



The Licensing Act 2003

Procedure at hearings for dealing with licensing applications

LA-9 - FEB 2005

SDC/0323/MAR05

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Stratford on Avon District Council Liquor Licensing Committee

Hearing Procedure for the Determination of Licence Applications made under the Licensing Act 2003

Introductions, General Information and Preliminary Matters before the hearing commences

Introductions

- 1 The Chairman will open the hearing and will introduce Members of the hearing, the Licensing Officer and other officers of "the Authority" present.
- 2 The "Party to the hearing" and any other person present will be asked to introduce themselves.
- 3.1 Hearings are to be in public
- 3.2 The Authority may exclude the public from all or part of the hearing where it considers that the public interest outweighs the public interest in the hearing or that part of the hearing taking place in public.
- 3.3 A party and any person assisting or representing a party may be treated as a member of the public (Regulation 14)
- 3.4 The Chairman will remind parties at the hearing of the procedure to be followed at the Hearing (Regulation 7(c)) informing them that they should have a copy of the hearing procedure enclosed with the Notice of Hearing sent to them.

4. General Information

- 4.1 **The Licensing Act 2003** (the Act) received Royal Assent on 10 July 2003 and governs the supply of alcohol, the provision of regulated entertainment and late night refreshment.

The Act transfers licensing powers from the Licensing Justices to new Licensing Authorities which are generally local authorities.

There is a transition period for implementation of the Act from 7 February 2005, the first appointed day when Licensing Authorities begin processing applications, to the second appointed day in November 2005 when the old licensing laws end and new premises licences and clubs premises certificates are given effect.

4.2 In carrying out its functions under the Act the Authority must have regard to: **Government Guidance** issued on 7 July 2004 under section 182 of the Act; its existing **Statement of Licensing Policy** and its duty to act in providing the **Licensing objectives** whenever the Authority makes a decision under the provisions of the Act.

The Authority will determine each application on its merits in enforcing the provisions of the Act. It is not required to enforce the Guidance.

4.3 The main planks of the Act are the “Licensing Objectives”:-

- Prevention of Crime and Disorder
- The promotion of public safety
- The prevention of public nuisance
- The protection of children from harm

These are the **only** matters on which representations can be made on an application – a “representation” being the Act’s terminology for what is commonly known as an objection.

4.4 Hearing Regulations

The procedures for determining licence applications and hearings are based not only on Licensing Act but also upon Regulations made by the Secretary of State.

On 7 February 2005 the Licensing Act 2003 (Hearings) Regulations 2005 and the Licensing Act 2003 (Hearings) (Amendment) Regulations 2005 came into force.

These Regulations provide for procedures to be made and the provisions to be followed before, during and after hearings called to hear representations into licensing applications.

4.5 Meanings

The following words and phrases used in this Procedure have the meanings given to them under the Act and Regulations:

“The Act”

“Party to hearing”

“The Authority”

“Notice of hearing”

“Determination”

“Interested parties”

“Relevant representations”

“Responsible Authorities”

“Licensing Objectives”

“Authorised License Officers” are staff within the Public Protection Team of the Environmental Services Directorate authorised to perform the duties under the Licensing Act 2003.

4.6 Discussions between applicants and Licensing Authority prior to application or hearings

Whilst discussions between the licence applicant and the Licensing Authority prior to the submission of an application or a hearing are helpful to both parties any advice given by Authorised Licence Officers will be impartial and will not bind the Licensing Authority.

Authorised Licensed Officers will be advising on the process only and facilitating any mediation.

Licensing Committee Members or Members of hearings cannot take part in any discussions prior to an application or hearing with applicants. Members will refer applicants and proposed parties to a hearing to an Authorised Licensed Officer for guidance.

Parties are advised to seek their own independent legal advice to ensure compliance with the Act and Regulations.

5. Preliminary matters prior to Hearings

The following preliminary matters are a summary of matters to be considered before the actual hearing and in accordance with the hearing regulations.

This summary does not replace the provisions contained in the Regulations mentioned above.

5.1 Period of time within which hearing to be held and Authority to issue Notice of Hearing

The Authority must arrange for the date on which and the time and place at which a hearing is to be held. It must give a Notice of the Hearing to the persons specified in the Regulations. Hearings must be commenced within the periods of time specified under the provisions listed in Schedule 1 of the Regulations (Regulations 4 and 5)

5.2 Requests for permission to appear

Before the hearing commences it will be necessary for the Authority, in accordance with the Regulations, to consider any requests made by a Party to the Hearing for permission for any other person to appear at the hearing (Regulation 8 (2)).

