



Licensing Act 2003: objecting to a licence

Standard Note: SN/HA/3788

Last updated: 19 June 2014

Author: John Woodhouse and Philip Ward

Section: Home Affairs

Under the *Licensing Act 2003* objections can be raised against an application for a new premises licence or a variation of an existing licence. It is also possible to trigger a review of an existing licence. The term used in the 2003 Act, regulations, and associated guidance is not “objections” but “representations”. All representations must be relevant to the four licensing objectives:

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

The key document on which local authorities rely, in their role as licensing authorities, is *Guidance issued under section 182 of the Licensing Act 2003*, the most recent version of which was published by the Home Office in June 2014.

This information is provided to Members of Parliament in support of their parliamentary duties and is not intended to address the specific circumstances of any particular individual. It should not be relied upon as being up to date; the law or policies may have changed since it was last updated; and it should not be relied upon as legal or professional advice or as a substitute for it. A suitably qualified professional should be consulted if specific advice or information is required.

This information is provided subject to [our general terms and conditions](#) which are available online or may be provided on request in hard copy. Authors are available to discuss the content of this briefing with Members and their staff, but not with the general public.

Contents

1	Introduction	2
2	Objecting to a new licence or variation	2
2.1	Authorised persons	3
2.2	Responsible authorities	4
2.3	Vexatious or frivolous representations	4
2.4	Disclosure of personal details of persons making representations	5
2.5	Hearings	6
2.6	Appeals	6
3	Review of an existing licence	7

1 Introduction

The licensing regime under the *Licensing Act 2003* (the 2003 Act) took effect on 24 November 2005.¹ There is scope for objections to be raised against an application for a new licence or a variation of an existing licence. It is also possible to trigger a review of an existing licence. These details were not written into the Act but are in the Regulations which were approved by Parliament in January 2005, principally the *Licensing Act 2003 (Premises licences and club premises certificates) Regulations 2005* (SI 2005/42).

The key document on which local authorities rely, in their role as licensing authorities, is the [Guidance issued under section 182 of the Licensing Act 2003](#), the most recent version of which was published by the Home Office in June 2014 (and hereafter referred to as the *2014 Guidance*).² The term used in the Act, regulations, and associated Guidance is not “objections” but “representations”.

2 Objecting to a new licence or variation

Premises licences are issued by the licensing authority in which the premises are situated or, in the case of premises straddling an area boundary, the licensing authority where the greater part of the premises is situated.³

Applicants are required to publish a notice in a local newspaper or, if there is none, in a local newsletter, circular or similar document circulating in the area in which the premises is situated. A brief summary of the application on an A4 size notice must also be displayed on or outside the premises.⁴

Licensing authorities must place a notice on their website outlining key details of the application including:

¹ *Licensing Act 2003 (Second appointed day) Order 2005*, SI 2005/2091

² In July 2010, responsibility for the *Licensing Act* (except in relation to regulated entertainment) transferred from the Department for Culture, Media and Sport to the Home Office

³ *2014 Guidance*, para 8.1

⁴ *2014 Guidance*, para 8.73

- the name of the applicant or club;
- the postal address of the premises or club premises;
- the postal address and, where applicable, the internet address where the relevant licensing authority's register is kept and where and when the record of the application may be inspected;
- the date by which representations from responsible authorities or other persons should be received and how these representations should be made; and
- 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.⁵

The summary of the application should set out matters such as the proposed licensable activities and the proposed hours of opening and should be clearly displayed for the period during which representations can be made, together with information about where the details of the application may be viewed.⁶

Once an application for a premises licence has been made with the licensing authority, **authorised persons** and **responsible authorities** have 28 days starting on the day after the application is lodged to make "representations."⁷ All representations must be relevant to the licensing objectives set out at the beginning of the 2003 Act:

- the prevention of crime and disorder;
- public safety;
- the prevention of public nuisance; and
- the protection of children from harm⁸

