

Licensing Authorities  
within Leicestershire &  
Rutland

**PROCEDURE**  
for Sub-Committee (Panel) Hearings  
under the  
**LICENSING ACT 2003**

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*(As per DCMS Hearings Regulations)*

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**A. ACTIONS BEFORE THE MEETING**

**(i) By the Licensing Authority**

Where an application is to be considered by a Licensing Panel, the hearing is to be held within the time scales laid down in legislation (these are repeated at Appendix 1), provided that .

Notice of the hearing will be sent to the applicant or holder of the licence, appropriate responsible authorities and any interested parties who have made relevant representations ("parties to the hearing"). The notice will state the date on which and time and place at which the hearing is to be held and will be sent out in a timescale set out as *Appendix 2*.

The notice sent to the parties to the hearing will also be accompanied by:

- this Procedure, setting out the process and rights of those attending, together with
- a copy of relevant representations or notices submitted to the licensing authority concerning the application or licence; and
- a covering report prepared by the authority's relevant Licensing Officer , which may vary dependant upon the type of application and the time periods associated with it from a full advice note on the representations made to little more than an index and copies of the to the documents to be submitted to the Panel, which shall include the relevant representations or notices; and
- any particular points on which the authority considers that it will want clarification at the hearing from a party.

The object of the Licensing Officer's covering report, and also his or her role at the hearing, is to convey to the meeting as much relevant information as is practicable on the application or licence and on the content or nature of all relevant representations and any applicant's observations made or received in respect of it. As such, the Licensing Officer's covering report will offer advice to the hearing on interpretation and relevance of the authority's statement of policy, guidance issued by the Secretary of State and relevant licensing legislation to the application or licence and the relevant representations or notices submitted. Accordingly, the Licensing Officer's report shall contain itself to that advice and comment but shall contain no covering recommendation as to the outcome of the hearing.

As the hearing will take place in public (except where there is an overriding public interest in excluding the public from all or part of the hearing), a copy of the notice will

also be published for the benefit of members of the public or representatives of the press who may wish to observe proceedings from the public gallery provided for their benefit at the hearing.

## (ii) By the Parties to the Hearing

### (a) Time Limits

In certain circumstances, the licensing authority may extend a time limits provided for in the Regulations and this Procedure where it considers this to be necessary in the public interest.

In certain limited circumstances, the licensing authority may also adjourn a hearing to a specified date or 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 notice made by a party.

If a party to the hearing considers this a necessary course of action, application should be made to the Licensing Officer [or proper officer] at the earliest possible opportunity, explaining why.

Where the authority has extended a time limit, adjourned a hearing to a specified date or arranged for a hearing to be held on a specified additional date, it will forthwith give a notice to the parties to the hearing stating the period of the extension and the reasons for it.

### (b) Attendance, Representations and Supporting Evidence

A party to the hearing may attend the hearing and be assisted or represented by any person (whether or not that person is legally qualified) and is entitled to—

- (1) give further information and call any witness in support of their application, representations or notice (as applicable),
- (2) question any other party or witness if the Sub-Committee allows this, and
- (3) address the authority.

To enable this to happen and still provide for the administration of a fair hearing, when a party to the hearing receives a notice of a hearing, he or she must give to the Licensing Authority a notice, within the period of time set out at *Appendix 3*, stating—

- (1) whether he or she intends to attend or be represented at the hearing;
- (2) whether he or she considers a hearing to be unnecessary;
- (3) whether he or she wishes any other person (other than the person he intends to represent him or her at the hearing) to appear at the hearing. If so, the notice returned must contain a request for permission for that person (be it a witness of the party, a supporter or otherwise) to appear at the hearing, accompanied by details of the name of that person and a brief description of the point or points on which that person may be able to assist the authority in relation to the

application, representations or notice of the party making the request.

If a party to the hearing has informed the licensing authority that he or she does not intend to attend or be represented at a hearing, the hearing may proceed in his or her absence.