5.3 Rights to attend, assistance and representation

The Chairman will remind a party to a hearing of his right to both attend the hearing and to be assisted or represented by any person whether or not that person is legally qualified (Regulation 15).

5.4 The Legal Officer or Clerk will confirm the following:-

- that a "**Notice of Hearing**" (Regulation 6) has been given by the Authority to the persons (normally "interested parties" and "responsible Authorities") in the time periods prescribed by the regulations which in most cases will be ten working days. (Regulation 2 Amendment Regulations)
- that the Notice in (i) above has been accompanied by the **Information** informing the parties of:
 - (a) their rights contained in Regulations 15 and 16;
 - (b) the consequences if a party does not attend or is not represented at the hearing (Regulation 20);
 - (c) the procedure to be followed at the hearing (Paragraph 13);
 - (d) any particular points the Authority considers it will want clarification at the hearing (Regulation 7) and
 - (e) in the case of certain provisions of the Act specified in the Regulations that the notice of hearing is accompanied by the **documents** listed in the Regulations (Regulation 7 Schedule 3 paragraph 5.12). This would include the sending out of copies of representations received to all parties including the applicants and responsible authorities.
- after receiving a Notice from the Authority a **party has given** to the Authority, within the various periods of time mentioned in the Regulations, a **Notice** stating:
 - (a) whether he intends to attend or be represented at the hearing;
 - (b) whether he considers a hearing to be necessary
- If a party wishes any other person (other than the person he intends to represent him at the hearing) to appear at the hearing, confirmation that the Notice contains a **request for permission** for such other person to appear at the hearing.

Confirmation that the notice also gives the name of that person and a brief description of the points on which that person may be able to assist the authority in relation to the application, representations or advice given by the party to the hearing.

Confirmation that the notice has been given by the Party not later than five working days before the day or the first day on which the hearing is to be held. However, the period of notice the party must give must be one working day or not later than two working days in respect of hearings under certain sections and paragraphs of the Licensing Act 2003.

These notice periods are set out in the Regulations. (Regulation 6 Schedule 2 (relating to Notices the Authority must give) and Regulation 8 (relating to Notices a party to a hearing must give)).

- That a party wishing to **withdraw** any representations they have made by giving the Authority at least 24 hours notice of withdrawal or do so orally at the hearing (Regulation 10).

5.5 Power to extend time limits, adjourn dispense with hearings if all parties agree etc.

Time limits for a specified period may be extended by the Authority if it considers this to be in the public interest but it must give the parties notice of this forthwith stating the period of extension and reasons for it (Regulations 11, 12 and 13).

5.6 Right to dispense with hearing if all parties agree

If all persons agree that a hearing is unnecessary and have given notice to the Authority to that effect, the Authority must also give notice to the parties that the hearing has been dispensed with (Regulation 9).

5.7 Failure to attend

If the Authority has been informed by a party that he does not intend to attend or be represented at the hearing, the hearing may proceed in his absence. Where a party fails to so inform, attend or be represented, the Authority may adjourn or hold the hearing in the party's absence. (Regulation 20).

5.8 Power to remove disruptive persons

The Authority has powers to remove from the hearing persons who are, in their opinion, behaving in a disruptive manner. (Regulation 25)

5.9 When a Hearing will be held into Representations made about a Licensing Application

- Background

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 representations.

All "interested parties" and "responsible authorities" will have a period in which they can make representations to the Licensing Authority about the application.

The Licensing Authority where practicable will seek to facilitate mediation between parties where significant issues have arisen relating to a licence application. The Local Authority will try to facilitate mediation between applicants, relevant statutory agencies, residents and businesses in the vicinity of the premises ("interested parties") through:

- (a) Identification of potential issues regarding safety and amenity of local residents for statutory agencies to consider;
- (b) Negotiation of potential conditions if possible to try and resolve issues.

- When Hearing to be held

If mediation between the applicant, "interested parties" and "responsible authorities" fail then if the Licensing Authority considers that the representations are "relevant representatives" within the meaning of the Act **it must hold a hearing** to consider those representations unless all agree that it is unnecessary or the Licensing Authority considers those representatives or requests to be **frivolous or vexatious**.

