freeing resource for other priorities.			

**Key Assumptions/Sensitivities/Risks** Estimates for numbers of variations that would fall into a minor variations process, costs and the proportion of variations that involve layout changes are based on information provided by stakeholders.

Price Base Year 2007	Time Period Years 10	<b>Net Benefit Range (NPV)</b> <b>£18.3m-£23.3m</b>	<b>NET BENEFIT (NPV Best estimate)</b> <b>£20.8m</b>
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What is the geographic coverage of the policy/option?	England and Wales			
On what date will the policy be implemented?	[Spring/Summer]			
Which organisation(s) will enforce the policy?	Licensing authorities			
What is the total annual cost of enforcement for these organisations?	£ 0 (fees cover)			
Does enforcement comply with Hampton principles?	Yes			
Will implementation go beyond minimum EU requirements?	No			
What is the value of the proposed offsetting measure per year?	£ n/a			
What is the value of changes in greenhouse gas emissions?	£ n/a			
Will the proposal have a significant impact on competition?	No			
Annual cost (£-£) per organisation (excluding one-off)	Micro	Small	Medium	Large
Are any of these organisations exempt?	No	No	N/A	N/A

<b>Impact on Admin Burdens Baseline</b> (2005 Prices)		(Increase - Decrease)	
Increase of	£	Decrease of	£2.5m
		<b>Net Impact</b>	<b>-£2.5m</b>

Key:

Annual costs and benefits: Constant Prices

(Net) Present Value

Legislative Reform Order: Proposal to Introduce a Simplified Process for Minor Variations to Premises Licences and Club Premises Certificates

## Summary: Analysis & Evidence

<b>Policy Option:</b> Option 2	<b>Description:</b> Introduce a new minor variations process but limit or remove licensing authority discretion by specifying on the face of the Act which variations should be included in, and/or excluded from the
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<b>COSTS</b>	<b>ANNUAL COSTS</b>		Description and scale of <b>key monetised costs</b> by 'main affected groups'
	<b>One-off</b> (Transition)	<b>Yrs</b>	
	£		
	<b>Average Annual Cost</b> (excluding one-off)		
	£0		<b>Total Cost (PV)</b> £0
Other <b>key non-monetised costs</b> by 'main affected groups' The proposal will require licensing authorities to consult relevant responsible authorities as they judge necessary, depending on the individual circumstances of the variation. However, any such costs in administering the system would be recoverable through a fee payable by the applicant to the licensing authority, so there would be a neutral impact on costs.			

<b>BENEFITS</b>	<b>ANNUAL BENEFITS</b>		Description and scale of <b>key monetised benefits</b> by 'main affected groups'  Potential Annual Savings to all licence and certificate holders of £1.5m-£2.6m per year.
	<b>One-off</b>	<b>Yrs</b>	
	£		
	<b>Average Annual Benefit</b> (excluding one-off)		
	£2.1m (£1.5m-£2.6m)		<b>Total Benefit (PV)</b> £17.5m (£12.5m-£22.6m)
Other <b>key non-monetised benefits</b> by 'main affected groups' Responsible authorities are currently consulted on all low risk, 'minor' variations. Under these proposals they would only be consulted on a small number of borderline minor variations, freeing resource for other priorities.			

**Key Assumptions/Sensitivities/Risks** Estimates for the numbers of variations that would fall into a minor variations process, costs and the proportion of variations that involve changes to layout were based on information provided by

Price Base Year 2007	Time Period Years 10	<b>Net Benefit Range (NPV)</b> £12.5m-£22.6m	<b>NET BENEFIT (NPV Best estimate)</b> £17.5m
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What is the geographic coverage of the policy/option?	England and			
On what date will the policy be implemented?	[Spring/Summer]			
Which organisation(s) will enforce the policy?	Licensing			
What is the total annual cost of enforcement for these organisations?	£ 0 (fees cover)			
Does enforcement comply with Hampton principles?	Yes			
Will implementation go beyond minimum EU requirements?	No			
What is the value of the proposed offsetting measure per year?	£ n/a			
What is the value of changes in greenhouse gas emissions?	£ n/a			
Will the proposal have a significant impact on competition?	No			
Annual cost (£-£) per organisation (excluding one-off)	Micro	Small	Medium	Large
Are any of these organisations exempt?	No	No	N/A	N/A

<b>Impact on Admin Burdens Baseline</b> (2005 Prices)		(Increase - Decrease)		
Increase of	£	Decrease of	£2.1m	<b>Net Impact</b> -£2.1m

Key: Annual costs and benefits: Constant Prices (Net) Present Value



## Evidence Base (for summary sheets)

[Use this space (with a recommended maximum of 30 pages) to set out the evidence, analysis and detailed narrative from which you have generated your policy options or proposal. Ensure that the information is organised in such a way as to explain clearly the summary information on the preceding pages of this form.]

### The legislative burden

Section 34 of the Licensing Act 2003 provides that the holder of a premises licence may apply to the relevant licensing authority for variation of the licence. A variation is required for any change to the licence including changes to any feature shown on the plan of the premises.