2.1 Authorised persons

"Authorised persons" are bodies empowered by the 2003 Act to carry out inspection and enforcement roles. The police are not included because they are separately empowered by the Act to carry out their duties. In respect of all premises, authorised persons include:

- officers of the licensing authority;
- fire inspectors;
- inspectors with responsibility in the licensing authority's area for the enforcement of the Health and Safety at Work etc Act 1974 etc; and
- officers of the local authority exercising environmental health functions.⁹

⁵ 2014 Guidance, para 8.74

⁶ 2014 Guidance, para 8.75

⁷ SI 2005/42, para 22

⁸ Licensing Act 2003 s4

⁹ 2014 Guidance, para 8.4

2.2 Responsible authorities

“Responsible authorities” are the bodies that must be fully notified of applications and that are entitled to make representations to the licensing authority in relation to the application for the grant, variation or review of a premises licence. These representations must be considered ‘relevant’ by the licensing authority and must relate to one or more of the licensing objectives. For all premises, responsible authorities include:

- the relevant licensing authority and any other licensing authority in whose area part of the premises is situated;
- the chief officer of police;
- the local fire and rescue authority;
- the local enforcement agency for the *Health and Safety at Work etc Act 1974*
- the local authority with responsibility for environmental health;
- the local planning authority;
- a body that represents those who are responsible for, or interested in, matters relating to the protection of children from harm;
- each local authority’s Director of Public Health (DPH) in England and Local Health Boards (in Wales); and
- the local weights and measures authority (trading standards)¹⁰

As well as responsible authorities, **any other person** can now make representations to licensing authorities.¹¹ A person may also request that a representative makes the representation to the licensing authority on their behalf. For example, a legal representative, a friend, a Member of Parliament, a Member of the National Assembly for Wales, or a local ward or parish councillor could all act in such a capacity.¹²

2.3 Vexatious or frivolous representations

Representations must not be “vexatious” or “frivolous.”¹³ The 2014 Guidance explains:

9.4 A representation is “relevant” if it relates to the likely effect of the grant of the licence on the promotion of at least one of the licensing objectives. For example, a representation from a local businessperson about the commercial damage caused by competition from new licensed premises would not be relevant. On the other hand, a representation by a businessperson that nuisance caused by new premises would deter customers from entering the local area, and the steps proposed by the applicant to prevent that nuisance were inadequate, would be relevant. In other words, representations should relate to the impact of licensable activities carried on from premises on the objectives. For representations in relation to variations to be relevant, they should be confined to the subject matter of the variation. There is no requirement for a responsible authority or other person to produce a recorded history of problems at

¹⁰ 2014 Guidance, para 8.6

¹¹ 2014 Guidance, para 8.12; the *Police Reform and Social Responsibility Act 2011* removed an earlier “vicinity test” from the 2003 Act - for background see section 3 of [Library research paper 10/81](#) (9 December 2009)

¹² 2014 Guidance, para 8.13

¹³ 2014 Guidance, para 8.12

premises to support their representations, and in fact this would not be possible for new premises.

9.5 It is for the licensing authority to determine whether a representation (other than a representation from responsible authority) is frivolous or vexatious on the basis of what might ordinarily be considered to be vexatious or frivolous. A representation may be considered to be vexatious if it appears to be intended to cause aggravation or annoyance, whether to a competitor or other person, without reasonable cause or justification. Vexatious circumstances may arise because of disputes between rival businesses and local knowledge will therefore be invaluable in considering such matters. Licensing authorities can consider the main effect of the representation, and whether any inconvenience or expense caused by it could reasonably be considered to be proportionate.

9.6 Frivolous representations would be essentially categorised by a lack of seriousness. Frivolous representations would concern issues which, at most, are minor and in relation to which no remedial steps would be warranted or proportionate.

9.7 Any person who is aggrieved by a rejection of their representations on either of these grounds may lodge a complaint through the local authority's corporate complaints procedure. A person may also challenge the authority's decision by way of judicial review.

