

AGENDA

Regulatory Sub Committee

Date: **Wednesday 20 April 2016**

Time: **10.30 am**

Place: **Committee Room one, The Shire Hall, St Peter's Square, Hereford, HR1 2HX**

Notes: Please note the **time, date** and **venue** of the meeting.

For any further information please contact:

Clive Lloyd, Governance Services

Tel: 01432 260249

Email: clive.lloyd@herefordshire.gov.uk

If you would like help to understand this document, or would like it in another format, please call Clive Lloyd, Governance Services on 01432 260249 or e-mail clive.lloyd@herefordshire.gov.uk in advance of the meeting.

Agenda for the Meeting of the Regulatory Sub Committee

Membership

Councillor BA Durkin
Councillor DW Greenow
Councillor MD Lloyd-Hayes

AGENDA

	Pages
1. ELECTION OF CHAIRMAN To elect a Chairman for the hearing.	
2. DECLARATIONS OF INTEREST To receive any declarations of interest by members in respect of items on the agenda.	
3. EXPEDITED/SUMMARY LICENCE REVIEW OF THE PREMISES LICENCE IN RESPECT OF: 'SPARKYS BAR AND CAFÉ, 18 WEST STREET, LEOMINSTER, HR6 8ES' - LICENSING ACT 2003 To consider an application for an 'expedited/summary licence review of the premises licence in respect of 'Sparkys Bar and Café, 18 West Street, Leominster, HR6 8ES' called by Inspector Robert Barnett.	11 - 36

The Public's Rights to Information and Attendance at Meetings

YOU HAVE A RIGHT TO: -

- Attend all Council, Cabinet, Committee and Sub-Committee meetings unless the business to be transacted would disclose 'confidential' or 'exempt' information.
- Inspect agenda and public reports at least five clear days before the date of the meeting.
- Inspect minutes of the Council and all Committees and Sub-Committees and written statements of decisions taken by the Cabinet or individual Cabinet Members for up to six years following a meeting.
- Inspect background papers used in the preparation of public reports for a period of up to four years from the date of the meeting. (A list of the background papers to a report is given at the end of each report). A background paper is a document on which the officer has relied in writing the report and which otherwise is not available to the public.
- Access to a public Register stating the names, addresses and wards of all Councillors with details of the membership of Cabinet and of all Committees and Sub-Committees.
- Have a reasonable number of copies of agenda and reports (relating to items to be considered in public) made available to the public attending meetings of the Council, Cabinet, Committees and Sub-Committees.
- Have access to a list specifying those powers on which the Council have delegated decision making to their officers identifying the officers concerned by title.
- Copy any of the documents mentioned above to which you have a right of access, subject to a reasonable charge (20p per sheet subject to a maximum of £5.00 per agenda plus a nominal fee of £1.50 for postage).
- Access to this summary of your rights as members of the public to attend meetings of the Council, Cabinet, Committees and Sub-Committees and to inspect and copy documents.
- **RECORDING OF THIS MEETING**
 - Please note that filming, photography and recording of this meeting is permitted provided that it does not disrupt the business of the meeting.
 - Members of the public are advised that if you do not wish to be filmed or photographed you should let the governance services team know before the meeting starts so that anyone who intends filming or photographing the meeting can be made aware.
 - The reporting of meetings is subject to the law and it is the responsibility of those doing the reporting to ensure that they comply.

Public Transport Links

There are bus stops directly outside the building. Hereford train station is a 15 minute walk, Hereford country bus station and Hereford city bus station are both a 5 minute walk from the Shirehall.

HEREFORDSHIRE COUNCIL

SHIRE HALL, ST PETERS SQUARE, HEREFORD HR1 2HX.

FIRE AND EMERGENCY EVACUATION PROCEDURE

In the event of a fire or emergency the alarm bell will ring continuously.