There are similar provisions relating to requests for review of a premises licence or club registration certificate. In addition the Authority can reject requests for review if they consider them to be a repetition. If no "relevant representations" are made the licence or variation must be granted (subject to the mandatory conditions).

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.

5.10 Hearing Procedure Information to accompany Notice of Hearing (Paragraph 5.4)

As required by the Regulation (Regulation 7) this Notice together with other information will be sent to the appropriate persons listed in the Regulations with the "Notice of Hearing" issued by the Authority (Regulation 6) if it becomes necessary to hold a hearing.

The Hearing Procedure

- 6.1 The Authority has the **power to determine** the procedure to be followed at the Hearing. (Regulation 21)
- 6.2 The hearing will take the form of a **discussion** led by the Authority.
- 6.3 Subject to any variation by the Chairman, the parties will be **allowed an equal maximum period of time of no more than 5 minutes** in which to exercise the following rights:-
 - (a) where in a notice of a hearing given under the Regulations, the Authority requires clarification of any particular points to be given by a party at the hearing, then a party will in response to those points be able to give further information in support of their application, representations, or notice (as applicable);
 - (b) if given permission by the Authority, to question any other party and
 - (c) to address the Authority.

Cross-examination will not be permitted.

- 6.4 The Authority will only allow cross-examination where it considers it is necessary for it to consider the representations, application, or advice as the care may require.
- 6.5 The Chairman will inform the hearing that Authority Members have read and familiarised themselves with the papers and issues. Accordingly Members will not require points to be repeated or made at length.
- 6.6 Authority members may at any time during the hearing ask any question or seek any **clarification** from the parties present.
- 6.7 The **order of presentations** at the hearing will be as follows:
 - (1) The **Authorised License Officer** of the Authority will outline the application and representations received.
 - (2) If not already done so at paragraph 5.4 above, the Legal Officer or Clerk will confirm that:
 - (i) the Authority has given a Notice of Hearing and Information to the persons prescribed in the Regulations
 - (ii) Party to the Hearing has given to the Authority a notice stating the following:
 - attendances at the hearing
 - requests for permissions for another person to attend supplying details of the other person's name and points that other person (other than the person he intends to represent him at the hearing) may be able to provide to assist the Authority

- withdrawal of representations
 - representations received after the hearing has been called.
- (3) the **Police and Fire Authority** and any other **“responsible authority”** will then present their representations;
- (i) Any **“interested party”** as defined by Section 13(3) of the Act will be given the opportunity to address the hearing.
- (ii) The Chairman will invite interested parties to appoint a **spokesperson** where there are a number of interested parties wishing to make representations. The Chairman’s invitation will inform the hearing that it is made on the understanding that the mere fact the hearing does not hear from other parties does not mean their representations are not taken into account. The strength of local feeling is understood by Authority members. It is merely that the case will not gain weight by repetition.
- (4) The **Party to the hearing** or his representative will present their case and make closing representations.

6.8 The Authority will not allow a party to a hearing to raise wholly **new representations** at the hearing.

6.9 The Licensing Authority may not make any order as to **costs** incurred by a Party in connection with a hearing under the Act (Section 183(2))

6.10 **Appeals** against the decision of the Licensing Authority have to be made to the Magistrates Court in accordance with Section 181 of the Act within 21 days of the decision.

7. The Determination of the Application

7.1 Authority Members will go into private session, to enable them to deliberate upon the representations and make their decision. A legal adviser may be called upon to advise the members on legal matters but will not take part in the discussion or decision making. Parties will be made aware of any legal advice given to the members prior to members making a decision.

(a) In certain cases prescribed by the Regulations, the Authority must make its determination at the conclusion of the hearing. In such cases the Authority will recall the parties and the Chairman will announce its decision (Regulation 26).

(b) In any other case the Authority will make its determination within five working days beginning with the day or last day on which the hearing was held. (Regulation 26)

- (c) Where a hearing has been dispensed with in accordance with the Regulations the Authority must make its determination within 10 working days beginning with the day the Authority gives notice to the parties the hearing has been dispensed with. (Regulation 27)

8. Notification of determination

The Authority will notify a party of its determination within the period prescribed by the Act. In a case where the Act does not make provision for the period within which the Authority will notify a party of its determination, the Authority will do so forthwith on making its determination.

