



GUIDANCE TO APPLICANTS FOR THE REVIEW OF A PREMISE LICENCE OR CLUB PREMISE CERTIFICATE

1 Introduction

The Licensing Act 2003 makes provision for an interested party or a responsible authority to apply for the review of a premises licence or a club premises certificate. The licensing system generally provides a light touch approach and allows for the reviews process to be used as a mechanism when problems arise in respect of premises. Paragraph 11.1 of the Secretary of State's Guidance states:

'The proceedings set out in the 2003 Act for reviewing premises licences represent a key protection for the community where problems associated with the licensing objectives are occurring after the grant or variation of a premises licence.'

There are many possible outcomes of a review application, the most severe being the revocation of a premise licence or a club premises certificate.

A responsible authority or any person, regardless of their geographical location, may apply for a licence to be reviewed. This authority will, however, look at the geographical location of the author of any review application received. Where the author lives or works a significant distance from the premises that are the subject of a review, this Authority will examine the content of the representation particularly closely. We would expect the author to explain in detail how, in terms of the licensing objectives, they are being affected.

The grounds for review must be relevant to one or more of the four licensing objectives.

- The prevention of crime and disorder;
- Public safety;
- The prevention of public nuisance; and
- The protection of children from harm

In accordance with the Secretary of State's Guidance, this Authority expects 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 concerned about crime and disorder or the sexual exploitation of children. Likewise, where there are concerns about noise nuisance, it is reasonable to expect the South Kesteven District Council's Environmental Protection team to make the application for review.

Responsible authorities and residents are encouraged to keep diaries of events that occur for future reference so that they can be submitted as evidence. The Licensing Authority will consider rejecting any representations which do not include sufficient detail to outline any harm or disturbance which may be caused.

Account will be taken of the need to encourage and promote all types of entertainment including live music, dancing and theatre for the wider cultural benefit of the community as a whole. If representations are made concerning the potential for limited disturbance from these activities in a particular neighbourhood, the Licensing Authority's consideration will be balanced against the wider benefits to the community.

Once we have received a review application we must determine whether it is relevant i.e. if it relates to one of the 4 licensing objectives and in the case of an interested party (any other person) is not vexatious, frivolous or a repetition. If the application is valid, the licensing authority must advertise the review for 28 consecutive days starting on the day after the day on which the application was given to the authority. The advertisement gives responsible authorities and interested parties the opportunity to make representations about the application to the licensing authority.

If the application is accepted there must be a hearing unless the application is withdrawn. We will write to you with the date and time of the hearing and will inform you of the procedure to be followed at the hearing.

2 Mediation

Ideally, mediation will have taken place between licensees and potential review applicants before they make an application but there are some situations where this will not happen therefore this authority will consider mediation on your behalf. Once mediation has taken place the possible outcomes are as follows:

1. An agreement is made between the applicant and the licensee and therefore the applicant agrees to withdraw their application for review.
2. An agreement is made between the applicant and the licensee to change conditions on the licence.
3. There is no agreement made between the applicant and the licensee.

3 Relevant / Frivolous or Vexatious / Repetitive

Once an application for review is made to the Licensing Authority, the Authority has to ensure that the basis of the review is relevant and is not frivolous vexatious or repetitious. Section 51 (4) of the Licensing Act 2003 states:

(4) The relevant licensing authority may, at any time, reject any ground for review specified in an application under this section if it is satisfied-

- (a) that the ground is not relevant to one or more of the licensing objectives, or*
- (b) in the case of an application made by a person other than a responsible authority, that-*
 - (i) the ground is frivolous or vexatious, or*
 - (ii) the ground is a repetition.*

Relevant

The representation must be relevant to one or more of the four licensing objectives. An applicant must ensure that the basis of their review focuses on the licensing objectives. Other factors such as the premises creating financial competition for their own business will be irrelevant. Paragraph 11.7 of the SoS Guidance states:

After a premises licence has been granted or varied, a complaint relating to a general (crime and disorder) situation in a town centre would generally not be regarded as relevant if it cannot be positively tied or linked by a causal connection to particular premises which would allow for a proper review of its licence. For instance, a geographic cluster of complaints, including along transport routes related to an individual public house and its closing time could

give grounds for a review of an existing licence as well as direct incidents of crime and disorder around a particular public house.