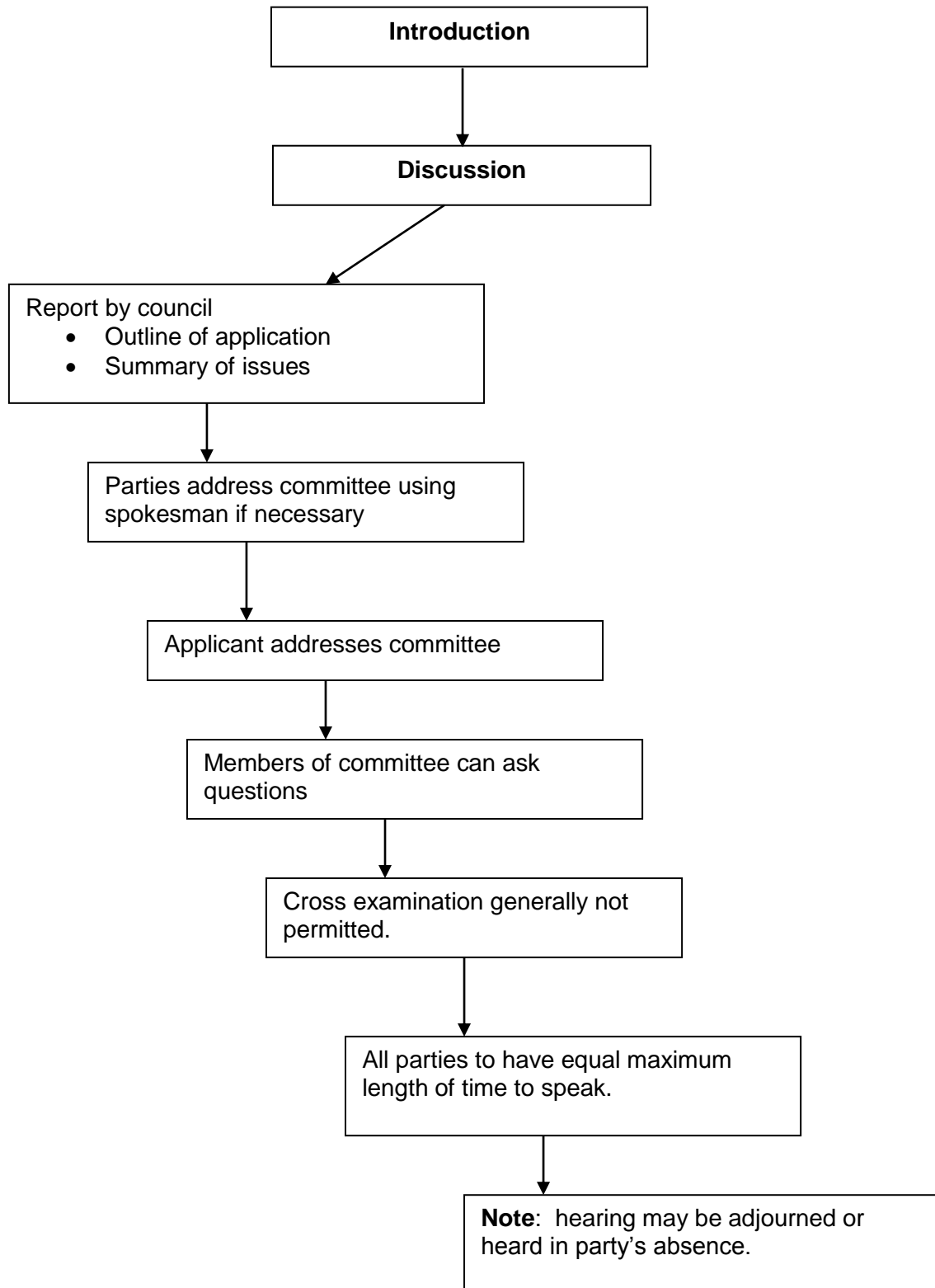
You should vacate the building in an orderly manner through the nearest available fire exit.

You should then proceed to the Fire Assembly Point which is located in the Shire Hall Side Car Park. A check will be undertaken to ensure that those recorded as present have vacated the building following which further instructions will be given.

Please do not allow any items of clothing, etc. to obstruct any of the exits.

Do not delay your vacation of the building by stopping or returning to collect coats or other personal belongings.