The Authority will also ensure that a chief officer of police is notified of the determination by an Authority where the Act provides for that officer to be notified of the determination and that chief officer was not a party to the hearing. (Regulation 28)

9. Record of proceedings

The Authority shall provide for a record to be taken of the hearing in a permanent and intelligible form and kept for six years from the date of the determination or, where an appeal is brought against the determination of the Authority, the disposal of the appeal. (Regulation 30)

10. Irregularities

Any irregularity resulting from any failure to comply with any provision of this procedure or the Regulations before the Authority has made a determination shall not of itself render the proceedings void. (Regulations 31 –33)

In any case of such an irregularity, the Authority shall, if it considers that any person may have been prejudiced as a result of the irregularity, take such steps as it thinks fit to cure the irregularity before reaching its determination.

Clerical mistakes in any document recording a determination of the Authority or errors arising in such document from an accidental slip or omission may be corrected by the Authority.

11. Notices

The Regulations set out the manner in which Notices under the Regulations are to be given but all notices must be in writing.

12. The Hearing Procedure will be kept under review and revised and amended as required. Reasons for departure from this procedure will be given by the Chairman at the hearing.

Schedules

SCHEDULE 1

Regulation 5

	Column 1	Column 2
	Provision under which hearing is held	Period of time within which hearing must be commenced.
1.	Section 18(3)(a) (determination of application for premises licence).	20 working days beginning with the day after the end of the period during which representations may be made as prescribed under section 17(5)(c).
2.	Section 31(3)(a) (determination of application for a provisional statement).	20 working days beginning with the day after the end of the period during which representations may be made as prescribed under section 17(5)(c) by virtue of section 30.
3.	Section 35(3)(a) (determination of application to vary premises licence).	20 working days beginning with the day after the end of the period during which representations may be made as prescribed under section 17(5)(c) by virtue of section 34(5).
4.	Section 39(3)(a) (determination of application to vary premises licence to specify individual as premises supervisor).	20 working days beginning with the day after the end of the period within which a chief officer of police may give notice under section 37(5).
5.	Section 44(5)(a) (determination of application for transfer of premises licence).	20 working days beginning with the day after the end of the period within which a chief officer of police may give notice under section 42(6).
6.	Section 48(3)(a) (cancellation of interim authority notice following police objection).	5 working days beginning with the day after the end of the period within which a chief officer of police may give notice under section 48(2).

7.	Section 52(2) (determination of application for review of premises licence).	20 working days beginning with the day after the end of the period during which representations may be made as prescribed under section 51(3)(c).
8.	Section 72(3)(a) (determination of application for club premises certificate).	20 working days beginning with the day after the end of the period during which representations may be made as prescribed under section 71(6)(c).
9.	Section 85(3) (determination of application to vary club premises certificate).	20 working days beginning with the day after the end of the period during which representations may be made as prescribed under section 71(6)(c) by virtue of section 84(4).
10.	Section 88(2) (determination of application for review of club premises certificate).	20 working days beginning with the day after the end of the period during which representations may be made as prescribed under section 87(3)(c).
11.	Section 105(2)(a) (counter notice following police objection to temporary event notice).	7 working days beginning with the day after the end of the period within which a chief officer of police may give a notice under section 104(2).
12.	Section 120(7)(a) (determination of application for grant of personal licence).	20 working days beginning with the day after the end of the period within which the chief officer of police may give a notice under section 120(5).
13.	Section 121(6)(a) (determination of application for the renewal of personal licence).	20 working days beginning with the day after the end of the period within which the chief officer of police may give a notice under section 121(3).

14.	Section 124(4)(a) (convictions coming to light after grant or renewal of personal licence).	20 working days beginning with the day after the end of the period within which the chief officer of police may give a notice under section 124(3).
15.	Section 167(5)(a) (review of premises licence following closure order).	10 working days beginning with the day after the day the relevant licensing authority receives the notice given under section 165(4).
16.	Paragraph 4(3)(a) of Schedule 8 (determination of application for conversion of existing licence).	10 working days beginning with the day after the end of the period within which a chief officer of police may give a notice under paragraph 3(2) or (3) of Schedule 8.
17.	Paragraph 16(3)(a) of Schedule 8 (determination of application for conversion of existing club certificate).	10 working days beginning with the day after the end of the period within which a chief officer of police may give a notice under paragraph 15(2) or (3) of Schedule 8.
18.	Paragraph 26(3)(a) of Schedule 8 (determination of application by holder of a justices' licence for grant of personal licence).	10 working days beginning with the day after the end of the period within which the chief officer of police may give a notice under paragraph 25(2) of Schedule 8.