The only exception is a variation to the licence to specify an individual as premises supervisor which is subject to a simplified, notification process under section 37 of the Act.

### The Government's proposal

The Government proposes that the 2003 Act is amended to make provision for a new 'minor' variations process. This would allow applicants to make small alterations to their licences for a minimal fee and without having to advertise the variation or copy it to all responsible authorities.

This proposal was put forward as part of the DCMS Simplification Plan published in December 2006.

### Who is affected by the burden?

On 8 November 2007 the DCMS Statistical Bulletin "Alcohol, Entertainment and Late Night Refreshment Licensing" was published. This includes figures for the numbers of applications to vary premises licences and club premises certificates in England and Wales during the period 1 April 2006 to 31 March 2007. Based on responses from 82% of licensing authorities there were 10,120 variation applications, although these figures will be higher if extrapolated to include the remaining 18% of authorities that did not provide responses.

These figures relate to a period soon after the Act came into force, so it follows that premises and clubs would be less likely to wish to vary the terms of their authorisations. This also explains why the statistics show a relatively high number of applications for new licences and certificates, 14,960 new applications based on responses from 82% of licensing authorities.

Following discussions with stakeholder groups and a focus group of ten licensing authorities, we believe that many premises and clubs have chosen to apply for new licences and certificates instead of making applications to vary. Therefore, we estimate that in future years there will be approximately **20,000 variation applications** per year across all licensing authorities.

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To calculate the current burden we would then need to establish how many variation applications might fall within the broad outline of a minor variation, i.e. a variation that does not impact on the four licensing objectives.

Again, reliable estimates are not available and there is the further complication that many premises are simply choosing not to make variation applications for small changes, due to the disproportionate costs involved. However, from discussions with stakeholder groups and licensing authorities we believe that approximately **30% of variations (6000)** would be likely to be captured by a minor variations process.

This figure does not translate directly into numbers of businesses or clubs affected by the burden, because some premises may submit several applications to vary (e.g. if they are carrying out a major refit of a store). Indications from stakeholders are that such multiple applications would account for around 5% of current 'minor' variations. If the total was reduced by 5% to take account of multiple applications, it would still mean that **5700 premises per year** are affected by the burden.

The range of affected groups includes:

- pubs, bars, nightclubs, hotels, guesthouses and other premises licensed for the sale of alcohol on the premises;
- supermarkets, convenience stores and other premises licensed for the sale of alcohol off the premises;
- theatres, cinemas, live music venues other providers of regulated entertainment;
- takeaways, restaurants, cafes and other premises providing late night refreshments;
- voluntary bodies, such as charities, schools, village and community halls; and
- private members' clubs, such as sports, working mens', and political clubs.

## The cost burden

Applicants wishing to vary a licence or certificate (with the exception of a variation to specify a premises supervisor) must:

- complete and send an application form with a copy of the licence or certificate, the original plan (and amended plan, if appropriate) to the relevant licensing authority (£15-£80<sup>1</sup>)
- pay a fee (£100-£1905, depending on the rateable value of the premises);
- copy all documents to up to nine responsible authorities (£20-£40);
- advertise the proposed change in a local newspaper/circular (£200-£400);
- display a brief summary of the application on an A4 size notice immediately on or outside the premises (£5-£10, although this would increase for larger premises required to display multiple notices).

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<sup>1</sup> Based on 1-5 hours of management time at an hourly cost of £16.23 (estimated from discussions with stakeholders).

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The average cost of a variation (including fees, which are charged on the same basis as for a full licence application and average approximately £225 per premises) is estimated to be approximately **£610**.

The average cost of a variation excluding fees is approximately **£385**.

However, the following additional costs may apply to some variations:

- supplying a revised plan of the premises (where applying for changes to layout) – £25-£500 (e.g. if the plan has to be professionally drawn)
- obtaining professional legal help – £100-£500 (although in a small number of cases, legal fees may be as high as £1500).

If these costs are added, the average cost of a variation could rise to £950 (excluding fees) or £1170 (including fees).

The range of possible costs for a variation (excluding fees) is therefore **£385 - £950**.

Based on approximately 6000 variation applications a year that are likely to be captured by a minor variations process, at a basic administrative cost of £385 per application, this would result in an approximate annual burden of **£2.3m**. Please note that all annual burdens in this Impact Assessment have been rounded to the nearest £0.1m.

Revised plans are only required for variations involving changes to layout. Stakeholders estimate that approximately 70% of the 6000 variations likely to be classed as 'minor' under the new process (4200) fall into this category and therefore incur these additional costs. At an average cost of £263 for a revised plan, this results in an annual burden of approximately **£1.1m**.

Similarly, not all applicants will seek legal help to complete a variation application. Discussions with stakeholders lead us to estimate that approximately half (3000) of all 'minor' variations incur legal fees at an average cost of £300 per application, resulting in an additional annual burden on these applicants of **£0.9m**.

The range of the annual cost burden for variations (excluding fees), but including the cost of revised plans and legal fees as above for some applicants, is therefore **£2.3m-£4.3m<sup>2</sup>**.