Licensing Hearing Flowchart





Meeting:	REGULATORY SUB-COMMITTEE
Meeting date:	20TH APRIL 2016
Title of report:	EXPEDITED/SUMMARY LICENCE REVIEW OF THE PREMISES LICENCE IN RESPECT OF: 'SPARKYS BAR AND CAFÉ, 18 WEST STREET, LEOMINSTER, HR6 8ES' - LICENSING ACT 2003
Report by:	FRED SPRIGGS – LICENSING OFFICER

Classification

Open

Key Decision

This is not an executive decision.

Wards Affected

Leominster

Purpose

To consider an application for an 'expedited/summary licence review of the premises licence in respect of 'Sparkys Bar and Café, 18 West Street, Leominster, HR6 8ES' called by Inspector Robert Barnett.

Recommendation

That:

Sub-Committee determine the interim steps necessary to prevent serious crime or serious disorder at the premises and to promote the licensing objectives in the overall interests of the local community. They should give appropriate weight to:

- The steps that are appropriate to assist with the prevention of serious crime and disorder,
- The representations (including supporting information) presented by all parties,
- The Guidance issued to local authorities under Section 53A of the Licensing Act 2003 by the Violent Crime Reduction Act 2006, and
- The Herefordshire Council Licensing Policy.

Options

1. The interim steps that the licensing authority can consider taking are:

Take no action or

Take any of the following steps: -

- (a) to modify the conditions of the licence;
- (b) the exclusion of the sale of alcohol by retail (or other licensable activities) from the scope of the licence;
- (c) to remove the designated premises supervisor;
- (d) to suspend the licence;

Where the authority takes a step mentioned in subsection (a) or (b), it may provide that the modification or exclusion is to have effect until the full review hearing.

Reasons for Recommendations

2. Ensures compliance with the Licensing Act 2003 and the Crime & Disorder Act 2006.

Key Considerations

3. The powers to call for an expedited review are contained in Section 53A of the 2003 Act by virtue of the Violent Crime Reduction Act 2006. The powers allow:
 - The police to trigger a fast track process to review a premises licence where the police consider that the premises are associated with serious crime or serious disorder (or both); and
 - The licensing authority to respond by taking interim steps quickly, where appropriate, pending a full review.

Applicant	Susan Thomas – Superintendent West Mercia Constabulary Represented by: - Inspector Bob Barnett	
Premise Licence Holder	Mr David Ronald Wicks The Flat, 3 Church Street, Leominster, HR6 8NE	
Solicitor	Not known	
Type of application: Expedited Review	Date received: 18/4/2016	Interim Steps Hearing 48 hours 20/4/2016

4. **Current Licence**

The current licence authorises the following licensable activities during the hours shown: -

A performance of live music	Friday-Saturday: 20:00 - 00:30
Any playing of recorded music	Tuesday-Thursday: 10:00 - 20:00 Friday-Saturday: 10:00 - 01:30
Provision of late night refreshment	Friday-Saturday: 22:00 - 02:00
Sale by retail of alcohol	Monday-Thursday, Sunday: 10:00 - 23:00 Friday-Saturday: 10:00 - 02:30

5. **The Grounds for the Review**

The grounds for the review and the Superintendent's authority are contained in Appendix 1 of the background papers.

6. The committee have to decide what action should be taken, if any, to prevent further outbreaks of serious crime and disorder and to promote the four licensing objectives in accordance with the recommendation.

Community Impact

7. Any decision is unlikely to have any significant effect of the local community.

Equality duty

8. There are no equality or human rights issues in relation to the content of this report.

Financial implications

9. There are unlikely to be any financial implications for the authority at this time.

Legal Implications

10. The premise licence holder may make representations against the interim steps taken by the licensing authority. There is not a time limit for the premises licence holder to make representation on the interim steps, although this would be within the normal review period of 28 days. On receipt of representations and if they are not withdrawn, a hearing must be arranged within 48 hours of receipt.

Risk Management

11. There is little risk associated with the decision at this time as the legislation allows representation to be made against the interim steps.

Consultees

12. Copies of the application and certificate have been sent to the responsible authorities.

Appendices

- a. Application for expedited review & Superintendent's certificate

- b. Summary Review Guidance issued by the Home Office

Background Papers

None.

