

Application for a Gambling Licence Review Guidance Notes

Section 197 of the Gambling Act 2005 ('the Act') provides that a responsible authority or an interested party may make an application for review.

Such applications must be submitted to the Licensing Authority in the prescribed form. It will state why a review is being requested, with any supporting information and documents.

As Licensing Authority, we can also initiate a review of a licence, without the need for representations having made to us. This will be based on where we suspect that the Licence conditions are not being complied with, or for other reasons where we believe a review is appropriate.

What is a licence review?

The Gambling Act 2005 is the piece of legislation which regulates commercial gambling premises. In addition to the national gambling and betting sector regulator, the gambling Commission, local (licensing) authorities have statutory responsibilities of premises-based gambling activities.

The regulatory bodies will use their powers to ensure that licensed premises operate in accordance with the provisions of the law and with any conditions attached to their licence(s). There may be occasions when concerns exist over the operation of premises which cannot be resolved either through mediation or enforcement. In those situations, a responsible authority or an interested party may request that a licence is reviewed.

This mechanism is in place as any licence issued under the Act (unless the applicant requests otherwise) will last for the lifetime of the business and would not otherwise be subject to renewal.

Before applying for a review, interested parties may want to consider whether their concern(s) could be effectively dealt with outside the formal review process. This could involve, for example:

- Talking to the licence holder to determine whether there are any steps they may be willing to take to rectify the situation
- Asking the Local Authority Licensing Unit or other responsible authorities to talk to the licence holder on their behalf
- Ask their local MP or Councillor to speak to the Licence Holder on their behalf
- Talking to the relevant 'responsible authority' (e.g., the police in relation to crime and disorder, or the Gambling Commission in relation to the fairness and openness objective) to determine whether there is other legislation that could help resolve the issue.

Does it cost anything to ask for a licence to be reviewed?

No, asking for a review is free.

Who or what is an 'interested party'?

To accept a representation from an interested party, we must take the view that the person:

- Lives sufficiently close to the premises to be likely to be affected by the authorised activities; or
- Has business interests that might be affected by the authorised activities; or
- Represents persons in either of these two groups.

We are required by regulations to state the principles we will apply in exercising our powers under the Act to determine whether a person is an interested party or not. Our Statement of Gambling Licensing Policy indicates:

5.5. The principles are that each case will be decided upon its merits. This Authority will not apply a rigid rule to its decision making. It will however consider the following as per Commission's Guidance:

- The size of the premises
- The nature of the premises
- The distance of the premises from the location of the person making the representation
- The potential impact of the premises (number of customers, routes likely to be taken by those visiting the establishment)
- The nature of the complainant. This is not the personal characteristics of the complainant but the interests of the complainant, which may be relevant to the distance from the premises. For example, it could be reasonable for an authority to conclude that 'sufficiently close to be likely to be affected' could have a different meaning for (a) a private resident (b) a residential school for children with truanting problems and (c) residential hostel for vulnerable adults.
- The 'catchment' area of the premises (i.e., how far people travel to visit); and
- Whether the person making the representation has business interests in that catchment area that might be affected.

5.6 Interested parties can include the following: trade association and trade associations and trade unions, residents' and tenants' associations, and persons who are democratically elected such as Ward Councillors, Members of Parliament, and Parish Councillors.

5.7 The authority will not, however, generally view any of the above as such unless they have a member or constituent who can be classed as an interested party, under the terms of the Act (and as outlined at Paragraph 5.3), and who have asked to be represented.

Who are 'responsible authorities'?

The Responsible Authorities are:

- The Gambling Commission
- The chief officer of police
- The local fire authority
- The local planning authority
- An authority which has functions in relation to pollution to the environment or harm to human health
- The body responsible for the protection of children from harm
- Any other licensing authority in whose area the premises are situated; and
- HM Revenue & Customs

What are the three licensing objectives?

The request for the review of a Licence must relate to one or more of the gambling licensing objectives, which are:

- Preventing gambling from being a source of crime or disorder, being associated with crime or disorder or being used to support crime
- Ensuring that gambling is conducted in a fair and open way; and
- Protecting children and other vulnerable persons from being harmed or exploited by gambling.

It should be noted that we cannot act in respect of the below matters. If there are concerns over these matters, it is advisable to contact the appropriate Responsible Authority, as action may be taken under different legislation.

- The physical safety of members of the public - for example, fire safety, or structural maintenance (Fire Authority, Commercial Team, Planning)
- Any incidents of public nuisance - noise, litter, light pollution (Environmental Health, Planning)
- Incidents of crime and disorder occurring in the vicinity of a licensed premises, but not connected to the operation of that premises (Police)
- A perceived excessive number of licensed gambling premises in a particular area - the licensing authority may not respond to any issues surrounding demand for gambling activities. (Planning)

Can the Licensing Authority reject a review application?