	Column 1	Column 2
	Provision under which hearing is held	Persons to whom notice of hearing is to be given.
1.	Section 18(3)(a) (determination of application for premises licence).	(1) The person who has made the application under section 17(1); (2) persons who have made relevant representations as defined in section 18(6).
2.	Section 31(3)(a) (determination of application for provisional statement).	(1) The person who has made the application under section 29(2); (2) persons who have made relevant representations as defined in section 31(5).
3.	Section 35(3)(a) (determination of application to vary premises licence).	(1) The holder of the premises licence who has made the application under section 34(1); (2) persons who have made relevant representations as defined in section 35(5).
4.	Section 39(3)(a) (determination of application to vary premises licence	(1) The holder of the premises licence who has made the application under section 37(1); 8 to specify individual as premises supervisor). (2) each chief officer of police who has given notice under section 37(5); (3) the proposed individual as referred to in section 37(1).

5.	Section 44(5)(a) (determination of application for transfer of premises licence).	<p>(1) The person who has made the application under section 42(1);</p> <p>(2) each chief officer of police who has given notice under section 42(6);</p> <p>(3) the holder of the premises licence in respect of which the application has been made or, if the application is one to which section 43(1) applies, the holder of that licence immediately before the application was made.</p>
6.	Section 48(3)(a) (cancellation of interim authority notice following police objection).	<p>(1) The person who has given notice under section 47(2);</p> <p>(2) each chief officer of police who has given notice under section 48(2).</p>
7.	Section 52(2) (determination of application for review of premises licence).	<p>(1) The holder of the premises licence in respect of which the application has been made;</p> <p>(2) persons who have made relevant representations as defined in section 52(7);</p> <p>(3) the person who has made the application under section 51(1).</p>
8.	Section 72(3)(a) (determination of application for club premises certificate).	<p>(1) The club which has made the application under section 71(1);</p> <p>(2) persons who have made relevant representations as defined in section 72(7).</p>
9.	Section 85(3)(a) (determination of application to vary club premises certificate).	<p>(1) The club which has made the application under section 84(1);</p> <p>(2) persons who have made relevant representations as defined in section 85(5).</p>

10.	Section 88(2) (determination of application for review of club premises certificate).	<p>(1) The club which holds the club premises certificate in respect of which the application has been made;</p> <p>(2) persons who have made relevant representations as defined in section 88(7);</p> <p>(3) the person who has made the application under section 87(1).</p>
11.	Section 105(2)(a) (counter notice following police objection to temporary event notice).	<p>(1) The premises user;</p> <p>(2) each chief officer of police who has given notice under section 104(2).</p>
12.	Section 120(7)(a) (determination of application for grant of personal licence).	<p>(1) The person who has made the application under section 117(1);</p> <p>(2) the chief officer of police who has given notice under section 120(5).</p>
13.	Section 121(6)(a) (determination of application for renewal of personal licence).	<p>(1) The person who has made the application under section 117(1);</p> <p>(2) the chief officer of police who has given notice under section 121(3).</p>
14.	Section 124(4)(a) (convictions coming to light after grant or renewal of personal licence).	<p>(1) The holder of the licence in respect of which the notice has been given;</p> <p>(2) the chief officer of police who has given notice under section 124(3).</p>
15.	Section 167(5)(a) (review of premises licence following closure order).	<p>(1) The holder of the premises licence in respect of which the review has been made;</p> <p>(2) persons who have made relevant representations as defined in section 167(9).</p>

16.	Paragraph 4(3)(a) of Schedule 8 (1) (determination of application for conversion of existing licence).	(1) The person who has made the application under paragraph 2(2) of Schedule 8; (2) each chief officer of police who has given notice under paragraph 3(2) or (3) of Schedule 8.
17.	Paragraph 16(3)(a) of Schedule 8 (determination of application for conversion of existing club certificate).	(1) The club which has made the application under paragraph 14(2) of Schedule 8; (2) each chief officer of police who has given notice under paragraph 15(2) or (3) of Schedule 8.
18.	Paragraph 26(3)(a) of Schedule 8 (determination of application by holder of a justices' licence for grant of personal licence).	(1) The person who has made the application under section 117 to which paragraph 23(1) of Schedule 8 applies; (2) the chief officer of police who has given notice under paragraph 25(2) of Schedule 8