Additional Information

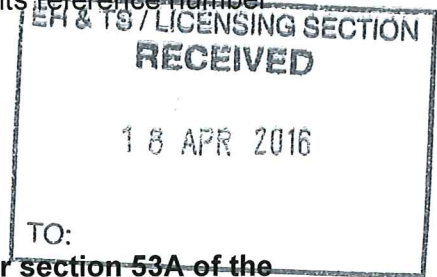
The committee attention is drawn to paragraph 3.6 and 3.7 of the 'Summary Review Guidance' issued by the Home Office which states:

- 3.6 The licensing authority, in deciding when its decision on interim steps should take effect, should consider the practical implications of compliance in relation to the premises. For example to comply with a modification of the conditions of a licence that requires employment of door supervisors, those running the premises may need some time to recruit appropriately qualified and accredited staff.
- 3.7 In addition, very careful consideration needs to be given to interim steps which would require significant cost or permanent or semi-permanent adjustments to premises which would be difficult to remove if the outcome of the subsequent full review was to withdraw or modify those steps. For example, making structural changes, installing additional CCTV or replacing all glassware with safer alternatives may be valid steps, but might be disproportionate if they are not likely to be deemed necessary following the full review (or any subsequent appeal). The focus for interim steps should be on the immediate measures that are necessary to prevent serious crime or serious disorder occurring. In some circumstances, it might be better to seek suspension of the licence pending the full review, rather than imposing a range of costly conditions or permanent adjustments'.

FORM FOR APPLYING FOR A SUMMARY LICENCE REVIEW

[Insert name and address of relevant licensing authority and its reference number (optional)]

Herefordshire District Council Licensing Authority



Application for the review of a premises licence under section 53A of the Licensing Act 2003 (premises associated with serious crime or disorder)

PLEASE READ THE FOLLOWING INSTRUCTIONS FIRST

Before completing this form please read the guidance notes at the end of the form. If you are completing the form by hand please write legibly in block capitals. In all cases ensure that your answers are inside the boxes and written in black ink. **Use additional sheets if necessary.**

I Police Inspector Robert BARNETT [on behalf of] the chief officer of police for the West Mercia police area apply for the review of a premises licence under section 53A of the Licensing Act 2003.

1. Premises details:

Postal address of premises, or if none or not known, Ordnance Survey map reference or description:

**Sparkys Bar and Café
18 West Street**

Post town: Leominster

Post code (if known): **HR6 8ES**

2. Premises licence details:

Name of premises licence holder (if known): David Ronald WICKS

Number of premises licence holder (if known): PR00499

3. Certificate under section 53A(1)(b) of the Licensing Act 2003 [Please read guidance note 1]:

I confirm that a certificate has been given by a senior member of the police force for the police area above that in his opinion the above premises are associated with

serious crime or disorder or both, and the certificate accompanies this application.

(Please tick the box to confirm)

4. Details of association of the above premises with serious crime, serious disorder or both:

[Please read guidance note 2]

Sparkys Bar and Café is located in Leominster town centre.

It mainly operates in the evening and at weekends it becomes a premises that basically is a night club with recorded music being played.

In the last 12 months at least 19 incidents have come to the attention of the police with regards to crime, disorder and nuisance at the premises. Most have happened at weekends when the premises is licenced until 0230hrs All but 4 of these matters have taken place after midnight with the majority occurring after 0100hrs

For a number of months the police have had concerns over the level and type of incidents that have been occurring, as many do involve excessive drinking and random acts of violence.

The police have visited the premises on a regular basis in order to provide public reassurance and to ensure that the management of the premises comply with the premises licence.

Since the beginning of January 2016, there have been 10 incidents brought to the attention of the police, since the start of April 2016, a total of 6 incidents have taken place.

The police are aware that the authority have recently sent a warning letter to the premises licence holder with regards to underage people being in the premises

This all in the view of the police has shown a steady increase in conduct that directly impacts on the licensing objectives and most importantly the safety and wellbeing of the public of Leominster.

At 0236hrs on Saturday 16 April 2016, the police received an emergency call to say there was disorder outside the premises. The caller said 'people are fighting and getting hurt', and 'One here might have a broken cheek bone' and 'Still fighting in the street'.

The police did attend and found two people injured, one with a significant facial injury which may be broken bones. The police were able to view CCTV at the premises that shows the disorder and does identify a potential suspect. This suspect has been arrested and the whole of the incident is subject to a police criminal investigation.

