
LICENSING ACT 2003 - CONSULTATION ON DRAFT REGULATIONS

1 SUMMARY

- 1.1 This report introduces the consultative document published by the Department for Culture, Media and Sport (DCMS) upon which comment is invited by 10 November 2004.
- 1.2 The report outlines those regulations under the Licensing Act 2003 (LA 2003) that will impact upon the Appeals & Licensing Committee in particular, i.e. those dealing with hearings and with the financial implications arising from reviews of premises licences.
- 1.3 Where invited by DCMS, suggested responses on behalf of the Council are shown for the Committee's consideration.

2 INTRODUCTION

- 2.1 The consultative document consists of 5 regulations attached as appendices to 7 explanatory chapters. The regulations deal with personal licences, hearings, premises licences and club premises certificates, the transitional order and the licensing register.
- 2.2 A 6th appendix consists of an Initial Regulatory Impact Assessment (IRIA), to which there is no invitation to make a response.
- 2.3 A copy of the IRIA, together with the explanatory chapters, has been deposited in the Member's Library at the Civic Suite for Member's information.
- 2.4 Committees will only be concerned with contested applications, where a hearing is necessary to determine outcome. In the absence of any representations or objections, the Act requires all other licensing issues to be delegated to officers.
- 2.5 Between 7 February 2005 and the Second Appointed Day, expected to be in November 2005, the majority of applications to the Council will be for conversion of existing licences and registration certificates granted under the Licensing Act 1964 (LA 1964) into new premises licences and club premises certificates, variation of those new licences and certificates, and issue of personal licences for those wishing to sell alcohol.
- 2.6 There may be a limited number of applications for grants of and/or variation to new licences, club registration certificates and personal licences that are not eligible for conversion under the transitional provisions having been granted under other legislation after 7 February 2005.

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- 2.7 There may be a limited number of applications for reviews of premises licences or club premises certificates, e.g. following a Closure Order issued by the police or where offences have been discovered.
- 2.8 During that period there will not be any determinations of temporary event notices, as they have no effect before the Second Appointed Day.
- 2.9 The most likely requirement for a hearing to take place during the transitional period will arise over a contested application to vary a premises licence, particularly where later hours of trading and/or the provision of music and dancing is requested.
- 2.10 It is anticipated that of approximately 90 premises currently holding a justice's on-licence, almost all will apply for variations to the issue of their premises licence, e.g. to extend their hours of trading at weekends and types of activity such as live music and dancing.
- 2.11 It is not possible to predict either the number of representations that might be made to such applications, or how many will result in contested hearings. The Act specifically provides for and encourages negotiations to take place between parties to resolve issues and avoid the necessity for a hearing.
- 2.12 The Regulations provide set periods and procedures in which matters have to be determined and these vary according to whether or not they are subject to the provisions of the transitional period. The following paragraphs give details of those matters.

3 HEARINGS

Period of time within which hearing to be held

- 3.1 The Act provides that a hearing must be held on a contested issue unless all parties agree that it is unnecessary.
- 3.2 The regulations prescribe the procedure to be followed by a licensing authority and by licensing committees and their sub-committees.
- 3.3 The regulations do not prescribe how committees will be constituted. In the absence of direction to the contrary it is assumed that the Local Government Act 1972 (LGA 1972) will apply.
- 3.4 The regulations propose that hearings will be held within **20 working days, 10 working days, 7 days** and **5 working days** according to the matter in question and always following the expiration of the period in which representations or objections can be made.
- 3.5 It should be noted that in respect of Temporary Event Notice hearings, the time period is **7 days**, not working days as in other hearings.

- 3.6 Appendix A shows the provisions under which hearings might be held, the period within which representations may be made, the period within which a hearing must then be held and persons to whom the notice of hearing must be sent.
- 3.7 A response is invited as to whether the periods of 20 working days, 10 working days, 7 days and 5 working days are adequate preparation time in the context of each of the circumstances giving rise to a hearing.

