

LICENSING ACT 2003 - REVIEW GUIDANCE

The Statutory Guidance issued by the Secretary of State, in accordance with the Licensing Act 2003, makes it clear that the ability to apply for a review of a licence represents a key protection for the community where problems associated with the licensing objectives are occurring after the grant or variation of a licence.

The purpose of this guidance is to assist people who may be experiencing problems and wish to seek advice about the review of a premises licence.

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 will 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 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 necessary the Committee can change the licence conditions or, in extreme cases, can suspend or revoke all or part of the licence.

Representations must relate to one or more of the four Licensing Objectives, which are:

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 vicinity of the premises.

Public safety: This relates to the safety of the public on the premises – such as fire safety, 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.

Q&A

How do I apply for a review of a licence?

An application for the review of a premises licences or club premises certificate must be given in writing and be in the prescribed form. The form can be downloaded from their

website: <https://www.gov.uk/government/publications/premises-licence-application-forms>. Alternatively a hard copy can be made available upon request.

The person or body requesting the review must notify the holder of the premises licence and each responsible authority 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.

What happens next?

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.

An interested party has a period of 28 days in which to make representations to the relevant licensing authority.

The licensing authority can reject any ground for the review if it considers it to be frivolous, vexatious, repetitious, or if the grounds are not relevant. If not rejected, the licensing authority must hold a hearing to consider the application.

In the case of a review of a premises licence following a closure order by a Magistrate's Court, an interested party or a responsible authority has a period of 7 days starting on the day after the day the licensing authority receives the order, in which to make representations about the review.

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 lacked 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 an interested party, 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 are relevant representations?

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

For a representation to be relevant it must:

- Relate to the effect of the grant or review of the licence on the promotion of the licensing objectives.
- Be made by an interested party or responsible authority.
- Not have been withdrawn.
- Not be ‘frivolous or vexatious’ or, in the case of a review, ‘repetitious’ if made by an interested party.
- If it concerns the premises supervisor be made by a chief officer of police and include a statement explaining the reasons for the objection.

The Secretary of State has made regulations under the Licensing Act 2003 in relation to the making of representations.

Do I have to pay a fee?

The Licensing Act 2003 (Fees) Regulations 2005 does not prescribe a fee for making representations, or applying for a review of a premises licence or club premises certificate.

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 and also agree to a copy being given to the applicant.

If the local pub, club, restaurant etc is currently open and causing disturbance is it possible to request a review of the licence?

Yes. At any stage, following the grant of a premises licence, a responsible authority such as the police or the fire authority, or other person, such as a resident, may apply to the licensing authority to review the licence if there are grounds relating to the licensing objectives. The licensing authority must first consider whether the grounds they have put forward are relevant to the licensing objectives and that they are not vexatious, frivolous 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.

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. This can be done by giving notice to the Licensing Section no later than 24 hours before the day of the hearing, or in person at the hearing. An agreement in principle may also be

made to change conditions on the licence. If there is no agreement, then a hearing must be held.

When will the application be heard?

The licensing authority has 20 working days from the close of representations to hold a hearing. If you have made a representation, you will be given notice of the hearing 10 working days before it takes place. A copy of the report will be made available on our website 5 working days beforehand.

Will my name be made public and do I have to attend the hearing in person?

According to law, applicants must be informed who has objected to their licence application. You do not have to attend the hearing, but may do so. 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 representation to a panel of Councillors (The Licensing Sub-Committee). The applicant for the licence (eg, the landlord or bar owner) will also be at the meeting and it will normally be open to the public. Both the applicant and the objectors 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 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. The Sub-Committee 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
- To leave the licence as it is

The decision of the Sub-Committee will be notified to the licence holder, the applicant, 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.

Guidance

The Home Office has published the review form and guidance which can be viewed via their website:

<https://www.gov.uk/government/organisations/home-office/series/alcohol-licensing-reviews>

or from Huntingdonshire District Council's website www.huntingdonshire.gov.uk.
Business and licensing section.