As part of the police investigation, a request was made to the management of Sparkys for the CCTV to be download. This has not happened as no-one at the time had the access or the ability to do this. This has prohibited the police investigation and does not comply with the premises licence.

The information to hand is that the suspect and others had been drinking excessively and they had been in Sparkys just prior to the incident taking place. Further information indicates that the suspect was drunk. The initial police enquiries indicate that these assaults were unprovoked.

The view of the police is that this matter was preventable and as it was due to excessive alcohol consumption at the premises and therefore should have been subject to control and management by the premises in order to promote the licensing objectives.

The cumulative impact of the incidents in the last 12 months and in particular the last few weeks is showing an increase in issues that are disproportionate to the town and the type of premises that Sparkys is licensed as.

The view is that the designated premises supervisor - who is also the premises licence holder - has failed in his responsibilities and has therefore failed to recognise the problems and therefore promote the licensing objectives.

This latest incident is viewed as serious and has been fully discussed with senior officers at Hereford Police Station. Other procedures have been considered and have been discounted at this time.

There is concern that if appropriate urgent action is not taken this situation will become worse

The view of West Mercia Police is that this committee suspend the premises licence for Sparkys pending a full review hearing.

Signature of applicant: R. Barnett



Date: 18 April 2016

Capacity: Police Inspector Safer Neighbour Team Leominster

Contact details for matters concerning this application:

Address:

**Harm Reduction Department
Hereford Police Station
Bath Street
Hereford. HR1 2HT**

Telephone number(s): 01432 347102

Email: HerefordAntiSocialBehaviour@westmercia.pnn.police.uk

Notes for guidance:

1. A certificate of the kind mentioned in the form must accompany the application in order for it to be valid under the terms of the Licensing Act 2003. The certificate must explicitly state the senior officer's opinion that the premises in question are associated with serious crime, serious disorder or both.

Serious crime is defined by reference to section 81 of the Regulation of Investigatory Powers Act 2000. In summary, it means:

- conduct that amounts to one or more criminal offences for which a person who has attained the age of eighteen and has no previous convictions could reasonably be expected to be sentenced to imprisonment for a term of three years or more; or
- conduct that amounts to one or more criminal offences and involves the use of violence, results in substantial financial gain or is conduct by a large number of persons in pursuit of a common purpose.

Serious disorder is not defined in legislation, and so bears its ordinary English meaning.

2. Briefly describe the circumstances giving rise to the opinion that the above premises are associated with serious crime, serious disorder, or both.

West Mercia Police
Herefordshire
Bath Street
Hereford

CERTIFICATE UNDER SECTION 53A(1)(b) OF THE LICENSING ACT 2003

I hereby certify that in my opinion the premises described below are associated with serious ~~crime / serious disorder~~ / both serious crime and serious disorder¹.

*Premises*²:

Sparkys Bar and Café
18 West Street
Leominster HR6 8ES

Premises licence number (if known): PR00499

Name of premises supervisor (if known): David Ronald WICKS

I am a Superintendent Susan Thomas ³ in the West Mercia police force.

I am giving this certificate because I am of the opinion that other procedures under the Licensing Act are inappropriate in this case, because⁴:

This is a serious criminal matter with an assault offence which that has resulted in suspected broken bones. In addition there have been a number of incidents in recent weeks that show a cumulative increase in disorder.

The nature and circumstances of the incident are serious and require prompt action. Therefore whilst other procedures have been considered, they are not appropriate in these circumstances

¹ Delete as applicable.

² Include business name and address and any other relevant identifying details.

³ Insert rank of officer giving the certificate, which must be superintendent or above.

⁴ Give a brief description of why other procedures such as a standard review process are thought to be inappropriate, e.g. the degree of seriousness of the crime and/or disorder, the past history of compliance in relation to the premises concerned.

(Signed) *[Handwritten Signature]* (Date) *18/4/2016.*

SUPERINTENDENT.