If a party, who has not indicated that he or she does not intend to attend, fails to attend or be represented at a hearing the Panel may —

- (1) where it considers it to be necessary in the public interest, adjourn the hearing to a specified date and notify the parties of the date, time and place to which the hearing has been adjourned; or
- (2) hold the hearing in the party's absence.

Where the authority holds the hearing in the absence of a party, the Panel will consider at the hearing the application, representations or notice made by that party as set out below.

The Panel will not take into account any written comments or documentary evidence from a party after the production of the Licensing Officer's report unless there are exceptional circumstances for submitting such late comments or, at the hearing, all parties consent.

### (iii) By the Licensing Authority as a Pre-hearing

#### (a) Where a hearing may be unnecessary

Where all of the parties, who are required to do so for these purposes, have returned a notice which states that they consider a hearing to be unnecessary, the Panel shall convene a meeting, which shall not require notice to be given to the parties.

If the Panel agrees that a hearing is unnecessary, then

- (1) the Panel may then proceed to determine the matter on the basis of the relevant representations received, then or at another date; and
- (2) notice shall be given forthwith to the parties that the hearing has been dispensed with;

#### (b) Generally

The Panel may be called to consider the relevant representations, application or notice in terms of

- (1) any particular points on which it considers that it will want clarification at the hearing from a party;
- (2) any requests from a party that any other person (other than the person he intends to represent him or her at the hearing) appears at the hearing
- (3) any maximum period of time in which the parties to the hearing may exercise their rights under the procedure explained below.

Notice may be given to the parties (and if so to all parties) to attend the pre-hearing in order to assist the Panel in ensuring the good administration of the hearing proper.

## **B. AT THE MEETING**

### **(i) Principles**

Please note that:

- (a) The Licensing Panel is not a Court and the strict rules of evidence do not apply;
- (b) Evidence will not be taken on oath;
- (c) Persons attending the Panel will not be expected to stand when addressing the meeting or giving evidence; and
- (d) Most comment or questions are to be put to, or through, the Chairman,

but that the hearing before the Panel remains quasi-judicial and the principles of natural justice must be applied where exercising the authority's licensing functions. Those principles are that:

- "no man may be a judge in his or her own cause" (*nemo dex in causa sua*); and
- "hear the other side" (*audi alteram partem*)

Aside from those principles, the decision making process must be carried out within a context of promotion of the licensing objectives; giving equal weight to the prevention of crime and disorder, public safety, the prevention of public nuisance, and the protection of children from harm.

Members of the Licensing Committee whose Ward is likely to be affected by the application may not sit on the Panel to hear that matter. Those Members, however, will be free to represent an interested party to the hearing (unless they have a personal and prejudicial interest) should they so wish.

At any hearing, the Panel (through the Chairman) may require any person who in their opinion is behaving in a disruptive manner to leave and may—

- (a) refuse to permit that person to return, or
- (b) permit him or her to return only on such conditions as the Panel may specify, but such a person may, before the end of the hearing, submit to the authority in writing any information which they would have been entitled to give orally had they not been required to leave.

### **(ii) PROCEDURE AT THE MEETING**

The procedure to be applied is as set out below. It will take the overall form of a discussion led by the Panel and cross-examination shall not be permitted unless the Panel considers that cross-examination is required for it to consider the representations, application or notice as the case may require.

The precise format and order of events on the day, however, is a matter for the Chairman, but in using his or her discretion the Chairman will comply with relevant Regulations (The Licensing Act 2003 (Hearings) Regulations 2005 (S.I. 44/2005) ) and have regard the objectives of ensuring the fairness and good administration of the hearing.