Suggested Response:

Rochford District Council considers that the periods of 20 and 10 working days are reasonable periods in which to prepare but that the periods of 7 days and 5 working days, which effectively amount to the same period, are unrealistic. They should be replaced with 7 working days.

Example – Police objection to temporary event notice (TEN)

A TEN must be issued 10 working days before an event, to which the police may object within 48 hours of receiving the notice. A hearing must be held within 7 days of the day following the day the authority received a notice of objection by the police.

If the notice was received on a weekend, the police must give the authority a notice by the end of Tuesday. A hearing must then be held by no later than the following Tuesday.

Notices in respect of hearings

- 3.8 The licensing authority is required to give a notice stating the date, time and place as follows.
- 3.9 The notice of hearing must be given at least **2 working days** before the day on which the hearing is to be held in cases involving police objections to interim authority notices and temporary event notices.
- 3.10 The notice of hearing must be given at least **5 working days** before the day on which the hearing is to be held in the case of hearings relating to:
- reviews of premises licences following closure orders issued by the police and the exercise of powers by a magistrates' court,
 - the determination of applications for conversion of existing licences to premises licences and club certificates to club premises certificates,
 - or the grant to a justices' licence holder of a personal licence during the period of transition.
- 3.11 In all other cases, the notice of hearing must be given at least **10 working days** before the day on which the hearing is to be held.

Information to accompany notice of hearings

3.12 The information that must accompany a notice of hearing includes:

- the rights of the party relating to the presence of the public and rights to address the authority, call witnesses and produce supporting information;
- the consequences of non-attendance or lack of representation at the hearing;
- the procedure to be followed at the hearing; and
- any matters about which the licensing authority wants clarification from a party at the hearing.

3.13 Additional documents, mainly those containing details of relevant representations, are required to be given in certain cases.

3.14 Appendix B shows the provisions under which hearings might be held, the additional documents that have to accompany the notices, the period within which they have to be sent and to whom they must be sent.

3.15 A response is invited as to whether the periods of 10 days, 5 days and 2 days are adequate in relation to the giving of notices of hearing and whether these arrangements are satisfactory, fair and practical.

Suggested Response:

Rochford District Council considers that the period of 10 working days is achievable. However the periods of 5 working days and 2 working days are not achievable given that the period within which a hearing must be held is dictated by the period within which representations may be made.

Example - Review of a premises licence following a police closure order

A hearing must be held within 10 working days following the day the authority receives a notice from the court. Within that period, representations may be made for up to 6 working days.

It is not possible, therefore, to give notices and relevant representations at least 5 working days before the hearing as the period for representations will not have expired.

Action following receipt of a notice of hearing

3.16 Parties are required to give the licensing authority a notice providing the following information:

- whether they intend to be present and/or be represented at the hearing;
- whether they intend to call any witnesses at the hearing and their names and addresses; and
- whether they consider a hearing to be unnecessary.

3.17 The time limit for giving such a notice varies between **5 working days, 2 working days** and **1 working day** depending on the provision of the Act under which the hearing arises.

3.18 The limit is effectively half that in which the licensing authority is required to serve notices on parties as shown in Appendix B.

Right to dispense with a hearing if all parties agree

3.19 The licensing authority is only empowered to dispense with a hearing if all persons, by giving a notice as mentioned above, agree that a hearing is unnecessary.

Withdrawal of representations

3.20 Parties would be allowed to withdraw their representations by either giving notice (in writing) to the authority no later than 24 hours before the day on which the hearing is to be held, or orally at the hearing.

3.21 A response is invited about any difficulties that may arise relating to compliance with the regulations covered by paragraphs 3.16 to 3.20 above.

Suggested Response:

Rochford District Council considers the time scales to be acceptable and fair to all. However, there do not appear to be any penalties in a case of non-compliance. Unlike hearings held under the LA 1964, we note that costs cannot be awarded in respect of a hearing under the LA 2003, which may otherwise have been a factor to influence compliance with the regulations.

Our view is that in the absence of any form of enforcement, the regulations amount to guidance of best practice only.