Home Office

Section 53A Licensing Act 2003

Summary Review Guidance

CONTENTS

- 1. Introduction**
- 2. The Steps – Summary Review**
- 3. The Licensing Authority and the Interim Steps**
- 4. Making representations against the Interim Steps**
- 5. The Review of the Premises Licence**
- 6. Right of Appeal**

ANNEX A

- 1. Certificate Under section 53A(1)(b) of the Licensing Act 2003**

ANNEX B

- 2. Application for the review of a premises licence under section 53A of the Licensing Act 2003 (premises associated with serious crime or disorder)**

INTRODUCTION

- 1.1 This guidance explains how to use the provisions in the Licensing Act 2003 (“the 2003 Act”), inserted by section 21 of the Violent Crime Reduction Act 2006, which allow a quick process for attaching interim conditions to a licence and a fast track licence review when the police consider that the premises concerned is associated with serious crime or serious disorder (or both).
- 1.2 This guidance has no statutory basis but is intended to assist police forces and licensing authorities when considering using the procedures.
- 1.3 The powers are set out in sections 53A to 53C of the 2003 Act and apply only where a premises licence authorises the sale of alcohol. They do not apply in respect of other premises licences, or to premises operating under a club premises certificate. The purpose of these powers is to complement existing procedures in the 2003 Act for tackling crime and disorder associated with licensed premises. Existing powers in Part 8 of the 2003 Act provide for the instant closure of premises by the police in some circumstances (in essence, disorder or nuisance) and the consequent review of premises licences by the licensing authority. The powers under sections 53A to 53C, which are in Part 3 of the 2003 Act, are aimed at tackling serious crime and serious disorder, in particular (but not exclusively) the use of guns and knives.
- 1.4 The powers allow:
 - the police to trigger a fast track process to review a premises licence where the police consider that the premises are associated with **serious** crime or **serious** disorder (or both); and
 - the licensing authority to respond by taking interim steps quickly, **where appropriate**, pending a full review.
- 1.5 In summary, the process is:
 - the chief officer of police for the area in which the premises are situated may apply to the licensing authority for an expedited review of a premises licence where a senior police officer has issued a certificate stating that in his/her opinion the premises are associated with serious crime or serious disorder (or both);
 - on receipt of the application and the certificate, the licensing authority must within 48 hours of the time of its receipt consider whether it is necessary to take interim steps pending determination of the review of the premises licence – the authority must in any event undertake a review within 28 days after the day of receipt of the application.
- 1.6 The options open to the licensing authority at the interim steps stage include:
 - modification of the conditions of the premises licence;
 - the exclusion of the sale of alcohol by retail from the scope of the licence;
 - removal of the designated premises supervisor from the licence; and

- suspension of the licence.

1.7 Following the full licence review, the licensing authority may do any of the above or may revoke the licence.

1.8 The purpose of this guidance is to:

- set out the circumstances where the power can be used; and
- outline the process and the steps at each stage.

THE STEPS

2. Triggering the expedited review

2.1 Section 53A of the Licensing Act 2003 sets out who may apply for an expedited review and the circumstances in which it can be used.

Application for expedited review

2.2 The chief officer of police for the area in which the premises are situated may apply to the relevant licensing authority for an expedited licence review if a **senior member** of the force has issued a **certificate** that in his/her opinion a licensed premises is associated with **serious crime or serious disorder (or both)**.

2.3 The key definitions used above are:

- **Senior member of the force:** This must be an officer of the rank of superintendent or above.
- **Certificate:** This is a formal note which identifies the licensed premises and includes a signed statement by a senior officer that he believes the premises is associated with serious crime, serious disorder or both. **This form is not prescribed in legislation. However, a sample form which forces may wish to adopt is attached at annex A to this guidance.**
- **Serious crime:** The tests to determine the kinds of conduct that amount to serious crime are set out in section 81(2) and (3) (a) and (b) of the Regulation of Investigatory Powers Act 2000. Those tests are that the conduct:
 - (a) constitutes an offence for which a person who is 21 years of age or over with no previous convictions could reasonably be expected to be sentenced to imprisonment for 3 years or more; and
 - (b) Involves the use of violence, results in substantial financial gain or is conduct by a large number of persons in pursuit of a common purpose.
- **Serious disorder:** There is no definitive list of behaviours that constitute serious disorder, and the matter is one for judgment by the local police. The phrase should be given its plain, ordinary meaning, as is the case under section 12 of the Public Order Act 1986 in which it is also used.
- **The application for a summary or expedited review:** this is an application made by, or on behalf of, the Chief Officer of Police under section 53A of the