## **The cost savings of a minor variations process**

### Administrative costs

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<sup>2</sup> Figures may not sum to the total due to rounding.

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Under a minor variations process there would be full cost savings in relation to:

- copying all documents to up to nine responsible authorities (£20 - £40);
- advertising the proposed change in a local newspaper/circular (£200-£400); and
- displaying a brief summary of the application on an A4 size notice immediately on or outside the premises (£5-£10).

At an average of £338 per application, excluding fees, across all 6000 minor variations this would deliver an annual cost saving of **£2.0m**.

Under a minor variations process, applicants would still have to complete an application form and send it to the relevant licensing authority, with a copy of the licence or certificate, the original plan (and amended plan, if appropriate). However, assuming that the application form will be shorter and simpler, this is likely to be a less time consuming process than for a full variation. If we assume an average reduction in management time required to complete the process of 0-3 hours per application at an estimated cost of £16.23 per hour the average cost saving would be £24. Since this average cost saving will apply across all 6000 variations the approximate annual cost saving will be **£0.1m**.

This means that for the main administrative elements that relate to all applications, the approximate total annual cost savings would be **£2.2m<sup>3</sup>**.

### Legal costs

It is possible that an applicant who seeks legal help to apply for a relatively simple variation would still choose to do so for a minor variation application, even with a simpler form, thereby reducing the potential savings. If we estimate that about half of the 3000 minor variations (1500) that currently involve legal fees would no longer do so, that would result in a cost saving of £300/application and a total cost saving of **£0.5m**.

The remaining 1500 minor variations would still incur legal costs. However, the scale of any legal fees will reflect the complexity of the application process and as such the more straightforward minor variation system should reduce costs. We estimate that legal costs for minor variations would be in the range £100-£300, with an average of £200, meaning an average cost saving per application involving legal help of £100, and an approximate annual cost saving of **£0.2m**. The total annual cost savings would therefore be **£0.6m**.

This gives a range for potential annual cost savings of **£2.2m-£2.8m**.

## **Costs for different options**

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<sup>3</sup> Figures may not sum to the total due to rounding.

**Option 1: Amend the Act to introduce a new process for minor variations, broadly defined as any variation that does not impact on the promotion of the licensing objectives. Give licensing authorities complete discretion to decide whether a variation is 'minor' within the broad parameters described above and having regard to general criteria and case studies provided in the statutory Guidance made under the 2003 Act. Licensing authorities required to consult relevant responsible authorities as they judge necessary, depending on the individual circumstances of the variation.**

It can be assumed that the discretion provided to licensing authorities in deciding whether an application is a minor variation would result in the maximum savings detailed above as **£2.2m-£2.8m per year**.

**Option 2: Amend the Act to introduce a new minor variations process as above, but limit or remove licensing authority discretion by specifying on the face of the Act which variations should be included in, and/or excluded from, a minor variations process. Licensing authorities required to consult relevant responsible authorities, as they judge necessary, depending on the individual circumstances of the variation.**

It could be argued that Option 2 would simply provide greater clarity about what is or is not minor on the face of the Act and that licensing authorities would probably arrive at similar decisions under Option 1. Therefore any savings through Option 2 would be more or less the same as in Option 1. However, the wide range of variations means that it is also reasonable to assume that however 'minor' is defined, it will exclude some variations which would have no impact on the licensing objectives. We can therefore anticipate that Option 2 would result in lower cost savings than Option 1.

However, the reduction in cost savings will vary depending on how 'minor' is defined. Even a generous definition that only excluded a few high risk variations (e.g. extensions to licensing hours for the sale of alcohol for consumption on the premises) would probably still exclude about 5% of potential minor variations. This would leave 95% of variations (5700) possible through a minor variations process, resulting in cost savings of **£2.1m-£2.6m per year**.

At the other end of the scale, the most cautious definition could, for example, specify that a minor variation process would only apply to small, low risk changes to layout. As stated above stakeholders, estimate that approximately 70% of variations (4200) would seek amendments to layout only. This would result in savings of **£1.5m-£1.9m per year**.

Therefore, the range of approximate savings for Option 2, depending on how a minor variations process was defined, would be **£1.5m-£2.6m per year**.

### **Option 3: No change**

There would be no savings with this option. Estimates of savings for options 1 and 2 have been calculated over and above this option.

## **The Government's Preferred Option**

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The Government has considered three options. Option 3 would involve no change to the current arrangements, and is a viable option only if the other options proposed are unacceptable for any reasons relating to the four statutory licensing objectives. Options 1 and 2 would both deliver a minor variations process as proposed, but Option 1 would give licensing authorities the discretion to decide whether a variation is 'minor' within a broad definition and having regard to statutory Guidance, whereas Option 2 would limit or remove licensing authority discretion by specifying which variations should be included in, and/or excluded from, a minor variations process. A comparison of cost savings with each option is provided below:

	<b>Potential annual savings to all licence and certificate holders</b>
Option 1	<b>£2.2m-£2.8m per year</b>
Option 2	<b>£1.5m-£2.6m per year</b>
Option 3	<b>£0</b>

The arguments for and against Options 1 and 2 are finely balanced. In practice, they are likely to deliver similar outcomes in terms of identifying variations that are likely to impact on the promotion of the licensing objectives and ensuring that they are subject to the full variations process. However, the Government considers that Option 2 is an overly cautious approach. Any definition of 'minor' will exclude some low risk variations, resulting in a smaller reduction in administrative burden without any compensatory benefits in terms of necessary public protection, or the promotion of the licensing objectives.