Power to extend the time limit

3.22 The regulations provide for the licensing authority to extend the time limits where it considers such an extension is necessary in the public interest.

3.23 The regulations also empower the licensing authority to adjourn any hearing to a specified date and arrange for a hearing to be held on specified additional

dates, where it considers this to be necessary for its consideration of any representations or notices made or given by any party.

- 3.24 Where it does so, the authority must notify all the parties forthwith.
- 3.25 The regulations also impose a limitation on the powers to extend time limits so they are not used in such a way as to result in an application being automatically treated as rejected or granted under the transitional provisions.
- 3.26 A response is invited on these discretionary powers.

Suggested response:

Rochford District Council consider the power to extend time limits is essential in ensuring matters are dealt with according to the rules of natural justice and the Human Rights Act. In particular it will allow for all factors to be properly taken into account and, for example, will allow for Members to make site visits, where necessary and appropriate.

Hearing to be public

- 3.27 Hearings must be held in public, but the regulations provide for exclusion of the public from all or part of a hearing where the committee considers that it is in the public interest to counter unreasonable and improper attempts to disrupt hearings.
- 3.28 In this context, “public” includes any party to the hearing or any representative of a party.
- 3.29 DCMS are particularly keen to receive a response to this issue.

Suggested Response:

Rochford District Council considers the powers to exclude disruptive persons are essential to ensure that matters are able to be dealt with expeditiously whilst also safeguarding the rights of all parties to a fair hearing.

The proposed provisions are consistent with existing provisions within the Council's Constitution in respect of hearings and should be included to ensure best practice is maintained across the whole hearings spectrum.

Representations and supporting information

- 3.30 The regulations provide:

- the right for parties to call witnesses and other supporting information and to address the authority; and the licensing authority with the discretion to question any party to the hearing or any witnesses called;
- disregard any evidence produced by parties or witnesses which is not relevant;
- take into account any documentary or other evidence produced by a party in support of their application, representations or notice (as applicable) either before the hearing or, with the consent of all the other parties, at the hearing.

3.31 The committee is also required to disregard any information or evidence produced that is not relevant to the application, representations or notice, the promotion of the licensing objectives or, in the case of a hearing to consider a notice given by a chief officer of police, the crime prevention objective.

Failure of parties to attend a hearing

3.32 A hearing may proceed in the absence of any party who has informed the authority that he/she does not intend to attend or be represented at the hearing.

3.33 If a party fails to attend a hearing without notice and the committee considers it necessary in the public interest, it may adjourn the hearing to a specified date. Such adjournments must be notified to all the parties forthwith.

3.34 Alternatively, the authority may decide to proceed with the hearing in the party's absence. Where the licensing authority decides to proceed, it must consider the application, representations or notice (as applicable) made by the absent party.

Procedure at hearing

3.35 The regulations provide that the licensing authority may determine the procedure to be followed at the hearing subject to the following:

- the committee must explain to the parties at the beginning of a hearing the procedure that it proposes to follow,
- in order to ensure fairness, all parties must be given an equal maximum period of time in which to exercise their rights,
- the committee can require any person attending a hearing who, in their opinion is behaving in a disruptive manner, to leave and/or to refuse them permission to return or to apply conditions to their return.

3.36 Before the end of the hearing, any person who has been excluded will still be entitled to submit in writing any information which they would have been entitled to give orally had they not been required to leave.

3.37 DCMS are also keen to receive comment on the above matters.

Suggested Response:

Rochford District Council consider the provisions within paragraphs 3.30 – 3.36 to be essential to ensure every party is aware of their rights to put relevant evidence before a committee, of how hearings will be conducted including the procedures that will be adopted in their absence and the safeguards protecting the interests of persons who may have been excluded.

Determination of applications

3.38 The regulations require a committee to give its determination at the conclusion of the hearing in the following cases:

- police objection to temporary event notices;
- review of premises licences following closure orders;
- conversion of existing licences and existing club certificates; and
- application by holders of existing justices' licences for the grant of personal licences.