Frivolous or Vexatious

There is no legal definition for 'frivolous or vexatious' and therefore the Authority will determine this on a case by case basis.

Frivolous" or "vexatious" will bear their ordinary meaning. Whether representations are frivolous or vexatious will be for the Authority to determine. For example, the Authority might find the representations were vexatious if they arise because of disputes between rival businesses or frivolous if they clearly lacked seriousness.

An interested party who is aggrieved by a rejection of their representations on these grounds may challenge the Authority's decision by way of judicial review.

The Guidance does however state, at paragraph 9.9, that if a Licensing Authority is unsure whether a representation is frivolous or vexatious, the Licensing Authority should give the benefit of the doubt to the interested party.

Repetition

Section 51(5) of the Licensing Act defines a repetition as follows:

- (5) *For this purpose a ground for review is repetitious 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 and determined under section 52, or*
 - (ii) *representations considered by the relevant licensing authority in accordance with section 18, before it determined the application for the premises licence under that section, or*
 - (iii) *representations which would have been so considered but for the fact that they were excluded representations by virtue of section 32, and*
 - (b) *a reasonable interval has not elapsed since that earlier application for review or the grant of the licence (as the case may be).*

The Act does not define what a 'reasonable interval' is but paragraph 11.13 of the Guidance states:

'Licensing authorities are expected to be aware of the need to prevent attempts to review licences merely as a further means of challenging the grant of the licence following the failure of representations to persuade the licensing authority on earlier occasions. It is for licensing authorities themselves to judge what should be regarded as a reasonable interval in these circumstances. However, the Secretary of State recommends that more than one review originating from an interested party should not be permitted within a period of twelve months on similar grounds save in compelling circumstances or whether it arises following a closure order.'

4 Determination of a Review

There are a range of powers available to the committee in a review hearing. Any step taken will be necessary for the promotion of the four licensing objectives. Section 52(2) of the Licensing Act 2003 states:

(2) Before determining the application, the authority must hold a hearing to consider it and any relevant representations.

(3) The authority must, having regard to the application and any relevant representations, take such of the steps mentioned in subsection (4) (if any) as it considers necessary for the promotion of the licensing objectives.

The steps are stated in section 52(4) of the Act:

- (a) to modify the conditions of the licence;
- (b) to exclude a licensable activity from the scope of the licence;
- (c) to remove the designated premises supervisor;
- (d) to suspend the licence for a period not exceeding three months;
- (e) to revoke the licence

and for this purpose the conditions of the licence are modified if any of them is altered or omitted or any new condition is added. The committee also has the option to leave the licence in its existing state.

Under section 52(6), the committee has the power in relation to steps (a) and (b) to provide that the modification and exclusion only has effect for a limited period not exceeding three months.

Once the Licensing Committee has made its decision, the following parties will be notified:

- the licence holder,
- the applicant,
- any person who made relevant representations, and
- the chief officer of the police for the police area (or each police area) in which the premises are situated.

5 Club Premises Certificate Reviews

The review of a club premises certificate is slightly different to that of a premises licence. A member of a club can also apply for the review of a club premises certificate. Section 87 of the Licensing Act states:

87 Application for the review of a club premises certificate

- (1) Where a club holds a club premises certificate –
- (a) an interested party,
 - (b) a responsible authority, or
 - (c) a member of the club,
- may apply to the relevant licensing authority for a review of the certificate.

Once the application is received by a Licensing Authority the process is the same and the licensing authority must advertise the hearing and hold a hearing. Under section 88(4) the committee in this instance can only make the following decisions:

- (a) to modify the conditions of the certificate;
- (b) to exclude a qualifying club activity from the scope of the certificate;
- (c) to suspend the certificate for a period not exceeding three months;
- (d) to withdraw the certificate;

Under section 88(6) the Committee has the power in relation to steps (a) and (b) to provide that the modification and exclusion only has effect for a limited period not exceeding three months. The Committee also has the option to leave the certificate in its existing state.