1. Appointment of Chairman by the Members from amongst their number where one has not been appointed in advance
2. The Chairman of the Licensing Panel will-
  - (i) introduce those present at the hearing and outline their role where appropriate;
  - (ii) ensure that the applicant and the objector(s) understand the procedure to be followed and, if unaccompanied, that the applicant could be represented; and
  - (iii) agree any maximum period of time in which the parties to the hearing may exercise their rights under this procedure and, if so, state that the maximum time shall be applied equally to each of the parties.
3. The Licensing Officer will outline the relevant details of the application and relevant representations received in respect of it, where appropriate relating that to and advising upon the appropriate provisions of the authority's statement of policy, government guidance and legislation, together with informing the meeting of any details relevant to the application that may have come to light since the report was written.
4. The Chairman will then invite the applicant or licence holder, or their representative, to outline their application, give further information in response to any request for clarification on a point from the authority and address the relevant representations or notice – including the calling of any witnesses and/or the giving of evidence by the applicant him or herself. After each witness or speaker has given evidence, a question or questions may be put:
  - (a) to that person, with the consent of the Panel and through the Chairman, by:
    - (i) another party to the hearing (in order of officers of the responsible authorities and then interested parties, or their representative, as determined by the Chairman);
    - (ii) the applicant or their representative to clear up any points raised in that questioning; and
    - (iii) the Licensing Officer, on behalf of and with the consent of the Chairman only, to assist in their advice to the Panel on the meaning of the evidence submitted in relation to interpretation of policy, govt. guidance and legislation;
  - (b) to any person by the Members of the Panel.
5. The Chairman will then invite the officers of the responsible authorities, or their representative(s), to outline their relevant representations, give further information in response to any request for clarification on a point from the authority and address the relevant part of the application or notice – including the calling of any witnesses

and/or the giving of evidence by the officer him or herself.

After each witness or speaker has given evidence, a question or questions may be put:

- (a) to that person, with the consent of the Panel and through the Chairman, by:
- (i) another party to the hearing (in order of officers of the responsible authorities and then interested parties, or their representative, as determined by the Chairman)
  - (ii) the officer or their representative to clear up any points raised in that questioning; and
  - (iii) the Licensing Officer, on behalf of and with the consent of the Chairman only, to assist in their advice to the Panel on the meaning of the evidence submitted in relation to interpretation of policy, govt. guidance and legislation; and
- (b) to any person by the Members of the Panel.

6. The Chairman will then invite the interested parties present, or their representative(s), to outline their relevant representations, give further information in response to any request for clarification on a point from the authority and address the relevant part of the application or notice – including the calling of any witnesses and/or the giving of evidence by the party him or herself.

Where more than one representation in support or objection has been received, the parties concerned will be (and reminded that they have been) strongly encouraged to agree to present the case jointly unless their representations differ so as to require differing outcomes or quite differing reasons for a desired outcome.

After each witness or speaker has given evidence, a question or questions may be put:

- (a) to that person, with the consent of the Panel and through the Chairman, by:
- (i) another party to the hearing (in order of officers of the responsible authorities and then interested parties, or their representative, as determined by the Chairman;
  - (ii) the interested party or their representative to clear up any points raised in that questioning; and
  - (iii) the Licensing Officer, on behalf of and with the consent of the Chairman only, to assist in their advice to the Panel on the meaning of the evidence submitted in relation to interpretation of policy, govt. guidance and legislation; and
- (b) to any person by the Members of the Panel.

7. The Chairman will invite the applicant or licensee to comment upon any ground of objection not yet addressed by the Panel (through non-attendance of the relevant person or their representative or otherwise) but contained within the papers of the Licensing Officer's report provided to the applicant and the Panel.

The applicant or licensee should be prepared to answer any questions by Members of the Panel about those objections.

8. Closing Statements, of a maximum duration of in proportion to the maximum time previously set by the Chairman, may then be made by or on behalf of:
  - (i) each interested party who submitted a relevant representation (subject to the request for a co-ordinated approach)
  - (ii) each responsible authority who submitted a relevant representation
  - (iii) the licensing officer (limited to statements in respect of his or her advice on interpretation of policy, guidance and legislation relevant to the application or licence only); and
  - (iv) the applicant or licensee

9. As a norm, all parties will then withdraw, directly or through retirement of the Panel. This will include all officers of the Council, including any legal officer appearing to represent an officer of the Council appearing on its behalf as a relevant authority.

