

LICENSING ACT 2003

GUIDANCE FOR RESIDENTS AND BUSINESSES

Introduction

This document provides information about the Licensing Act 2003.

The Act has established a single integrated scheme for licensing premises, which are used for the sale or supply of alcohol, to provide regulated entertainment or to provide late night refreshment.

Permission to carry on some or all of these licensable activities will now be contained in a single licence – the premises licence, and the Act has accordingly swept away considerable red tape at a stroke.

The Act also provides a balanced package of freedoms and safeguards. It will have an important role in the prevention of crime and disorder and public nuisance perpetrated by a minority. It will give the responsible majority more freedom and choice about how they spend their leisure time.

The Act provides certain rights of appeal to the magistrates' court for those who feel aggrieved by decisions made by licensing authorities. So a right of appeal is not only afforded to applicants where their application has been rejected, or has been granted subject to conditions, but is also afforded to those who made relevant representations in relation to an application; for example, a local resident has a right to appeal against the decision of the licensing authority to grant a premises licence if they made relevant representations as an interested party in relation to the application where he considers the application should not have been granted.

The Act marks the end of the existing outdated licensing regimes. The legislation reflects that the licensable activities it covers are to be carried on in a modern, vibrant society and deserves a more streamlined and unified licensing system.

Key measures contained in the Act include:

- Flexible opening hours for premises, with the potential for up to 24 hour opening, seven days a week, subject to consideration of the impact on local residents, businesses and the expert opinion of a range of authorities in relation to the licensing objectives. This will help to minimise public disorder resulting from fixed closing times;
- A single premises licence which can permit premises to be used to supply alcohol, to provide regulated entertainment and to provide refreshment late at night. This will bring together the six existing licensing regimes (alcohol, public entertainment, cinemas, theatres, late night refreshment house and night cafes) thereby cutting down on red tape;
- premises licences to be issued by licensing authorities after notification to and scrutiny of all applications by the police and other responsible authorities. Those living in and businesses operating in the vicinity of the premises will also be able to make representations on applications.

Making Representations

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

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

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

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

For guidance on reviews please see the document 'Guidance for Interested Parties on Reviews'. This is available on the web site <http://www.bracknell-forest.gov.uk/environment/env-licensing/env-licensing-new-laws/env-making-an-application-for-review.htm> or from the Licensing Team on 01344 352000.

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

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

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

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

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

IMPORTANT NOTE: If no relevant representations are made the licence or variation must be granted.

Requesting a Review

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

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

Interested parties are any of the following:

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

Responsible authorities include: the Police service; the Fire service; and the Council's health and safety, planning, environmental health and trading standards services.

How will applications be advertised?

All applications for new licences and for variation of existing licences will be advertised by way of:

- Details of the application will be provided on at least one blue A4 poster which will be fixed to the outside of the premises for 28 days; and
- Details of the application will be provided in the 'notices' section of a local newspaper.

In addition, the licensing team will provide details of applications received on the Bracknell Forest Borough Council website at <http://www.bracknell-forest.gov.uk/environment/envlicensing.htm>

What is the deadline for making relevant representations?

Relevant representations must be provided to the licensing authority within 28 days of the application being made. The licensing authority has prevented by law from accepting any representations after that date. This deadline will be confirmed on the poster at the premises, in the newspaper notice and on the BFBC website.

What are the licensing objectives?

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

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

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

What are relevant representations?

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

For a representation to be relevant it must:

- relate to the effect of the grant of the licence on the promotion of the licensing objectives;
- be made by an interested party or responsible authority;
- not have been withdrawn; or
- not be 'frivolous or vexatious' or, in the case of a review, 'repetitious' if made by an interested party.

What does frivolous, vexatious or repetitious mean?

Frivolous or vexatious will bear their ordinary meaning. The licensing authority must form a view as to whether a reasonable person would consider the observations frivolous or vexatious.

In the case of a review of the licence, the Act provides that for a ground to be a repetition it must be identical or substantially similar to a ground for review already made.

Can the licensing authority impose conditions on a premises licence?

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

If the local pub, club, restaurant etc is currently open and causing disturbance is it possible to request a review of the licence?

Yes. At any stage, following the grant of a premises licence, a responsible authority such as the police or the fire authority, or an interested party, such as a resident in the vicinity of the premises, may apply to the licensing authority to review the licence if there are grounds relating to the licensing objectives.

If an interested party, for example, a local resident, residents' association, or local business applies for a review of the licence, the licensing authority must first consider whether the grounds they have put forward are relevant to the licensing objectives and that they are not vexatious, frivolous or repetitious. If the grounds comply with these tests, the licensing authority must arrange a hearing to consider them and any relevant representations made.

Need Help?

Bracknell Forest Borough Council is aware that there are concerns about making representations and recommends that you contact the licensing team on 01344 352000 or licence.all@bracknell-forest.gov.uk to discuss the application prior to making a relevant representation. Alternatively you may feel that you wish to seek independent legal advice.

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