2003 Act. **The application must be made in the form which is set out in Schedule 8A to the Licensing Act 2003 (Premises licences and club premises certificates) Regulations 2005 (SI 2005/42). The completed application must be accompanied by the certificate issued by a senior officer. The form which must be used is reproduced in annex B of this guidance.**

2.4 In deciding whether to sign a certificate, the senior officer will want to consider the following (as applicable):

- The track record of the licensed premises concerned and whether the police have previously had cause to give advice about serious criminal or disorderly conduct (or the likelihood of such conduct) attributable to activities taking place on the premises – it is not expected that this power will be used as a first response to a problem.
- The nature of the likely crime and/or disorder – is the potential incident sufficiently serious to warrant using this power?
- Should an alternative power be deployed? Is the incident sufficiently serious to warrant use of the powers in sections 161 to 165 of the 2003 Act to close the premises? Or could the police trigger a standard licence review to address the problem? Alternatively, could expedited reviews be used in conjunction with other powers (for example, modifying licence conditions following the use of a closure power).
- What added value will use of the expedited process bring? How would any interim steps that the licensing authority might take effectively address the problem?

2.5 It is recommended that these points are addressed in the chief officer's application to the licensing authority. In particular, it is important to explain why other powers or actions are not considered to be appropriate. It is up to the police to decide whether to include this information in the certificate or in section 4 of the application for summary review. The police will also have an opportunity later to make representations in relation to the full review.

2.6 In triggering the process, the police will wish to take into account the fact that an intended use of the power is to tackle the use of dangerous weapons and the violence they fuel. For example, in appropriate circumstances the police might want to make representations to the licensing authority suggesting that they modify the conditions of the premises licence to require searches of customers for offensive weapons upon entry. Under the powers in sections 53A to 53C, this could be done on an interim basis pending a full hearing of the issues within the prescribed 28-day timeframe.

2.7 Similarly, the power could, **where appropriate**, be used to reduce the risk of injury caused by glass by requiring the adoption of a safer alternative (but see paragraphs 3.6 and 3.7 below).

2.8 However, it should continue to be borne in mind that these are selective measures. It is not the aim to require all licensed premises to undertake these searches or use toughened glass. Rather, the policy aim is to provide a selective

tool, to be used proportionately, to limit this condition to those pubs that are at risk either because police intelligence shows there is a risk of knives/guns being carried or because crime and disorder has occurred on the premises.

3. The Licensing Authority and the interim steps

3.1 Within 48 hours of receipt of the chief officer's application, the licensing authority must give the premises licence holder and responsible authorities a copy of the application for review and a copy of the certificate, and must also consider whether it is necessary to take interim steps. When calculating the 48 hour period any non-working day can be disregarded.¹

3.2 The licensing authority may want to consult the police about the steps that it thinks are appropriate, pending the determination of the review, to address the immediate problems with the premises, in particular the likelihood of serious crime and/or serious disorder. The licensing authority may consider the interim steps without the holder of the premises licence having been given an opportunity to make representations. This does not, of course, mean that the licensing authority *cannot* afford such an opportunity if it thinks it appropriate and feasible to do so in all the circumstances.

3.3 The determination of interim steps is not a matter that may be delegated to an officer of the licensing authority. The relevant decisions are likely to be taken by a licensing sub-committee. It should also be noted that there is no requirement for a formal hearing in order to take interim steps. This means that the relevant sub committee members can communicate by telephone or other remote means in order to reach a decision. A written record should always be produced as soon as possible after a decision is reached.

3.4 The interim steps that the licensing authority must consider taking are:

- the modification of the conditions of the premises licence;
- the exclusion of the sale of alcohol by retail from the scope of the licence;
- the removal of the designated premises supervisor from the licence; and
- the suspension of the licence.

Modification of the conditions of the premises licence can include the alteration or modification of existing conditions or addition of any new conditions, including those that restrict the times at which licensable activities authorised by the licence can take place. Further examples of possible licensing conditions, including those aimed at tackling crime and disorder, can be found in the amended guidance issued under section 182 of the 2003 Act (available at:

www.homeoffice.gov.uk/publications/alcohol-drugs/alcohol/guidance-section-182-licensing).

