



LICENCE REVIEWS

- The Licensing Act 2003 included provision for premises licences to be reviewed by the Licensing Authority. This provision was designed to tackle rogue operators causing persistent disorder or nuisance, those trading illegally or endangering public safety. It was also designed to be a nuclear option, to be used when all attempts at dialogue and mediation had been exhausted. It was not anticipated that responsible operators would ever be involved in review proceedings.
- The first applications for review of a licence have now been submitted and action has been taken against a few licence holders. It is clear that the review mechanism is being used as a weapon of first resort, particularly by the police and that reviews are being initiated on slim grounds. It is also clear that licensing authorities and the police have little understanding of the implications of this for licensed retailers.
- As a review has the potential to revoke a licence, it is important that all operators are alert to the dangers inherent in the process. This briefing note summarises the legal aspects of the review process, highlighting the risks to operators and the actions to be taken to protect your assets.

The Law

- An application for a review of a licence may be made by an interested party – eg local resident or business – or a responsible authority eg police, fire, EHO. The request for a review is submitted to the licensing authority. The licensing authority and licensing officials cannot undertake a review on their own initiative.
- The request for a review must be based on the licensing objectives – crime and disorder, public safety, public nuisance and protection of children. It could, for example, be based on the fact that a condition of the licence is being ignored or that the way in which the outlet is now operating endangers one of these objectives.
- The licensing authority is obliged to consider the request and has the ability to disregard requests which are frivolous, vexatious or repetitious eg the same complaint being logged or an issue being raised which was dealt with when the licence was granted. In these circumstances, the licensing authority has the discretion to disregard the request. In practice, however, few will do so as the decision will risk legal challenge.
- The exception to this is a request made by the police or other statutory body. A request for a review initiated by a responsible authority is accorded far greater status than one submitted by a local resident. The licensing authority has no discretion here and must proceed to a formal review regardless of how frivolous or minor the grounds for the request. The process is unstoppable and can quickly snowball out of control.

The process

- If a request for a review is granted, the licensing authority must hold a hearing to consider the request in detail and to review any relevant representations. A copy of the request and the grounds for review is therefore submitted to the operator.

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- In addition, the licensing authority must advertise the application for a review of the licence, inviting representations about it from other interested parties. The wording of this aspect of the law is uncertain and it is not clear the advertising of the application opens up the entire licence to comment and review or whether representations are limited to the initial grounds for review. The latter is implied, but it is a moot point and will only be clarified by case law.
- Relevant representations may be those in support of the application to review but also in support of the operator and it would be open to outlets to solicit representations from their customers and supportive local residents to rebut complaints.
- There is no discretion for the licensing authority to abandon proceedings once begun unless representations are withdrawn. The process is automatic and will result in a hearing. Given that the hearing could result in the licence being revoked or suspended, licensable activities being excluded from the licence or stringent conditions applied, it must be defended and treated seriously.

Implications for licensed retailers

- We are seeing dramatically increased licensing activity by police, with ad hoc, informal inspections occurring on a regular basis. During these inspections, some police officers are asking for actions to be taken or changes to be made to operational practice, these are phrased as “recommendations” but are actually meant as requirements, with the threat of review action if these changes are not made. The police are therefore using the threat of review to impose new conditions on the licence.
- Whilst the licensing authority has the power to disregard complaints made by local residents, it cannot ignore requests made by the police, however frivolous. Review proceedings initiated by the police are unstoppable. It is vitally important, therefore, that they are defended at all costs – around £10,000 per defence – and costs may not be recouped from the police.
- Efforts must also be made to nip potential problems in the bud. Site managers and DPS must be made aware of the seriousness of police ‘recommendations’ and required to communicate these to head office at the earliest opportunity. All paperwork from the police should also be copied and forwarded for action. You may wish to ask the local police to copy correspondence to the premises licence holder as well as ‘the licensee’.
- These requests must be taken seriously and mechanisms be put in place to ensure that they are communicated to senior management. The initial comment is usually made to the DPS on site and letters following up a request for action are also addressed to the outlet.
- Operators should also be aware that the Government has recently clarified that the restriction of one request for review per outlet per year does not apply to the police and other statutory authorities. The police are also able to raise repetitive requests for a review to deal with persistent flouting of the law or failure to take action. This means that premises could find themselves targeted by the police and reinforces the need to build a good working relationship at a local and central level with the licensing inspector.

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