The only exceptions shall be any committee administrator (democratic services officer) acting solely in that role and the Panel's legal advisor. The legal advisor's role is to:

- (i) advise the Panel on points of law, following which the substance of any such advice must be shared with all of the parties unless considered inappropriate (as determined by the public interest test); and
- (ii) assist the members of the Panel in formulating their reasoning and any conditions.

Neither the administrator nor the legal advisor may advise the Panel on the merits or otherwise of placing conditions on or granting, refusing or revoking a licence.

If further information is required from one party, all parties will be recalled whilst it is obtained.

When the Panel has reached a decision, all parties are recalled and the decision will be announced to the applicant, together, if appropriate, with details of any conditions to be attached to the grant of the licence and the reasons for that or the reasons for refusal. Dependant upon the case in question, this will normally only be in summary or outline form only and the exact wording and reasoning will be issued as part of the formal notification.

10. Formal notification of the Panel's determination and related information will then issued, to all parties to the hearing, in writing and as soon as practicable (within the statutory time limits where applicable).

The written form of the determination will be set out as a record of who attended the hearing for what purpose, together with a record of the Panel's findings of fact, the decision and the reasons for that decision when applying those findings to the promotion of the licensing objectives and having regard to the authority's statement of licensing policy

The formal notification will include information as to the statutory rights of a party to the hearing to appeal against the determination.

#### **APPENDIX 1**

Hearings to be held under the provisions listed in column 1 of the table in Schedule 1 of the Regulations must be commenced within the period of time specified in column 2 of the table and in a case where the hearing is to be held on more than one day, the hearing must be arranged to take place on consecutive working days.

#### **APPENDIX 2**

##### **Notice of hearing**

(1) In the case of hearings under the provisions listed in column 1 of the table in Schedule 2 of the Regulations, the authority shall give to the persons listed in column 2 of the table a notice stating the date on which and time and place at which the hearing is to be held (the "notice of hearing") in accordance with the following provisions of this regulation.

(2) In the case of a hearing under—

(a) section 48(3)(a) (cancellation of interim authority notice following police objection), or  
(b) section 105(2)(a) (counter notice following police objection to temporary event notice), the authority shall give the notice of hearing no later than two working days before the day or the first day on which the hearing is to be held.

(3) In the case of a hearing under—

(a) section 167(5)(a) (review of premises licence following closure order),  
(b) paragraph 4(3)(a) of Schedule 8 of the Regulations (determination of application for conversion of existing licence),  
(c) paragraph 16(3)(a) of Schedule 8 of the Regulations (determination of application for conversion of existing club certificate), or  
(d) paragraph 26(3)(a) of Schedule 8 of the Regulations (determination of application by holder of justices' licence for grant of personal licence), the authority shall give the notice of hearing no later than five working days before the day or the first day on which the hearing is to be held.

#### **APPENDIX 3**

##### **Action following receipt of notice of hearing**

In the case of a hearing under—

(a) section 48(3)(a) (cancellation of interim authority notice following police objection), or  
(b) section 105(2)(a) (counter notice following police objection to temporary event notice), the party shall give the notice no later than one working day before the day or the first day on which the hearing is to be held.

In the case of a hearing under—

(a) section 167(5)(a) (review of premises licence following closure order),  
(b) paragraph 4(3)(a) of Schedule 8 (determination of application for conversion of existing licence),  
(c) paragraph 16(3)(a) of Schedule 8 (determination of application for conversion of existing club certificate), or  
(d) paragraph 26(3)(a) of Schedule 8 (determination of application by holder of justices'



licence for grant of personal licence), the party shall give the notice no later than two working days before the day or the first day on which the hearing is to be held.

In any other case, the party shall give the notice no later than five working days before the day or the first day on which the hearing is to be held.