The Government prefers Option 1 as it would deliver the maximum reduction in burden with minimum risk, and allow greater flexibility for licensing authorities to decide if a variation is 'minor' based on their local knowledge and drawing on expertise from any other responsible authority they may wish to consult.

## Specific Impact Tests: Checklist

Use the table below to demonstrate how broadly you have considered the potential impacts of your policy options.

**Ensure that the results of any tests that impact on the cost-benefit analysis are contained within the main evidence base; other results may be annexed.**

<b>Type of testing undertaken</b>	<b><i>Results in Evidence Base?</i></b>	<b><i>Results annexed?</i></b>
Competition Assessment	No	Yes
Small Firms Impact Test	No	Yes
Legal Aid	No	No
Sustainable Development	No	No
Carbon Assessment	No	No
Other Environment	No	No
Health Impact Assessment	No	Yes
Race Equality	No	Yes
Disability Equality	No	Yes
Gender Equality	No	Yes
Human Rights	No	No
Rural Proofing	No	Yes

## Annexes

### Department for Culture, Media and Sport: Equality Impact Assessment – Initial Screening

Section	Notes
<p>1. Name of the function/policy to be assessed:</p> <p><b>Proposed Legislative Reform Order to make provision for a new ‘minor’ variations process to allow applicants to make small alterations to licences and certificates under the Licensing Act 2003 through a low cost and streamlined process.</b></p>	
<p>2. What is the aim, objective or purpose of the policy?</p> <p><b>The policy objective is to amend the Licensing Act 2003 to introduce a simplified, fast track process for making small, low risk changes to licences.</b></p> <p><b>The intended effects are a significant reduction in the current administrative burden on licence holders, and an increase in the number of applicants submitting small changes to licences to the licensing authority. This should ensure that licensing (and other) authorities have up to date records of premises to inform their enforcement strategies.</b></p>	
<p>3. What are the intended outcomes?</p> <p><b>An amendment to the Licensing Act providing a simplified and lower cost mechanism for making small changes to premises licences and club premises certificates.</b></p> <p><b>A revision to the statutory Guidance to licensing authorities to reflect this new regulatory process.</b></p>	<p><i>How will you monitor progress towards these outcomes?</i></p> <p><i>Do the outcomes support or hinder other policies, values or objectives within the Department?</i></p> <p><i>If they hinder other work is this justifiable?</i></p>
<p>4. Who are the key stakeholders?</p> <p><b>Those who represent premises licence holders (including pubs, nightclubs, hotels, supermarkets, convenience stores, theatres, cinemas, live music venues, takeaways, restaurants, and village halls) and club premises certificate holders (including sports, working mens’, and political clubs), the licensing authorities as administrators of the regime, those involved in enforcement activity such as the police and other responsible authorities, and others with interest in the impact of the proposals on the licensing objectives such as residents.</b></p>	<p><i>Who are the groups/individuals likely to be affected by the function or policy?</i></p> <p><i>Who else might have a significant interest in the implementation of this policy?</i></p> <p><i>Who else might have knowledge of the impact or potential impact of the policy or function?</i></p>
<p>5. Is the aim of the policy or any of its intended outcomes designed specifically to meet the Public Duties, for example to:</p> <ul style="list-style-type: none"> <li>• Eliminate discrimination?</li> <li>• Promote equality of opportunity?</li> <li>• Promote good relations between different groups?</li> </ul>	<p><i>For example, a policy that has the aim of preventing harassment and bullying</i></p> <p><i>If the answer is <b>YES</b> to any of the questions, then you are required to proceed to a full</i></p>