	Column 1	Column 2	Column 3
	Provision under which hearing is held	Persons to whom notice of hearing is to be given.	Documents to accompany notice of hearing
1.	Section 18(3)(a) (determination of application for premises licence).	The person who has made the application under section 17(1).	The relevant representations as defined in section 18(6) which have been made.
2.	Section 31(3)(a) (determination of application for provisional statement).	The person who has made the application under section 29(2).	The relevant representations as defined in section 31(5) which have been made.
3.	Section 35(3)(a) (determination of application to vary premises licence).	The holder of the premises licence who has made the application under section 34(1).	The relevant representations as defined in section 35(5) which have been made.
4.	Section 39(3)(a) (determination of application to vary premises licence to specify individual as premises supervisor).	(1) The holder of the premises licence who has made the application under section 37(1); (2) the proposed individual as referred to in section 37(1).	The notices which have been given under section 37(6).

5.	Section 44(5)(a) (determination of application for transfer of premises licence).	(1) The person who has made the application under section 42(1); (2) the holder of the premises licence in respect of which the application has been made or, if the application is one to which section 43(1) applies, the holder of that licence immediately before the application was made.	The notices which have been given under section 42(6).
6.	Section 48(3)(a) (cancellation of interim authority notice following police objection).	The person who has given notice under section 47(2).	The notices which have been given under section 48(2).
7.	Section 52(2) (determination of application for review of premises licence).	The holder of the premises licence in respect of which the application has been made.	The relevant representations as defined in section 52(7) which have been made.
8.	Section 72(3)(a) (determination of application for club premises certificate).	The club which has made the application under section 71(1).	The relevant representation as defined in section 72(7) which have been made.
9.	Section 85(3)(a) (determination of application to vary club premises certificate).	The club which has made the application under section 84(1).	The relevant representations as defined in section 85(5) which have been made.

10.	Section 88(2) (determination of application for review of club premises certificate).	The club which holds the club premises certificate in respect of which the application has been made.	The relevant representations as defined in section 88(7) which have been made.
11.	Section 120(7)(a) (determination of application for grant of personal licence).	The person who has made the application under section 117(1).	The notice which has been given under section 120(5)
12.	Section 121(6)(a) (determination of application for renewal of personal licence).	The person who has made the application under section 117(1).	The notice which has been given under section 121(3).
13.	Section 124(4)(a) (convictions coming to light after grant or renewal of personal licence).	The holder of the licence in respect of which the notice has been given.	The notice which has been given under section 124(3).
14.	Section 167(5)(a) (review of premises licence following closure order).	The holder of the premises licence in respect of which the review has been made.	The relevant representations as defined in section 167(9) which have been made.

Meaning of “determination”

The determination of the authority is the outcome of its consideration, as applicable, of

1. the relevant representations as defined in section 18(6), in accordance with section 18,
2. the relevant representations as defined in section 31(5), in accordance with section 31,
3. the relevant representations as defined in section 35(5), in accordance with section 35,
4. a notice given under section 37(5), in accordance with section 39,
5. a notice given under section 42(6), in accordance with section 44,
6. a notice given under section 48(2), in accordance with section 48,
7. an application made in accordance with section 51 and any relevant representations as defined in section 52(7), in accordance with section 52,
8. the relevant representations as defined in section 72(7), in accordance with section 72,
9. the relevant representations as defined in section 85(5), in accordance with section 85,
10. an application made in accordance with section 87 and any relevant representations as defined in section 88(7), in accordance with section 88,
11. a notice given under section 104(2), in accordance with section 105,
12. a notice given under section 120(5), in accordance with section 120,
13. a notice given under section 121(3), in accordance with section 121,
14. a notice given under section 124(3), in accordance with section 124,
15. the matters referred to in section 167(5)(a), in accordance with section 167,
16. the notice given under paragraph 3(2) or (3) of Schedule 8, in accordance with its paragraph 4,
17. the notice given under paragraph 15(2) or (3) of Schedule 8, in accordance with paragraph 16, or
18. the notice given under paragraph 25(2) of Schedule 8, in accordance with its paragraph 26.

