

## LICENSING ACT 2003

These notes are intended for guidance only and are not authoritative. No responsibility is accepted for errors or omissions. You may wish to seek specialist legal advice.

### REVIEW GUIDANCE FOR RESIDENTS

Occasionally things may go wrong once a licence has been granted. In the first case, we strongly advise you talk to the manager of the premises to try and arrange an informal resolution; we can help with this if asked.

If you have a complaint about any activities allowed under a licence, the Council's Licensing Section would be pleased to help you try and resolve it. Some complaints may not be the Council's responsibility to deal with, but we can advise you who would be the most appropriate agency in these circumstances.

If your complaint relates to one or more of the four licensing objectives (prevention of crime and disorder; public safety; prevention of public nuisance; protection of children from harm) the Council will start by informing the premises licence holder that there are concerns about the premises which may require improvement. If the holder does not respond to an informal approach, then a warning may be necessary. If the warning is not responded to, then a review of the licence may be appropriate.

Reviews allow the Licensing Sub-Committee to look at the licence again. If appropriate the Committee can change the licence conditions or, in extreme cases, can suspend or revoke all or part of the licence.

### How do I apply for a review of a premises licence?

At any stage, following the grant of a premises licence, a responsible authority such as the police or the fire authority, or any other person, such as a resident in the vicinity of the premises, may apply to the licensing authority to review the licence if there are grounds relating to the licensing objectives.

Before applying for a review, you may want to consider whether your concern(s) could be effectively dealt with outside of the formal review process. This could involve, for example:

- Talking to the licence or certificate holder to determine whether there are any steps they may be willing to take to rectify the situation
- Asking the licensing department at your council to talk to the licensee on your behalf
- Ask your local MP or Councillor to speak to the licence or certificate holder on your behalf
- Talking to the relevant "responsible authority" (e.g. environmental health in relation to noise nuisance, or the police in relation to crime and disorder) to determine whether there is other legislation that could help resolve the issue

If an individual, body or business applies for a review of the licence, the licensing authority must first consider whether the grounds they have put forward are relevant to the licensing objectives and that they are not **frivolous, vexatious** or **repetitious**. If the grounds comply with these tests and the application accepted, the licensing authority must arrange a hearing to consider them and any relevant representations made, unless the application is withdrawn.

The person or body requesting the review must notify the holder of the premises licence and each responsible authority (details available on request) of their request, by sending them a copy of the application for review, together with any accompanying documents, on the same day as the application is given to the relevant licensing authority.

The application for the review of a premises licence or club premises certificate is available from the Licensing Service upon request.

### **What does frivolous, vexatious or repetitious mean?**

Frivolous or vexatious will bear their ordinary meaning. The licensing authority must form a view as to whether a reasonable person would consider the observations frivolous or vexatious. For example representations may be vexatious if they arise because of disputes between rival businesses or frivolous if they clearly lack seriousness.

In the case of a review of the licence, the Act provides that for a ground to be a repetition it must be identical or substantially similar to a ground for review already made. Further, the Act provides that it will be a repetition if a reasonable interval has not elapsed since an earlier application for review, or grant of the licence. Although the Act does not define a “reasonable interval”, advice in the statutory guidance states that once a review application has been made by any individual, body or business, there should not be another one permitted within a 12 month period on similar grounds, except in compelling circumstances or where the review arises following a closure order.

### **What information can be provided in support of a review?**

You can support the review by supplying the following:

- A diary/record of events or incidents that occur.
- Photos/video evidence.
- Sound recordings.
- A record of complaints made to authorities.
- Supporting statements from fellow neighbours/witnesses.

If you collect such evidence you will need to inform the licensing authority before the hearing that you wish to use it as part of your evidence. A copy of all evidence will be provided to the licence holder or club.

### **What happens next?**

Once an application has been received, the relevant licensing authority must advertise the application for the review by displaying prominently a pale blue A4 (or larger) notice, printed legibly in black ink or typed in black, in a size equal to 16 font (or larger):

- At, on or near the premises to which the application relates, where it can be conveniently read from the exterior of the premises by the public (where the premises covers an area of more than 50m squared, a further notice in the same form and subject to the same requirements every 50m along the external perimeter of the premises abutting any highway).
- At the offices, or the main office of the licensing authority in a central and conspicuous place.
- In a case where the relevant licensing authority maintains a website for the purpose of advertisement of applications given to it, by publication of a notice on that website.

The notice must be displayed for 28 consecutive days, starting on the day after the application is given to the relevant licensing authority. A responsible authority or any individual, body or business has a period of 28 days in which to make representations to the relevant licensing authority.

### **What information needs to be included in the advertisement for review?**

Notices advertising applications for reviews need to state:

- The address of the premises about which an application for a review has been made.
- The dates between which any individual, body or business and responsible authorities may make representations.
- The grounds of the application for review.
- That postal address and website address (if any) where the register of the relevant licensing authority is kept and where and when the grounds for the review may be inspected.
- That it is an offence knowingly or recklessly to make a false statement in connection with an application and the maximum fine for which a person is liable on summary conviction for the offence.

### **Do I have to pay a fee?**

There is no fee to apply for the review of premises licence or club premises certificate.

### **Is there any mediation?**

Ideally mediation will have taken place between the licensees and potential review applicants before they make the application for a review of the licence. There will be some situations where this may not happen and in these circumstances the Licensing Authority can try to come to an agreement between the relevant parties. If an agreement is made, then the applicant may agree to withdraw their application for a review. An agreement in principle may also be made to change conditions on the licence either by way of application to vary the licence, or at a review hearing. If there is no agreement, then a hearing must be held.