<p><b>No</b></p> <p><i>[Most functions, policies and practices will not be designed <b>specifically</b> to meet the Public Duties. You need only answer 'yes' if the <b>specific intent</b> of the function, policy or practice is to meet the public duties. Otherwise, move on to section 6]</i></p>	<p><i>impact assessment. You should turn to section 13, though please note that sections 7-12 will help you to conduct a full assessment</i></p>
<p>6. Does the function or policy involve or have consequences for members of the public or staff employed by the Department?</p> <p><b>Yes</b></p>	<ul style="list-style-type: none"> <li>• <i>If the answer is <b>YES</b> proceed to section 7</i></li> <li>• <i>If the answer is <b>NO</b> list the evidence or other justification opposite or on an attached sheet that identifies why the function or policy has <u>no</u> consequences for members of the public or for staff employed by the Department</i></li> <li>• <i>If the evidence that you have indicates that there is <u>no</u> impact or likely impact you do not need to conduct an impact assessment <u>but</u> you do need to monitor the implementation of the policy over time to ensure that there continues to be no impact on people. At a minimum this should be every three years</i></li> <li>• <i>If you are sure the answer is <b>NO</b>, proceed to sections 13 and 14</i></li> </ul>
<p>7. Is there any evidence that tells you how the function or policy is working or is intended to work for the intended stakeholders?</p> <p><b>Yes. Feedback from a range of stakeholders suggests that there is currently an unnecessary burden on those wishing to make small changes to their premises licence or club premises certificate, which do not impact in any way on the licensing objectives. The proposals are designed to reduce the burdens involved in making such application whilst still retaining the licensing objectives as the key protection built into the system.</b></p>	<ul style="list-style-type: none"> <li>• <i>If you have <u>no</u> evidence available, then you will not be able to assess if the policy is relevant to equality</i></li> <li>• <i>You will need to gather evidence about the effects of the policy on stakeholders. (Please refer to section 2 of the guidance notes on gathering evidence)</i></li> <li>• <i>You should also consider consulting with stakeholder groups and involving disabled people at this stage (Please refer to section 5 on consulting and involving)</i></li> <li>• <i>When you have gathered evidence of the effects of the policy on the intended stakeholders, you can then proceed with the initial screening</i></li> <li>• <i>You should ensure that the</i></li> </ul>

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	<p><i>actions necessary to collect the evidence are identified in an action plan</i></p>																												
<p>8. From the available evidence, is there any reason to believe that people are affected differently or are likely to be affected differently according to any of the listed equality strands, for example, because they have different needs or priorities?</p> <table border="1" style="width: 100%; border-collapse: collapse;"> <thead> <tr> <th style="width: 15%;"></th> <th style="width: 20%;">Yes</th> <th style="width: 20%;">No</th> <th style="width: 45%;">Not Known</th> </tr> </thead> <tbody> <tr> <td>Age</td> <td></td> <td>X</td> <td></td> </tr> <tr> <td>Disability</td> <td></td> <td>X</td> <td></td> </tr> <tr> <td>Gender</td> <td></td> <td>X</td> <td></td> </tr> <tr> <td>Race</td> <td></td> <td>X</td> <td></td> </tr> <tr> <td>Religion or Belief</td> <td></td> <td>X</td> <td></td> </tr> <tr> <td>Sexual Orientation</td> <td></td> <td>X</td> <td></td> </tr> </tbody> </table> <p>Please summarise what the evidence shows and attach the evidence more fully to this screening document or reference where the evidence is available</p> <p><b>None of the feedback received from stakeholders indicates that the proposed regulatory change is likely to affect any of the above equality strands any differently.</b></p>		Yes	No	Not Known	Age		X		Disability		X		Gender		X		Race		X		Religion or Belief		X		Sexual Orientation		X		<ul style="list-style-type: none"> <li>• <i>If the answer to any of these questions is <b>Yes</b> for any of the strands, you will need to proceed to a full impact assessment. In which case, proceed to section 13, though please note that sections 9-12 will help you to conduct a full assessment</i></li> <li>• <i>If the answer is <b>No</b> and the evidence supports this, proceed to section 9</i></li> <li>• <i>If your evidence is not enabling you to identify the impact on different groups, you will need to gather more evidence that allows you to do this. Refer back to section 7 above</i></li> </ul>
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<p>9. Is there any evidence that the function or policy in any way discriminates or might discriminate unlawfully, directly or indirectly against people from any of the listed strands, for example, in terms of access to a service, or the ability to take advantage of an opportunity?</p> <table border="1" style="width: 100%; border-collapse: collapse;"> <thead> <tr> <th style="width: 15%;"></th> <th style="width: 20%;">Yes</th> <th style="width: 20%;">No</th> <th style="width: 45%;">Not Known</th> </tr> </thead> <tbody> <tr> <td>Age</td> <td></td> <td>X</td> <td></td> </tr> <tr> <td>Disability</td> <td></td> <td>X</td> <td></td> </tr> <tr> <td>Gender</td> <td></td> <td>X</td> <td></td> </tr> <tr> <td>Race</td> <td></td> <td>X</td> <td></td> </tr> <tr> <td>Religion or Belief</td> <td></td> <td>X</td> <td></td> </tr> <tr> <td>Sexual Orientation</td> <td></td> <td>X</td> <td></td> </tr> </tbody> </table> <p>Please summarise what the evidence shows and attach the evidence more fully to this screening document or reference where the evidence is available</p> <p><b>None of the feedback received from stakeholders indicates that the proposed regulatory change will discriminate against people in the listed strands.</b></p>		Yes	No	Not Known	Age		X		Disability		X		Gender		X		Race		X		Religion or Belief		X		Sexual Orientation		X		<ul style="list-style-type: none"> <li>• <i>If the answer to any of these questions is <b>Yes</b> for any of the strands, you will need to proceed to a full impact assessment. In which case, proceed to section 13, though please note that sections 10-12 will help you to conduct a full assessment</i></li> <li>• <i>If the answer is <b>No</b> and the evidence supports this, proceed to section 10</i></li> <li>• <i>If your evidence is not enabling you to identify the impact on different groups, you will need to gather more evidence that allows you to do this. Refer back to section 7 above</i></li> </ul>
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10. Is there any evidence that people from the groups covered by the listed strands have or may have different expectations of the function or policy in questions?