9.8 Licensing authorities should not take decisions about whether representations are frivolous, vexatious or relevant to the licensing objectives on the basis of any political judgement. This may be difficult for councillors who receive complaints from residents within their own wards. If consideration is not to be delegated, contrary to the recommendation in this Guidance, an assessment should be prepared by officials for consideration by the sub-committee before any decision is taken that necessitates a hearing. Any councillor who considers that their own interests are such that they are unable to consider the matter independently should disqualify themselves.

9.9 It is recommended that, in borderline cases, the benefit of the doubt about any aspect of a representation should be given to the person making that representation. The subsequent hearing would then provide an opportunity for the person or body making the representation to amplify and clarify it.

9.10 Licensing authorities should consider providing advice on their websites about how any person can make representations to them.¹⁴

2.4 Disclosure of personal details of persons making representations

Where a notice of a hearing is given to an applicant, the licensing authority is required under the *Licensing Act 2003 (Hearings) Regulations 2005* to provide the applicant with copies of the relevant representations that have been made.¹⁵ In certain circumstances, persons making representations to the licensing authority may be reluctant to do so because of fears of intimidation if their personal details are divulged. In such circumstances, the 2014 guidance states:

9.24 Where licensing authorities consider that the person has a genuine and well-founded fear of intimidation and may be deterred from making a representation on this basis, they may wish to consider alternative approaches.

¹⁴ 2014 Guidance, paras 9.4-9.10

¹⁵ 2014 Guidance, para 9.22

9.25 For instance, they could advise the persons to provide the relevant responsible authority with details of how they consider that the licensing objectives are being undermined so that the responsible authority can make representations if appropriate and justified.

9.26 The licensing authority may also decide to withhold some or all of the person's personal details from the applicant, giving only minimal details (such as street name or general location within a street). However, withholding such details should only be considered where the circumstances justify such action.¹⁶

2.5 Hearings

If a licensing authority decides that representations are relevant, it must hold a hearing to consider them. The need for a hearing can only be avoided with the agreement of the licensing authority, the applicant and all of the persons who made relevant representations.¹⁷

In determining an application with a view to promoting the licensing objectives in the overall interests of the local community, the licensing authority must give appropriate weight to:

- the steps that are appropriate to promote the licensing objectives;
- the representations (including supporting information) presented by all the parties;
- [Home Office] Guidance;
- its own statement of licensing policy.¹⁸

The licensing authority should give its decision within five working days of the conclusion of the hearing (or immediately in certain specified cases) and provide reasons to support it. Notification of a decision must be accompanied by information on the right of the party to appeal. After considering all the relevant issues, the licensing authority may grant the application subject to such conditions that are consistent with the operating schedule. Any conditions imposed must be appropriate for the promotion of the licensing objectives.¹⁹

The 2014 Guidance states that, in the interests of transparency, a licensing authority should publish hearings procedures in full on its website.²⁰

The requirements discussed in section 2 above apply equally to applications to vary an existing licence and applications for an entirely new premises licence. Variations to premises licences that would not impact adversely on the licensing objectives are subject to a simplified 'minor variations' process.²¹

2.6 Appeals

Following the decision by a licensing authority there is a right of appeal to the magistrates' court. This right is available to both the applicant and those who have made representations on an application. Appeals have to be lodged with the court within 21 days from the day the appellant is notified of the licensing authority decision about the application. On receiving an appeal, a magistrates' court has three options. It can:

¹⁶ 2014 Guidance, paras 9.24-9.26

¹⁷ 2014 Guidance, para 9.27

¹⁸ 2014 Guidance, para 9.34

¹⁹ 2014 Guidance, para 9.35

²⁰ 2014 Guidance, para 9.36

²¹ This process is discussed in the 2014 Guidance, paras 8.46-8.53

- dismiss the appeal
- substitute for the decision being appealed against any other decision the licensing authority could have made
- send the case back to the licensing authority and tell them how to deal with it in accordance with directions of the court.

