

Guidance for Interested Parties applying for a Review



1. Introduction

In dealing with the licensing of premises that either sell or supply alcohol, provide regulated entertainment or sell hot food or hot drink late at night the Council (as the licensing authority) tries to ensure that the operation of the licensed premises will not be carried out in a way that is detrimental to local residents and local businesses. However, occasionally things may go wrong once a licence has been granted and the level of management of the premises is not to the standard expected. Where such circumstances arise it is recommended that initially you should talk to the manager of the premises concerned to draw his / her attention to the problem and to try and arrange an informal resolution.

If that course of action doesn't work or, if for some reason you are not prepared to contact the manager, then as a next course of action you can direct a complaint about any activities allowed under a licence to the Council's Licensing Team. The staff in the Team will be pleased to try to resolve your problem. 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. You may also if you wish request your local councillor or Member of Parliament to contact the licence holder on your behalf.

An 'interested party' can ask for a licence to be reviewed at any time but we would advise that before doing so the options referred to above should be considered.

An interested party is defined as being:-

- (a) a person living in the vicinity of the premises,
- (b) a body representing persons who live in that vicinity
- (c) a person involved in a business in that vicinity
- (d) a body representing persons involved in such businesses.

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

2. Frequently Asked Questions

How do I make my comments for a review to be considered?

Representations must be in writing and on the prescribed form. A copy of the form can be downloaded from the Council's website <http://www.wigan.gov.uk>

Representations must 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 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.

How do I apply for a review of a premise licence?

An application for the review of a premises licence or club premises certificate must be given in writing and be in the prescribed form.

The person or body requesting the review must notify the holder of the premises licence of their request, by sending them a copy of the application for review, together with any accompanying documents. Once we receive the application and accompanying documents we will email them, on your behalf, to the relevant Responsible Authorities (see Section 3 List of Responsible Authorities)

What happens next?

The Council must advertise the application for the review by displaying 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):

- Prominently 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). The notice must be displayed for 28 consecutive days, starting on the day after the application is given to the Council.
- At the offices, or the main office of the Council in a central and conspicuous place.
- On the Council's website.

The notice must be displayed for 28 consecutive days, starting on the day after the application is given to the Council. An interested party or a responsible authority may make representations to the Council during that 28 day period.

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

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

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

Notices advertising applications for reviews and reviews of a premises licence following a closure order, need to state:

- The address of the premises about which an application for a review has been made.
- The dates between which interested parties and responsible authorities may make representations
- The grounds of the application for review.
- The postal address and website address (if any) where the register of Council 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.

What do 'frivolous' and 'vexatious' 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, the council might find the representations were vexatious if they arise because of disputes between rival businesses or frivolous if they clearly lacked seriousness.

What does 'repetitious' mean?

A 'repetitious' representation is one that is identical or substantially similar to:

- A ground for review in an earlier application, which has already been determined (the Council's 'register of licences' includes all applications for reviews made in the past)
- Representations considered by the Council when the premises licence was first granted
- Representations made when the application was first made and were excluded because of the prior issue of a provisional statement
- In addition to the above grounds, a reasonable interval has not elapsed since any earlier review or the grant of the licence.

What are relevant representations?

In brief "relevant representations" is the expression used in the Act for comments including objections on applications or reviews.

For a representation to be relevant in the case of a request for a review it must relate to the review of the licence on the promotion of at least one of the licensing objectives:

- Be made by an interested party or responsible authority.
- Not have been withdrawn.
- Not be 'frivolous, vexatious' or, '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.

Can the Council 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 Council (as 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. However, several of the Council's service areas that are 'responsible authorities' (see the list in paragraph 3 below) can, if it is considered appropriate to do so, request a review of a licence.

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

What can the objector do to help his/her review?

You can support the review by supplying the following:

- A diary/record of events or incidents.
- Photos/video evidence.
- Sound recordings.
- A record of complaints made to authorities such as the police or the Council's Environmental Protection Section.
- Supporting statements from neighbours/witnesses.

If you collect such evidence you will need to inform the Council 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 an interested party, such as a resident in the vicinity of the premises, may apply to the Council to review the licence if there are grounds relating to at least one of 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 Council 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 Council must arrange a hearing to consider them and any relevant representations made.

When will my objection be heard?

The Council has 20 working days from the close of representations to hold a hearing. If you have objected you will be given notice of the hearing at least 10 working days before it takes place. A copy of any report to the Licensing Sub-Committee will be available to you.

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

According to law, applicants must be informed of anyone who has objected to their licence application. You don't have to attend the hearing but any written representation will be made

available to each member of the Sub-Committee at the hearing. If you wish, you can also nominate any person to speak on your behalf such as:

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

What happens at the hearing?

At the meeting you will be able to talk to a panel of three Councillors (the Licensing Sub-Committee).

The licensee (e.g., the landlord, bar owner or takeaway owner) will also usually be at the meeting and it will usually be open to the public. Both the applicant for the review and the licensee 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 Sub-Committee on your behalf.

If you want someone to give evidence on your behalf then you should give the Council notice of the name of that person and the points that you wish them to make five days before the date of the hearing. You need not repeat what has been given in the written evidence as the Councillors will have read this before the hearing commences. The Sub-Committee may ask questions but there will not normally be formal "cross examination".

In considering any representations the Sub-Committee may take into account documentary or other information produced by a party in support of their application or representation either before the hearing or, only with the consent of all other parties, at the hearing.

The Sub-Committee must, having regard to the application for a review and any relevant representations, take such of the steps mentioned below (if any) as it considers necessary for the promotion of the licensing objectives. The steps are:-

- (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.

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

Yes. An appeal may be made against the decision of the Sub-Committee by:-

- (a) the applicant for the review,
- (b) the holder of the premises licence or, in respect of a club, the club premises certificate, or
- (c) any other person who submitted a relevant representation in relation to the application.

The appeal must be made to the Magistrates' Court within 21 days of the date of notification of the Licensing Sub-Committee's decision. It must be pointed out however that there are potential cost implications if the appeal is not successful.

3. List of Responsible Authorities

Applications for reviews under the Licensing Act 2003 will be sent by the Licensing Team to: -

1. The holder of the premises licence or, in the case of a club the holder of the club premises certificate;
2. To the following responsible authorities: -
 - 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 Local Planning 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
 - The Health and Safety Authority for the area in which the premises are situated
 - The relevant Licensing Authority
 - The Environmental Health Authority for the area in which the premises are situated
 - Inspectors of Weights and Measures
 - The Director of Public Health
 - In respect of vessels the British Waterways Board
 - Home Office Immigration Enforcement (on behalf of the Secretary of State) (if applicable).

If it is proposed to provide any documentary evidence to support the application for a review this must accompany the application for the review and be sent to the holder of the premises licence or club premises certificate and to the Licensing Manager and all the responsible authorities referred to above. This evidence must be sent at the same time as the application for the review.

If you wish to discuss any issue referred to in this document please contact the Licensing Team by e-mail at Licensing@wigan.gov.uk