	Yes	No	Not Known
Age		X	
Disability		X	
Gender		X	
Race		X	
Religion or Belief		X	
Sexual Orientation		X	

Please summarise what the evidence shows and attach the evidence more fully to this screening document or reference where the evidence is available

**None of the feedback received from stakeholders indicates that any of the above groups will have different expectations of the proposed regulatory change.**

- If the answer to any of these questions is **Yes** for any of the strands, you will need to proceed to a full impact assessment. In which case, proceed to section 13, though please note that sections 11-12 will help you to conduct a full assessment
- If the answer is **No** and the evidence supports this, proceed to section 11
- If your evidence is not enabling you to identify the impact on different groups, you will need to gather more evidence that allows you to do this. Refer back to section 7 above

11. Is there any evidence that the function or policy affects or might affect relations between groups covered by the listed strands, for example is it, or might it, be seen as favouring a particular group or denying opportunities to another?

	Yes	No	Not Known
Age		X	
Disability		X	
Gender		X	
Race		X	
Religion or Belief		X	
Sexual Orientation		X	

Please summarise what the evidence shows and attach the evidence more fully to this screening document or reference where the evidence is available

**None of the feedback received from stakeholders indicates that the proposed regulatory change will favour a particular group or deny opportunities to another.**

- If the answer to any of these questions is **Yes** for any of the strands, you will need to proceed to a full impact assessment. In which case, proceed to section 13, though please note that sections 12 will help you to conduct a full assessment
- If the answer is **No** and the evidence supports this, proceed to section 12
- If your evidence is not enabling you to identify the impact on different groups, you will need to gather more evidence that allows you to do this. Refer back to section 7 above

12. Have previous consultations with relevant stakeholder groups or individuals indicated that policies of this type create exclusion or hold specific challenges for any of the listed groups?

	Yes	No	Not Known
Age		X	

- If the answer to any of these questions is **Yes** for any of the strands, you will need to proceed to a full impact assessment. In which case, proceed to section 13
- If the answer is **No** and the

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Disability		X		<p><i>evidence supports this, proceed to section 13</i></p> <ul style="list-style-type: none"> <li><i>If your evidence is not enabling you to identify the impact on different groups, you will need to gather more evidence that allows you to do this. Refer back to section 7 above</i></li> </ul>
Gender		X		
Race		X		
Religion or Belief		X		
Sexual Orientation		X		
<p>Please summarise what the evidence shows and attach the evidence more fully to this screening document or reference where the evidence is available</p> <p><b>None of the feedback received from stakeholders indicates that this policy will create exclusions or hold specific challenges for any of the listed groups.</b></p>				

<p>13. Is a full impact assessment required?</p> <p><b>No. We do not believe that the proposed regulatory change will affect any of the groups under the listed strands in a different way.</b></p>	<ul style="list-style-type: none"> <li><i>If the answer is <b>NO</b> please use the space opposite to summarise why and attach any further supporting evidence</i></li> <li><i>If the answer is <b>YES</b> you will need to arrange to carry out a full impact assessment</i></li> <li><i>Please note that the information that you have already identified in this initial screening will be valuable to you in carrying out the full impact assessment</i></li> </ul>
<p>14. If a full impact assessment is not required, please indicate the plans to monitor the implementation of this policy over the next three years.</p> <p><b>We will check with key stakeholders whether the statement in section 13 is still correct 12 months after the regulatory change (subject to Parliament) is enacted.</b></p>	
<p>15. Please return a copy of this form to:</p>	
Name: <b>Amanda Stevens</b>	
Unit/Directorate: <b>Licensing Team/Industry Directorate</b>	
Date: <b>12/11/07</b>	

## Competition Assessment

We do not believe that the proposed policy is likely to raise any competition concerns. It will be for a premises or club to decide whether to apply for a minor variation and there would be no restriction to a particular type of premises or club, so to that extent the proposals apply equally to all premises. Therefore, it will not directly or indirectly limit the number or range of suppliers, limit the ability of suppliers to compete or reduce suppliers' incentives to compete vigorously.

## Small firms impact test

Since these proposals will impact equally on all premises, merely altering the mechanism by which a minor variation is made, we do not believe there is likely to be a significant impact on small businesses. Where these proposals affect small businesses, the impact will be to reduce burden and allowing greater flexibility in business operation. The stakeholder group set up to advise us on these proposals includes a wide range of bodies representing small businesses, including the Federation of Small Businesses, Association of Convenience Stores, Cinema Exhibitors Association, British Retail Consortium, Business in Sport and Leisure, British Beer and Pub Association, Musicians Union, Bar Entertainment and Dance Association, and Committee of Registered Clubs Associations. None of these groups have advised us of any adverse impact of the proposals on small businesses.