An application for a review may be rejected if we think that the grounds on which the review is sought:

- Are not relevant to the principles that must be applied by a licensing authority in accordance with section 153. So, of the applicant raised issues that are not relevant to the Gambling Commission guidance/codes of practice, our policy statement, or the gambling licensing objectives, then we may reject it. In

addition, if the application raises general objections to gambling as an activity, that is likely to be irrelevant to the principles in section 153, given that a licensing authority is required to permit the use of premises for gambling in so far as it thinks that permission is in accordance with the matters set out in that section. Examples that are likely to be irrelevant include: demand for gambling premises, issues relating to planning, public safety, and traffic congestion.

- The grounds are frivolous
- The grounds are vexatious
- The grounds 'will certainly not' cause the authority to revoke or suspend a licence or to remove, amend or attach conditions on the premises licence
- Are substantially the same as the grounds cited in a previous application relating to the same premises. Here a licensing authority must consider how much time has passed since the earlier application in reaching a judgement about whether it is reasonable to rely on this as a reason not to review the licence; or
- Are substantially the same as representations made at the time the application for a premises licence was considered. As with sub-section (e) we will need to consider the period that has passed since the representations were made, but the underlying requirement is that the licensing authority should not review the licence on the basis of the same arguments considered on the grant of the premises licence.

What does 'frivolous' or 'vexatious' mean?

'Frivolous' and 'vexatious' will bear their ordinary meaning.

A 'frivolous' complaint is one so trivial it would be unreasonable to consider it.

A complaint is 'vexatious' if it is not genuine and is made because of a dispute between neighbouring residents and business. Council officers will make their own observations to establish whether complaints are being made for vexatious reasons.

Whether representations are 'frivolous' or 'vexatious' will be for the Licensing Authority to determine.

How do I ask for a licence to be reviewed?

The application and Notice form can be obtained from the Licensing Department of Gravesham Borough Council.

Complete the form and notice carefully, providing as much detail as possible to support your application. You should state the ground(s) for review. You may use extra sheets of paper if necessary.

Details may include, for example, dates that problems occurred and how the problem affected you. If you wish to attach any documents or other evidentiary material, please list this within Part 4 of the application form. If there are any steps that you believe should be taken by the licensing authority because of the review application,

please outline them, and explain why you consider those steps to be appropriate and proportionate.

I don't want the Licence holder to know my name; can I apply anonymously for a review?

Interested parties cannot apply for a review anonymously. This is because, for example, the Licensing Authority needs to be satisfied that the person who wants the review lives sufficiently close to the premises to be affected by the authorised activities and is not being vexatious. Similarly, it is important that the Licence holder is also able to respond to an application for a review, for example, if they believe the applicant does not live sufficiently close to the premises to be affected. If interested parties are concerned about possible intimidation, they could consider asking the police, or another appropriate Responsible Authority to apply for a review on their behalf.

What happens next?

We must advertise requests for a review of a licence. We will do this by displaying a notice at or near the premises that is subject to review, and on our website, for 18 consecutive days starting on the 8th day after the application is given to us. Other interested parties and responsible authorities then have this period of 28 consecutive days starting on the 8th day after the application was given to make representations about the review.

If the request for a review is not rejected then we must hold a hearing to consider the application, unless all parties agree that this is unnecessary. For example, we may offer to try to resolve the matters via a negotiated agreement outside a formal hearing. You will need to decide if this is appropriate for you, but you can, of course, insist upon the hearing. 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.

At the Hearing

Hearings will generally be held in public, unless the Licensing authority are satisfied that it is necessary to hold all, or part of the hearing in private, having regard to any unfairness to a party that may arise from holding a public hearing, and the need to protect the commercial and other legitimate interests of a party. We shall ensure that a record is taken of the Hearing.

Hearings will normally take the form of a discussion and will be led by the Licensing Authority, which will consist of three elected Councillors (this will be the Licensing Sub-Committee drawn from a full Licensing Committee). The Licensing Authority will explain the procedure to be followed. It will determine any request for additional persons to appear at the hearing. It will consider evidence produced in support before the Hearing, but only if all parties agree.

Further evidence can also be produced if this was sought for clarification of an issue by the authority before the hearing. Cross-examination of another party during a

hearing is not allowed, unless the Licensing Authority thinks it's necessary. The parties are entitled to address the authority and will be allowed equal time to address the Authority and, if they have been given permission by the authority to do so, they will be given equal time to ask questions of any other party. The Authority will disregard any information it considers to be irrelevant.

It is important that you consider what you are going to say at the hearing, as the Licence holder and the Sub-Committee will have seen your application for review and may get the chance to question what you are saying.

What happens after a hearing?

If no decision is made at the hearing, the Sub-Committee has a maximum of 5 days from the day or the last day of the hearing to come to a decision.

Following a review, a licensing authority may:

- Decide that no action is necessary and leave the licence as it is
- Add, remove, or amend a 'default' condition (relating to trading times)
- Add, remove, or amend any other condition deemed necessary
- Suspend the licence for a period of up to 3 months
- Revoke the licence

Written confirmation of the decision will be sent to all parties following the hearing, together with information about any right of appeal against the decision that was made.

Can I appeal any decision made?

An appeal may be lodged in the magistrates' court, for the area in which the premises are wholly or partly situated, within the period of 21 days beginning with the day on which you received notice of the decision against which the appeal is brought.