Stratford on Avon District Council
LICENSING ACT 2003

**Frivolous and vexatious
representations**

Frivolous Vexations and Repetitious Requests

The Licensing Act 2003 provides that where the Licensing Authority receives representations in respect of an application, then it must normally arrange a hearing unless the Authority considers those representations or requests to be **frivolous or vexatious**.

There are similar provisions relating to requests for review of a premises licence or club registration certificate. In addition the Licensing Authority can reject requests for review if they consider them to be a **repetition**.

This document is intended to assist in determining whether a representation or request is frivolous or vexatious or a repetition.

INTRODUCTION

What is the Council's general approach?

The Council is confident that most members of the public will exercise their rights to make representations and requests sensibly and responsibly. However, it is recognised that there is a risk that some individuals - and perhaps some organisations - may seek to abuse these rights with requests which are manifestly unreasonable and which would impose substantial burdens on applicants, licence holders and the licensing authority. Such cases may well arise in connection with a grievance or complaint which an individual is pursuing against the applicant, licence holder or the authority.

The Council considers that the exception in the Act for frivolous and vexatious and repeated representations and requests is important in order to prevent the licensing function being used to pursue non licensing issues and to ensure that unjustified expenditure is not incurred or unnecessary burdens imposed as a result of or in dealing with such representations/requests.

The Council does however emphasise that it will not conclude that a representation or request is frivolous, vexatious or repeated unless there are sound grounds for such a decision, and interested parties will be notified of the grounds for any such decision.

Frivolous or Vexatious Representations or Requests

What does the Act say?

Attached as an Appendix to this note is a list of sections in the Act which deal with these issues in respect of a series of licence types.

Interested parties and responsible authorities (defined in the Act) are able to make representations in respect of licence applications and the licensing authority must normally hold a hearing provided:

- The representations were made by the required date
- They have not been withdrawn
- In the case of representations made by an interested party (who is not also a responsible authority) that they are not, in the opinion of the licensing authority, frivolous or vexatious

Interested parties and responsible authorities are also able to make requests for review of premises licences and club registration certificates already in force, and the licensing authority must normally hold a hearing unless it rejects the request because it is satisfied that

- The grounds for review were not relevant to the licensing objectives set out in the Act
- In the case of representations made by an interested party (who is not also a responsible authority) that the ground is frivolous or vexatious or a repetition

What is a frivolous or vexatious request?

There is no definition of "frivolous" or "vexatious" in the Act.

Dictionary definitions of frivolous refer to "trifling; not serious" and this will be taken to mean that a representation or request for review will fall into this category if the issues complained of are of a very minor nature and would not warrant any action at all or any action required would be disproportionate.

Dictionary definitions of vexatious refer to "causing annoyance or worry".

In the different context of litigation, vexatious has been considered by the courts in cases where public authorities and others have sought to have particular individuals declared "vexatious litigants." The case of the Attorney General v Barker (2000), for instance, suggests that it may be reasonable to treat as vexatious a request which is **designed** to subject a public authority to inconvenience, harassment or expense.

But – although a request cannot be treated as vexatious simply because it causes inconvenience or expense - the Council considers that a wider approach is necessary in the context of the Act. **Effect** will need to be

considered as well as intention. Even though it may not have been the explicit intention of the applicant to cause inconvenience or expense, if a reasonable person would conclude that the main effect of the request would be disproportionate inconvenience or expense, then it will be appropriate to treat the request as being vexatious.

How is it possible to identify a single request as vexatious?

There are a number of ways in which it may be possible to identify individual requests as being vexatious. The following list is not designed to be exhaustive, but rather to illustrate a general approach:

➤ **The interested party makes clear his or her intention**

If an applicant explicitly states that it is his or her intention to cause an applicant, licence holder or the licensing authority the maximum inconvenience through a request, it will almost certainly make that request vexatious.

➤ **The authority has independent knowledge of the intention of the interested party**

Similarly, if an applicant (or an organisation to which the applicant belongs, such as a campaign group) has previously indicated an intention to cause an applicant, licence holder or the licensing authority the maximum inconvenience through making representations or requests, it will usually be possible to regard that representation or request as being vexatious.

➤ **The representation or request clearly does not have any serious purpose**

Although the Act does not require the person making a representation or request to disclose any reason for doing so beyond the requirement to relate to the licensing objectives, there may be cases which are so lacking in serious purpose that they can only be fairly treated as "vexatious".