## Rural Proofing

Action with Communities in Rural England (ACRE) is a member of our stakeholder group and has not raised any concerns about the impact of these proposals on rural communities.

## Health Impact Assessment Screening

We have undertaken a screening process to determine whether this policy needs a full health impact assessment. The proposal only potentially changes the process through which a variation may be made for certain low risk variations which will not impact on the licensing objectives (which include the prevention of crime and disorder and public nuisance) which would otherwise be granted without any difficulty. Since it does not otherwise change any other element of licensing policy, we do not believe that a health impact assessment is required.

### **We have considered that the policy will not have:**

- **a significant impact on human health by virtue of its effects on the following wider determinants of health:** Income, Crime, Environment, Transport, Housing, Education, Employment, Agriculture or Social cohesion.
- **a significant impact on any of the following lifestyle related variables:** Physical activity, Diet, Smoking, drugs, or alcohol use, Sexual behaviour, Accidents and stress at home or work.
- **a significant demand on any of the following health and social care services:** Primary care, Community services, Hospital care, Need for medicines, Accident or emergency attendances, Social services, Health protection and preparedness response

# Annex C: Cabinet Office Code of Practice on Consultations

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The consultation is being conducted in line with the Cabinet Office's Code of Practice on Written Consultation. The six broad consultation criteria are listed below, but more information can be found at:

[www.cabinetoffice.gov.uk/regulation/consultation/code/criteria.asp](http://www.cabinetoffice.gov.uk/regulation/consultation/code/criteria.asp)

## The Six Consultation Criteria

- Consult widely throughout the process, allowing a minimum of 12 weeks for written consultation at least once during the development of the policy
- Be clear about who may be affected, what questions are being asked and the timescale for responses.
- Ensure that your consultation is clear, concise and widely accessible
- Give feedback regarding the responses received and how the consultation process influenced the process.
- Monitor your department's effectiveness at consultation, including through the use of a designated consultation co-ordinator.
- Ensure your consultation follows better regulation best practice, including carrying out a Regulatory Impact Assessment if appropriate.

If you have any questions or complaints about the process of consultation on this paper, please contact Mythily Manickavasagar, Consultation Co-ordinator, Strategy Division, Department for Culture, Media and Sport, 2-4 Cockspur Street, London, SW1Y 5DH  
[mythily.manickavasagar@culture.gsi.gov.uk](mailto:mythily.manickavasagar@culture.gsi.gov.uk)

# Annex D: Legislative Reform Orders – Parliamentary Consideration

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## Introduction

1. These reform proposals in relation to minor variations will require changes to primary legislation in order to give effect to them. The Minister could achieve these changes by making a Legislative Reform Order (LRO) under the Legislative and Regulatory Reform Act 2006 (LRRA). LROs are subject to preliminary consultation and to rigorous Parliamentary scrutiny by Committees in each House of Parliament. On that basis, the Minister invites comments on these reform proposals in relation to minor variations as measures that might be carried forward by a LRO.

## Legislative Reform Proposals

2. This consultation document on minor variations has been produced because the starting point for LRO proposals is thorough and effective consultation with interested parties. In undertaking this preliminary consultation, the Minister is expected to seek out actively the views of those concerned, including those who may be adversely affected, and then to demonstrate to the Scrutiny Committees that he or she has addressed those concerns.

3. Following the consultation exercise, when the Minister lays proposals before Parliament under the section 14 Legislative and Regulatory Reform Act 2006, he or she must lay before Parliament an Explanatory Document which must:

i) explain under which power or powers in the LRRA the provisions contained in the order are being made;

ii) introduce and give reasons for the provisions in the Order;

iii) explain why the Minister considers that:

- there is no non-legislative solutions which will satisfactorily remedy the difficulty which the provisions of the LRO are intended to address;
- the effect of the provisions are proportionate to the policy objective;
- the provisions made in the order strikes a fair balance between the public interest and the interests of any person adversely affected by it;
- the provisions do not remove any necessary protection;
- the provisions do not prevent anyone from continuing to exercise any right or freedom which they might reasonably expect to continue to exercise;
- the provisions in the proposal are not constitutionally significant; and
- where the proposals will restate an enactment, it makes the law more accessible or more easily understood.

iv) include, so far as appropriate, an assessment of the extent to which the provision made by the order would remove or reduce any burden or burdens;

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v) identify and give reasons for any functions of legislating conferred by the order and the procedural requirements attaching to the exercise of those functions; and

vi) give details of any consultation undertaken, any representations received as a result of the consultation and the changes (if any) made as a result of those representations.