6 Appeals

There is a right to appeal to the Magistrates' Court if any of the following parties is aggrieved by the licensing authority's decision:

- the applicant for the review,
- the holder of the premises licence, or the club that holds or held the club premises certificate or
- any other person who made relevant representations in relation to the application.

The appeal must be lodged with the court within 21 days beginning with the day on which the appellant was notified by the licensing authority of the decision appealed against. Once an appeal application has been lodged, the original decision will not take effect until the appeal is disposed of i.e. determined by the Magistrates' Court or withdrawn.

The address to appeal to is:

Lincoln Magistrates' Court
Address: 358 High St, Lincoln LN5 7QA
Phone:01522 528218

7 Applying for a review

- ❖ An application for a review of a licence or certificate must be about the effect the licence is having on at least one of the four licensing objectives. You should indicate which licensing objective(s) the application relates to.
- ❖ You should state the ground(s) for review and provide as much information as possible to support the application. You may use extra sheets of paper if necessary. Details may include, for example, dates that problems occurred and how the problem affected you.
- ❖ You should state whether you have made an application for a review relating to this premises before and give the further details of any representations you have made previously relating to this premises. This information will be used to determine whether the application for a review is 'repetitious'.
- ❖ The person or body requesting the review must notify the holder of the premises licence or club premises certificate and each 'responsible authority' of their request, by sending them a copy of the application, together with any accompanying documents, on the same day as the application is given to us. Responsible authorities can then, if they wish, join or back up your application for review or use the opportunity to make their own application for a review on different grounds.

- ❖ Please note that representations can be of a positive nature in support the licence.

8 List of responsible authorities

<p>Police: The Chief Officer of Lincs Police Alcohol Licensing Team Myle Cross Centre Macaulay Drive St Giles Lincoln LN2 4EL countylicensinggroup@lincs.pnn.police.uk</p>	<p>Fire: Lincolnshire Fire and Rescue Harlaxton Road Grantham NG31 7SG fire.safety@lincoln.fire-uk.org</p>
<p>Planning: Planning & Building Control South Kesteven District Council Council Offices St Peter's Hill Grantham, NG31 6PZ 01476 406080 planning@southkesteven.gov.uk</p>	<p>Environmental (health & safety) South Kesteven District Council Council Offices St Peter's Hill Grantham, NG31 6PZ 01476 406080 ehs@southkesteven.gov.uk</p>
<p>Lincolnshire Trading Standards County Offices Newlands Lincoln LN1 1YL tradingstandards@lincolnshire.gov.uk</p>	<p>Lincolnshire Safeguarding Children Board Clare Rowley, LSCB Manager Lincolnshire Social Services Orchard House Orchard Street Lincoln, LN1 1BA 01522 552208 07789 944440 clare.rowley@lincolnshire.gov.uk</p>
<p>Environmental (Environmental Protection) South Kesteven District Council Council Offices St Peter's Hill Grantham NG31 6PZ 01476 406080 ehs@southkesteven.gov.uk</p>	<p>Public Health Simon Gladwin Public Health Division Adult Care & Community Wellbeing Room 3a Orchard House Orchard Street Lincoln LN1 1BA 01522 552796 simon.gladwin@lincolnshire.gov.uk</p>
<p>Home Office Alcohol Licensing Team Home Office Lunar House 40 Wellesley Road Croydon CR9 2BY alcohol@homeoffice.gsi.gov.uk</p>	

10 Contact us:

<p>The Licensing Team South Kesteven District Council The Council Offices St Peter's Hill Grantham NG31 6PZ</p>	<p>Tel: 01476 406080 Email: licensing@southkesteven.gov.uk Website: www.southkesteven.gov.uk</p>
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PLEASE NOTE THAT THE INFORMATION CONTAINED IN THE GUIDANCE DOCUMENT IS THE LICENSING AUTHORITY'S UNDERSTANDING OF THE CURRENT LEGISLATION. APPLICANTS ARE STRONGLY ADVISED TO SEEK ADVICE FROM A QUALIFIED PROFESSIONAL.