The court may also make such costs orders as it considers fit.²² This last point is important because there have been allegations that certain breweries and pub chains have attempted to intimidate residents who might wish to appeal against a licence by warning them that, if they lose the appeal, they will be liable for costs.

The 2003 Act does not provide for a further appeal against the decision of the magistrates' court. The other routes open to the appellant are to seek judicial review or to make a complaint to the Local Government Ombudsman.

3 Review of an existing licence

At any stage following the grant of a premises licence (or club premises licence), a responsible authority or any other person can ask the licensing authority to review the licence because of a matter arising at the premises in connection with any of the four licensing objectives.

In addition, the licensing authority must review a licence if the premises to which it relates was made the subject of a closure order by the police based on nuisance or disorder and the magistrates' court has sent the authority the relevant notice of its determination, or if the police have made an application for summary review on the basis that premises are associated with serious crime and/or disorder.²³

Representations must be made in writing and may be amplified at the subsequent hearing or may stand in their own right. Additional representations which do not amount to an amplification of the original representation may not be made at the hearing. Representations may be made electronically, provided the licensing authority agrees and the applicant submits a subsequent written representation. The licensing authority may also agree in advance that the representation need not be given in writing.²⁴

If the application for a review has been made by a person other than a responsible authority (for example, a local resident, residents' association, local business or trade association), before taking action the licensing authority must consider whether the complaint is relevant, frivolous, vexatious or repetitious.²⁵ A repetitious representation is one that is identical or substantially similar to:

- a ground for review specified in an earlier application for review made in relation to the same premises licence or certificate which has already been determined; or
- representations considered by the licensing authority when the premises licence or certificate was granted; or

²² *Licensing Act 2003* s178

²³ *2014 Guidance*, para 11.4

²⁴ *2014 Guidance*, para 11.9

²⁵ *2014 Guidance*, para 11.11

- representations which would have been made when the application for the premises licence was first made and which were excluded then by reason of the prior issue of a provisional statement; and, in addition to the above grounds, a reasonable interval has not elapsed since that earlier review or grant.²⁶

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 an earlier occasion”:

...It is for licensing authorities themselves to judge what should be regarded as a reasonable interval in these circumstances. However, it is recommended that more than one review originating from a person other than a responsible authority in relation to a particular premises should not be permitted within a 12 month period on similar grounds save in compelling circumstances or where it arises following a closure order.²⁷

(...) 11.15 When a licensing authority receives an application for a review from a responsible authority or any other person, or in accordance with the closure procedures described in Part 8 of the 2003 Act (for example, closure orders), it must arrange a hearing. The arrangements for the hearing must follow the provisions set out in regulations. These regulations are published on the Government’s legislation website (www.legislation.gov.uk). It is particularly important that the premises licence holder is made fully aware of any representations made in respect of the premises, any evidence supporting the representations and that the holder or the holder’s legal representative has therefore been able to prepare a response.

The licensing authority may decide that a review does not require it to take any further action. It may issue an informal warning and/or recommend improvement within a particular period of time.²⁸ Or it may take any of the following steps:

- modify the conditions of the premises licence (which includes adding new conditions or any alteration or omission of an existing condition), for example, by reducing the hours of opening or by requiring door supervisors at particular times;
- exclude a licensable activity from the scope of the licence, for example, to exclude the performance of live music or playing of recorded music (where it is not within the incidental live and recorded music exemption);
- remove the designated premises supervisor, for example, because they consider that the problems are the result of poor management;
- suspend the licence for a period not exceeding three months;
- revoke the licence.²⁹

Modifications of conditions and exclusions of licensable activities may be imposed either permanently or for a temporary period of up to three months.³⁰

²⁶ 2014 Guidance, para 11.12

²⁷ 2014 Guidance, para 11.13

²⁸ 2014 Guidance, para 11.17

²⁹ 2014 Guidance, para 11.19

³⁰ 2014 Guidance, para 11.23