## **Can the licensing authority make representations on a licence application or ask for a review of a licence?**

Yes, however, it is not expected that licensing authorities should normally act as responsible authorities in applying for reviews on behalf of other persons, such as local residents or community groups. These individuals or groups are entitled to apply for a review for a licence or certificate in their own right if they have grounds to do so. It is also reasonable for licensing authorities to expect other responsible authorities to intervene where the basis for the intervention falls within the remit of that other authority. For example, the police should take appropriate steps where the basis for the review is concern about crime and disorder or the sexual exploitation of children. Likewise, where there are concerns about noise nuisance, it is reasonable to expect the local authority exercising environmental health functions for the area in which the premises are situated to make the application for review.

### **Representations**

During the consultation responsible authorities or any other person may make representation in respect of a review application. Representations must be WRITTEN and relate to one or more of the four Licensing Objectives:

**Crime and disorder:** This relates to any crime, disorder or anti-social behaviour related to the management of the premises. The licence-holder cannot be responsible for the conduct of individuals once they leave the direct vicinity of the premises.

**Public safety:** This relates to the safety of the public on the premises – such as ensuring the safety of people as they leave the premises, lighting and first aid.

**Prevention of public nuisance:** This can relate to hours of operation, noise and vibration, noxious smells, light pollution and litter.

**Protection of children from harm:** This relates to protecting children from the activities carried out on the premises whilst they are on the premises. The law already provides special protections for children, such as making it illegal for children under 18 to buy alcohol.

Representations can be made both in support of and opposing an application.

### **What are relevant representations?**

In brief “relevant representations” is the expression used in the Act for comments including objections to applications etc.

For a representation to be relevant it must:

- Relate to the likely effect of the grant or review of the licence on the promotion of the licensing objectives.
- Be made by an individual, body, business or responsible authority.
- Not have been withdrawn.

- Not be ‘frivolous or vexatious’ or, in the case of a review, ‘repetitious’ if made by an individual, body or business.

### **Will my name be made public?**

It is not possible to apply for a review of a licence or club premises certificate anonymously. An applicant for the review of a premises licence or club premises certificate must serve a copy of the review application of the premises licence holder or club. The review application requires the applicant to provide their name and address details. Prior to the hearing, a report containing the application will be published on the Council website.

When arranging a hearing, the licensing authority is required to provide the applicant/licence holder/club with copies of any relevant representations that have been made.

In exceptional circumstances, persons making representations to the licensing authority may be reluctant to do so because of fears of intimidation or violence if their personal details, such as name and address, are divulged to the applicant.

Where licensing authorities consider that the person has a genuine and well-founded fear of intimidation and may be deterred from making a representation on this basis, they may wish to consider alternative approaches.

For instance, they could advise the persons to provide the relevant responsible authority with details of how they consider that the licensing objectives are being undermined so that the responsible authority can make representations if appropriate and justified.

The licensing authority may also decide to withhold some or all of the person’s personal details from the applicant, giving only minimal details (such as street name or general location within a street). However, withholding such details should only be considered where the circumstances justify such action.

### **When will the application be heard?**

The licensing authority has 20 working days from the close of representations to hold a hearing. The applicant, licence holder and any person who submitted a relevant representation will be given notice of the hearing approximately 10 working days before it takes place. A copy of the report will be made available on our website 5 working days beforehand.

### **Do I have to attend the hearing in person?**

It is anticipated that applicants for the review of a licence or club premises certificate will attend or be represented at the hearing to advise the sub-committee of their concerns and answer any questions they may have. You can also nominate a person to speak on your behalf such as:

- A friend or relative.
- A Councillor.
- A representative from a residents’ or amenity society.
- A solicitor or other such professional (but this is not required).

If you do not attend the hearing you will not be able to speak in support of your request for a review. The absence of you or your representative may affect the Committee’s decision.

### **What happens at the hearing?**

At the meeting you will be able to speak in support of your application/representation to a panel of Councillors (The Licensing Sub-Committee).

The licence holder will usually also be at the meeting and it will normally be open to the public. The applicant for review, the licence holder and any person who made representation will be asked to put forward a brief summary of their case to the Sub-Committee. If you wish you may be assisted or represented by another person, whether or not they are legally qualified. You may also ask for permission for someone to attend to give evidence to the panel on your behalf.

If you want someone to give evidence on your behalf then you should give the licensing authority notice of the name of that person and the points that you wish them to make five days before the date of the hearing. Any party to the hearing may ask questions but there will not normally be formal "cross examination".

The Sub-Committee will have to make a decision whether to:

- Modify the conditions of the licence (for example, by putting conditions on it that reflect the concerns of the objectors).
- Exclude a licensable activity from the scope of the licence
- Suspend the licence for a period not exceeding 3 months
- To remove the Designated Premises Supervisor (the person responsible for the day to day running of the premises)
- To revoke the licence
- Alternatively, the sub-committee may decide to take no action.

The decision of the Sub-Committee will be notified to the licence holder, the applicant for the review, any person who made a relevant representation and the Chief Officer of Police for the area.

### **Can I appeal if I am not happy with the decision?**

There is a right to appeal to the magistrates' court if any of the following parties is aggrieved by the decision of the Licensing Authority:

- The applicant for the review.
- The holder of the premises licence or club premises certificate.
- Any other person who made relevant representations in relation to the application.

The appeal must be lodged with the Magistrates' Court within 21 days beginning with the day on which the appellant was notified of the decision.