



The Licensing Act 2003

Making Representations or Complaints

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Making Representations or Complaints

The Licensing Act 2003 ("the Act") will enable thorough scrutiny of applications both by experts and by the local residents and businesses. "Responsible authorities" such as the police, fire authorities, health and safety and environmental health authorities, and others, will be notified of every application for a new premises licence, or variation of existing licences. They will have the opportunity to make representations to the licensing authority about the effect on the promotion of the licensing objectives of the application.

The Act also enables residents and businesses in the vicinity of the premises (interested parties) to make relevant representations about any application for new or for variations to licences. This gives the local community a greater say than ever before in licensing decisions.

For a representation to be relevant it must be one that is about the likely effect of the application on the promotion of the four licensing objectives. Also, if the representation is made by an interested party it will not be relevant if the licensing authority considers it to be vexatious or frivolous.

In addition, responsible authorities and interested parties will have the power to apply for a review by the licensing authority of existing licences, on a ground relating to the promotion of the licensing objectives. Such a review can result in the modification of the licence, its suspension, or ultimately, revocation.

Also, the Act makes provision for rights of appeal against a licensing authority's decision to the magistrates' court (see Schedule 5 to the Act).

Similar provisions apply in regards to applications for, or to vary, a club premises certificate and in respect of applications for a provisional statement.

What are the licensing objectives?

The Act provides four objectives. In carrying out its functions the licensing authorities must do so with a view to promoting the objectives. They are:

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

These licensing objectives have been formulated in order to ensure that the carrying on of licensable activities is done in the overall public interest. Any representations made in relation to an application for a provisional statement, a premises licence or club premises certificate (or a variation) or in respect of a review must be about the likely effect of granting the application on the promotion of the licensing objectives.

Who can make representations about a licence application or ask for a review of the licence?

'Interested parties' or 'responsible authorities' can make representations.

Interested parties are any of the following:

- a person living in the vicinity of the premises;
- a body representing persons who live in that vicinity;
- a person involved in a business in the vicinity of the premises;
- a body representing persons involved in these businesses.

Responsible authorities mean any of the following:

- the chief officer of police for the area in which the premises are situated;
- the fire authority for the area in which the premises are situated;
- the health and safety authority for the area in which the premises are situated;
- the local planning authority for the area in which the premises are situated;
- the environmental health authority for the area in which the premises are situated;
- the body recognised as being responsible for protection of children from harm for the area in which the premises are situated; and
- with regard to a vessel - the relevant navigation authority ➤ the Environment Agency, British Waterways Board or the Secretary of State.

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

No (except where a premises is situated in more than one area and a different licensing authority is determining the application) the Act does not give the licensing authority considering the application the power to make representation in relation to the application for a premises licence or request a review of a premises licence.

The same provisions apply in relation to club premises certificates and provisional statements.

Can the licensing authority impose conditions on a premises licence?

If no relevant representations are made, the only conditions that can be imposed are those that are consistent with the applicant's operating schedule and any mandatory conditions provided in the Act. If relevant representations are made, the licensing authority may modify or add conditions to the operating schedule if necessary in order to promote the licensing objectives.

The same provisions apply in relation to club premises certificates and provisional statements.

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 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; or
- 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 will be making regulations in relation to the making of representations and these will be placed on the DCMS website as soon as they are available.

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.

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. For a representation to be a repetition it is identical or substantially similar to one already considered by the authority before it determined an application, or the representation would have been considered but for the fact that they were excluded representations following a provisional statement. Further, the Act provides that it will be a repetition if a reasonable interval has not elapsed since the earlier application or review.

Putting forward your views on applications for, or to vary, a premises licence

When applying for, or seeking to vary, a premises licence, an applicant must give notice of their application to each responsible authority. The applicant will also be obliged to advertise his/her application. Any residents or business operating in the vicinity of the premises which are the subject of the application will be able to make representations to the licensing authority about the application, if they wish to do so. This includes the ability to raise objections.

All interested parties and responsible authorities will have a period in which they can make representations to the licensing authority about the application. If the licensing authority considers that the representations are relevant it must hold a hearing to consider those representations (unless all agree that this is unnecessary). The licensing authority will then have choices as to how it proceeds depending upon what is necessary for the promotion of the licensing objectives. It may:

- decide to grant or vary the licence in the same terms as it was applied for;
- decide that it is necessary to refuse to issue or vary the licence;
- decide to grant or vary the licence, but to modify the conditions;
- exclude from the scope of the licence a licensable activity.

If no relevant representations are made the licence or variation must be granted (subject to the mandatory conditions).

A similar approach is taken in respect of club premises certificates and provisional statements.

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 an interested party, 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.

If an interested party, for example, a local resident, residents' association, or local 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 vexatious, frivolous or repetitious. If the grounds comply with these tests, the licensing authority must arrange a hearing to consider them and any relevant representations made.

Complaints against Licensed Premises

Complaints relating to the activities carried out at licensed premises of any description will be referred to the Licensing authority's Licensing Section. In the first instance, complainants will be encouraged to raise the complaint directly with the licensee or business concerned.

The Licensing authority where practicable will seek to facilitate mediation between applicants, relevant statutory agencies and occupiers of nearby premises, local residents groups, community or interested groups where significant issues have arisen relating to a licence application. The Licensing authority, where possible, will facilitate mediation through:

- Identification of potential issues for other relevant statutory agencies particularly regarding the safety and amenity of local residents.
- Negotiation of, if possible, potential conditions to reflect resolutions of mediation forums.

Where mediation is not practicable or fails the Licensing authority may arrange for a hearing to review the licence or application

This process if used will not override the right of any interested party to ask that the Licensing authority consider their valid objections or for any licence holder to decline to participate in a mediation meeting.

The Licensing authority will disregard any representations which are irrelevant, frivolous and/or vexatious.

A senior Police Officer may, under section 161 of the Licensing Act 2003 close a premises in the interest of Public Safety for up to 24 hours on the grounds of likely or imminent disorder on or in the vicinity of the premises. Premises may also be closed if a public nuisance is being caused by Noise from the premises.

Additionally a review of the licence will take place within 28 days of any action by the Police to close down the premises for up to 24 hours or longer if so granted by the Magistrates Court on grounds of disorder or public nuisance - Annex L of Guidance and Section 167 of Licensing Act 2003.

Requesting a review of a premises licence

An interested party or responsible authority can, at any time, apply to the licensing authority for a review of a premises licence on a ground relating to the licensing objectives. The person or body requesting the review must notify the holder of the premises licence and each responsible authority of their request. The licensing authority must advertise the application for the review and invite representations from responsible authorities and interested parties.

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

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