3.39 In any other case, the determination must be made within a period of 5 working days beginning with the day or the last day on which the hearing was held.

3.40 Where hearings have been dispensed with in agreement with all parties (paragraph 3.19 above), the authority must make its determination within 10 working days beginning with the day the authority gives notice informing the parties that the hearing has been dispensed with.

3.41 Comment is requested about any difficulties that may arise in complying with these time limits.

Suggested Response:

Rochford District Council considers the timescales to be reasonable and achievable.

Notification of determination

- 3.42 Where the Act itself does not make provision for the period within which the authority must notify a party of its determination, the licensing authority must do so forthwith.
- 3.43 There are certain circumstances where the chief officer of police has to be notified of a determination even though he has not been a party to the hearing. Where this is the case, the authority must also notify him/her forthwith.
- 3.44 Where the authority notifies a party of a determination, it must also include in the notice information regarding entitlements to appeal against the determination.

Record of proceedings

- 3.45 The licensing authority is required to ensure that a permanent and intelligible record of the hearing is taken and kept for six years. Members may wish to consider that as all hearings will involve contested matters, a number will result in appeals to the courts.

Irregularities

- 3.46 Any irregularity arising from failure to comply with the Regulations does not automatically render the proceedings void.
- 3.47 Where such an irregularity has arisen and the licensing authority considers that any person has been prejudiced as a result, it may take such steps as it thinks fit to cure the irregularity before reaching its determination.
- 3.48 Where clerical mistakes are made in any document recording a determination, or errors arise in such documents from an accidental slip or omission, they may be corrected by the authority.

Notices

- 3.49 All notices must be given in writing.
- 3.50 They may be sent electronically provided:
- the text is received in legible form,
 - it is capable of being used for subsequent reference, and
 - the person to whom the notice is to be given has agreed that such a notice may be given electronically.

3.51 It should be noted that sending notices by electronic means is in addition to sending them by post or by personal delivery.

3.52 Comment is sought about these administrative arrangements.

Suggested Response:

Rochford District Council supports the move towards e-government that has been encapsulated in the regulations and feels that there should be no need to duplicate the application process and incur additional costs, by applications having to be made electronically and in writing.

Advertisement by the licensing authority

3.53 The Act requires an authority to advertise the fact that it has received an application for review of a premises licence or club premises certificate in 3 ways: -

- By displaying a notice in or near the premises,
- By publishing a notice in a local newspaper on one occasion, and
- Where the authority maintains a website for the purpose of advertisement of applications, on the website.

3.54 For reviews following a police closure order, only the first 2 methods are necessary due to the restricted timescale involved.

3.55 The placing of an advertisement in a local newspaper currently costs approximately £400.00 and would have to be met from revenue arising from licensing fees.

3.56 A response from local authorities is requested concerning this procedure.

Suggested Response:

Rochford District Council considers that an application for review of a premises licence should be treated with the same seriousness regardless of its source. There appears to be no greater justification for having to advertise one type of review in local newspapers than another, other than one of expediency for reviews following a closure order.

It is our view that the benefits do not outweigh the costs involved in having to make a newspaper advertisement and the requirement should be removed.

4 RISK IMPLICATIONS

4.1 Operational Risk

There is no risk in not commenting on the consultative document, other than losing an opportunity for Members to influence aspects of proposed regulation that directly affect them, e.g. period of notice for summons to hearings, method of recording hearings, costs involved in advertising reviews, etc.

5 LEGAL IMPLICATIONS

- 5.1 If the consultative process is inadequate, corrections and amendments to the proposed regulations will not be made, e.g. where timescales appear to be in conflict with the provisions of LGA 1972 and LA 2003.

6 RECOMMENDATION

- 6.1 It is proposed that the Committee **RESOLVES**

To consider the draft regulations and suggested responses for forwarding to DCMS by 10 November 2004.

G Woolhouse

Head of Housing, Health & Community Care

Background Papers: -

None

For further information please contact Kevin Doyland on: -

Tel: - 01702 318036
E-mail: - kevin.doyland@rochford.gov.uk