4. On the day the Minister lays the proposals and explanatory document, the period for Parliamentary consideration begins. This lasts 40 days under negative and affirmative resolution procedure and 60 days under super-affirmative resolution procedure. If you want a copy of the proposals and the Minister's explanatory document laid before Parliament, you will be able to get them either from the Government department concerned or by visiting the BRE's website at:

[www.cabinetoffice.gov.uk/regulation/regulatory\\_reform/act/reform\\_orders.asp](http://www.cabinetoffice.gov.uk/regulation/regulatory_reform/act/reform_orders.asp)

**Parliamentary Scrutiny**

5. Both Houses of Parliament scrutinise legislative reform proposals and draft LROs. This is done by the Regulatory Reform Committee in the House of Commons and the Delegated Powers and Regulatory Reform Committee in the House of Lords.

6. Standing Orders for the Regulatory Reform Committee in the Commons stipulate that the Committee considers whether proposals:

(a) appear to make an inappropriate use of delegated legislation;

(b) serve 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) serve 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) secure a policy objective which could not be satisfactorily secured by non-legislative means;

(e) have an effect which is proportionate to the policy objective;

(f) strike a fair balance between the public interest and the interests of any person adversely affected by it;

(g) do not remove any necessary protection;

(h) do not prevent any person from continuing to exercise any right or freedom which that person might reasonably expect to continue to exercise;

(i) are not of constitutional significance;

(j) make the law more accessible or more easily understood (in the case of provisions restating enactments);

(k) have been the subject of, and takes appropriate account of, adequate consultation;



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(l) give 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, such as defective drafting or failure of the department to provide information where it was required for elucidation;

(m) appear to be incompatible with any obligation resulting from membership of the European Union;

7. The Committee in the House of Lords will consider each proposal in terms of similar criteria, although these are not laid down in Standing Orders.

8. Each Committee might take oral or written evidence to help it decide these matters, and each Committee would then be expected to report.

9. Copies of Committee Reports, as Parliamentary papers, can be obtained through HMSO. They are also made available on the Parliament website at:

- [Regulatory Reform Committee](#) in the Commons; and
- [Delegated Powers and Regulatory Reform Committee](#) in the Lords.

10. Under negative resolution procedure, each of the Scrutiny Committees is given 40 days to scrutinise an LRO, after which the Minister can make the order if neither House of Parliament has resolved during that period that the order should not be made or to veto the LRO.

11. Under affirmative resolution procedure, each of the Scrutiny Committees is given 40 days to scrutinise an LRO, after which the Minister can make the order if it is not vetoed by either or both of the Committees and it is approved by a resolution of each House of Parliament.

12. Under super-affirmative procedure each of the Scrutiny Committees is given 60 days to scrutinise the LRO. If, after the 60 day period, the Minister wishes to make the order with no changes, he may do so only after he has laid a statement in Parliament giving details of any representations made and the LRO is approved by a resolution of each House of Parliament. If the Minister wishes to make changes to the draft LRO he must lay the revised LRO and as well as a statement giving details of any representations made during the scrutiny period and of the proposed revisions to the order, before Parliament. The Minister may only make the order if it is approved by a resolution of each House of Parliament and has not been vetoed by either or both relevant Committees.

### **How to Make Your Views Known**

13. Responding to this consultation document is your first and main opportunity to make your views known to the relevant department as part of the consultation process. You should send your views to the address set out in the consultation document. When the Minister lays proposals before Parliament you are welcome to put your views before either or both of the Scrutiny Committees.

14. In the first instance, this should be in writing. The Committees will normally decide on the basis of written submissions whether to take oral evidence.

15. Your submission should be as concise as possible, and should focus on one or more of the criteria listed in paragraph 6 above.

16. The Scrutiny Committees appointed to scrutinise Legislative Reform Orders can be contacted at:

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Delegated Powers and  
Regulatory Reform Committee  
House of Lords  
London  
SW1A 0PW  
Tel: 0207 219 3103  
Fax: 0207 219 2571  
[mailto: DPDC@parliament.uk](mailto:DPDC@parliament.uk)

Regulatory Reform Committee  
House of Commons  
7 Millbank  
London  
SW1P 3JA  
Tel: 020 7219 2830/2833/2837  
Fax: 020 7219 2509  
[mailto: regrefcom@parliament.uk](mailto:regrefcom@parliament.uk)

**Non-disclosure of responses**

17. Section 14(3) of the LRA provides what should happen when someone responding to the consultation exercise on a proposed LRO requests that their response should not be disclosed.

18. The name of the person who has made representations will always be disclosed to Parliament. If you ask for your representation not to be disclosed, the Minister should not disclose the content of that representation without your express consent and, if the representation relates to a third party, their consent too. Alternatively, the Minister may disclose the content of the representation in such a way as to preserve your anonymity and that of any third party involved.

**Information about Third Parties**

19. If you give information about a third party which the Minister believes may be damaging to the interests of that third party, the Minister does not have to pass on such information to Parliament if he does not believe it is true or he is unable to obtain the consent of the third party to disclosure. This applies whether or not you ask for your representation not to be disclosed.

20. The Scrutiny Committees may, however, be given access on request to all representations as originally submitted, as a safeguard against improper influence being brought to bear on Ministers in their formulation of legislative reform orders.

**Better Regulation Executive**

**Department for Business, Enterprise and Regulatory Reform**