

Gambling Act 2005 Making Representations

The Gambling Act 2005 will enable thorough scrutiny of applications both by experts and by local residents and businesses.

'Responsible authorities' such as police, fire, the Gambling Commission, Customs and Excise, 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 (known as 'interested parties'), to make relevant representations about any application for new or for variations to licences.

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.

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

Notice must be given in three ways:

- a notice placed outside the premises for 28 consecutive days in a place where it can be conveniently read;
- in a newspaper or newsletter of local relevance, on at least one occasion within 10 days of the application being made; and
- to all responsible authorities within seven days of the application being made.

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).

At the Hearing the licensing authority can either grant the application or it can reject it.

If no relevant representations are made the licence or variation must be granted (subject to the mandatory conditions applicable under the Act).

2. Requesting a review of a premises licence

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 (see 9. below for definitions). 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.

The licensing authority can reject any ground for the review if it considers it be frivolous or vexatious. If not rejected, the licensing authority must hold a hearing to consider the application.

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

Interested parties:

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

- (a) lives sufficiently close to the premises to be likely to be affected by the authorised activities; or
- (b) has business interests that might be affected by the authorised activities; or
- (c) represents persons in either of these two groups.

Each case will be decided upon its merits. This Authority will consider the following as per the 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); and
- 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.

Interested parties can include the following: trade associations and trade unions, residents' and tenants' associations, and persons who

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are democratically elected such as Ward Councillors, Members of Parliament and Parish Councillors.

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 who have asked to be represented.

'Responsible authorities':

Section 157 of the Act details the necessary "responsible authorities", which 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 part of the premises are situated; and,
- HM Revenue & Customs

6. **Can the licensing authority impose conditions on a premises licence?**

If no relevant representations are made, the only conditions that can be imposed are the mandatory conditions provided for in the Act. If relevant representations are made, the licensing authority may modify or add conditions if necessary in order to promote the licensing objectives (see 9. below).

7. **What are relevant representations?**

When considering a representation, the first thing the licensing authority has to determine is whether the representation has been made by a responsible authority or an interested party. This is very important as only representations from these two categories of person can be deemed **admissible**. If the representation has not been made by a responsible authority or an interested party it is **inadmissible**.

The decision on this initial issue could be subject to legal challenge in the courts. There is no right of appeal under the Act against a licensing authority's determination that representations are not admissible.

After determining whether the representation has come from a responsible authority or interested party, and consequently whether it is admissible or inadmissible, the authority must then determine its

relevance. The only representations that are likely to be relevant are those that relate to the licensing objectives, or that raise issues under the licensing policy statement, or the Gambling Commission's guidance or codes of practice (ie those matters mentioned in section 153 of the Act).

For example, the following examples of possible representations would not be likely to be relevant:

- that there are already too many gambling premises in the locality (although it may be relevant if it points, as a result, to rising problems in crime, disorder, underage gambling or problem gambling);
- that the proposed premises are likely to be a fire risk;
- that the location of the premises is likely to lead to traffic congestion; or
- that the premises will cause crowds of people to congregate in one area, which will be noisy and a nuisance.

This list is by no means exhaustive, and each case must be decided on the facts.

8. What does frivolous or vexatious mean?

Linked to the above is the question of what is a 'frivolous' or 'vexatious' representation. Representations that could be considered 'frivolous' or 'vexatious' are more likely to come from interested parties. However, matters that licensing authorities will want to look at are likely to include:

- who is making the representation, and whether there is a history of making representations that are not relevant;
- whether it raises a 'relevant' issue; or
- whether it raises issues specifically to do with the premises that are the subject of the application.

9. What are the three licensing objectives?

The three licensing objectives to which all representations must relate are as follows:

- 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.