➤ **The representation or request can fairly be characterised as obsessive or manifestly unreasonable**

It will usually be easier to recognise such cases than define them. They will be exceptional – public authorities must not be judgemental without good cause. An apparently tedious representation or request, which in fact relates to a genuine concern, will not be dismissed.

However, the Council will need to identify representations or requests which a reasonable person would describe as obsessive or manifestly unreasonable. They will obviously be easier to identify when there has been frequent prior contact with the submitter or there is a pattern of representations or requests. Although they may not be "repeated" in the sense that they are requests about the same matters, taken together they may form evidence of a pattern of obsessive representations/requests so that the Council may reasonably regard the most recent as vexatious.

To what extent can the Council take into account any knowledge it has of the applicant?

A representation/request cannot be judged vexatious purely on the basis that the person who submitted that request had previously submitted one or more vexatious, though unrelated, requests. The same applies where that person has been judged vexatious by the Council in areas unconnected to Licensing matters.

The Council may have taken the decision not to correspond with a person in respect of their complaints to the organisation, but they cannot simply adopt this stance with regard to that person's representations/requests.

However, it may be reasonable for the authority to conclude that a particular representation/request represents a continuation of behaviour which it has judged to be vexatious in another context and therefore to refuse the request as being vexatious,

Can the Council take account of abusive or threatening language?

A representation or request which either contains abusive or offensive language or is written in a threatening tone, although unpleasant, will not automatically render it vexatious. The use of threatening, offensive or abusive language or behaviour may however be strongly indicative of a vexatious request.

Are representations/requests submitted under obvious pseudonyms automatically vexatious?

Representations and requests for review must be in writing and the interested party must state his or her name and an address for correspondence. Technically, therefore a representation/request submitted using a pseudonym is not a proper request and could be refused on that ground. However, the time limits imposed on the Council for dealing with applications will permit very little time for any enquiries into the circumstances of the applicant or to ask for information in order to verify identities.

Unless the Council **knows** that the applicant has used a pseudonym, therefore, it will be difficult to refuse a request on that ground.

What is a repetition?

The Act states that a ground for review is a repetition if –

- (a) it is identical or substantially similar to –
 - (i) a ground for review specified in an earlier application for review made in respect of the same premises licence... or

- (ii) representations considered previously by the licensing authority before it determined the licence application
 - (iii) representations which would have been considered except for the exclusion provisions relating to provisional statements, and
- (b) a reasonable interval has not elapsed since the earlier application for review or the grant of the licence.

What is a “reasonable interval”?

The term “a reasonable interval” is not defined in the Act. Much will depend on when the previous request was dealt with and the outcome, for example was the licence holder given a time to comply with conditions.

Can requests be both repeated and vexatious?

Yes but this may often be a difficult judgement to make. Such a judgement may become easier however, if there is a succession of requests, whether or not strictly “identical or substantially similar”.

Can an authority refuse identical requests submitted by different applicants on the ground that they are repetitious?

Yes. The Act deals with the content of the request not the submitter. Furthermore the requests do not have to be identical, they can be refused if they are substantially similar.

Who should make the decision as to whether a request is vexatious?

This is set out in the Scheme of Delegation.

What approach should be adopted where it is uncertain that a request is vexatious?

In certain cases it may be difficult to determine whether a request is frivolous or vexatious. In such cases it may be appropriate to accept the representation or request and proceed to a hearing.

What happens if a representation/request is judged to be frivolous, vexatious or a repetition?

The Act requires the Council to notify the interested party of the reasons for its decision if it does decide that a representation is frivolous, vexatious or a repetition.

Frivolous/Vexatious

Section	Subject
18 (7), (8)	Determination of application for premises Licence
31 (6), (7)	Determination of application for provisional statement
35 (6)	Determination of application under section 34
36 (5)	Supplementary provision about determination under section 35
51 (4), (6)	Application for review of premises licence
52 (8), (9)	Determination of application for review
72 (8), (9)	Determination of application for club premises certificate
85 (6)	Determination of application under section 84
86 (5)	Supplementary provision about application under section 84
87 (4), (6)	Application for review of club premises certificate
88 (8), (9)	Determination of applications for review
167 (10), (11)	Review of premises licence following closure order
Repetition	
51 (4), (5)	Application for review of premises licence
87 (4), (5)	Application to review club premises certificate

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