3.5 If the licensing authority decides to take steps at the interim stage:

¹ This means that, for example, if the application was received at 3pm on a Friday, the 48 hour period would cover the remaining 9 hours on that Friday and the remaining 39 hours starting on the Monday morning (provided it was not a bank holiday). In this case the licensing authority would have to decide on interim steps by 3pm on the Tuesday.

- the decision takes effect immediately, or as soon after it as the licensing authority directs; but
- the licensing authority must give immediate notice of its decision and its reasons for doing so to the holder of the premises licence and the chief officer of police who made the application. The 2003 Act does not specify that the immediate notice has to be in writing. However, in an individual case the licensing authority may consider that the need for immediate communication at least initially requires a non-written approach, such as a telephone call. This may happen when, for example, the authority decides that the decision should have immediate effect. In such a case, the decision and the reasons for it should be explained clearly and in full to the licence-holder (or someone who may properly act for the licence-holder), and the call followed up as soon as possible with a written version of the decision and the reasons (for example, by email or fax) which is identical to, or not significantly different from, the version given by telephone.

3.6 The licensing authority, in deciding when its decision on interim steps should take effect, should consider the practical implications of compliance in relation to the premises. For example to comply with a modification of the conditions of a licence that requires employment of door supervisors, those running the premises may need some time to recruit appropriately qualified and accredited staff.

3.7 In addition, very careful consideration needs to be given to interim steps which would require significant cost or permanent or semi-permanent adjustments to premises which would be difficult to remove if the outcome of the subsequent full review was to withdraw or modify those steps. For example, making structural changes, installing additional CCTV or replacing all glassware with safer alternatives may be valid steps, but might be disproportionate if they are not likely to be deemed necessary following the full review (or any subsequent appeal). The focus for interim steps should be on the immediate measures that are necessary to prevent serious crime or serious disorder occurring. In some circumstances, it might be better to seek suspension of the licence pending the full review, rather than imposing a range of costly conditions or permanent adjustments.

4. Making representations against the interim steps

4.1 The premises licence holder may make representations against the interim steps taken by the licensing authority. There is no time limit for the premises licence holder to make representations on the interim steps, although in practice this would at some point be superseded by the full review which would have to be completed within 28 days of the application being received by the licensing authority. On receipt of such representations, the licensing authority must (if the representations are not withdrawn) hold a hearing within 48 hours of their receipt. When calculating the 48 hour period, any non-working day can be disregarded.

4.2 The licensing authority must give advance notice of the hearing to the premises licence holder and the chief officer of police. Given that these measures are designed to deal with serious crime and serious disorder on an interim basis only, the process is designed to avoid delay and, as such, significant portions of the Licensing Act 2003 (Hearings) Regulations 2005 (SI 2005/44) (which set out the usual processes governing the conduct of licensing authority hearings) do not apply in order to streamline the hearing process. One result of this is that licensing authority cannot adjourn the hearing to a later date if the licence holder fails to attend

at the scheduled time, as is the case under the normal review procedure. And as is the case with that procedure, the licence holder does not have to be present for the hearing to take place. In addition, there is no timescale for notifying the licence holder of the hearing under the modified process, providing the notification takes place before the hearing is held. However, it is imperative that the licence holder be given as much notice as is possible in the circumstances to afford the holder a maximum practicable opportunity to prepare for and attend the hearing. Licensing authorities should bear in mind that the usual principles of public law decision-making will apply to interim determinations, in a form that has regard to the statutory context of an expedited process.

4.3 At the hearing the licensing authority must:

- consider whether the interim steps are appropriate for the promotion of the licensing objectives; and
- determine whether to withdraw or modify the steps taken.

4.4 When considering the case the licensing authority must take into account:

- the senior officer's certificate that accompanied the application;
- the chief officer's representations (if any); and
- any representations made by the premises licence holder.

4.5 There is no right of appeal to a magistrates' court against the licensing authority's decision at this stage.

5. The review of the premises licence

5.1 The licensing authority must hold a review of the premises licence within 28 days after the day of receipt of the chief officer's application. This must take place even if the chief officer asks to withdraw his application or representations. At the hearing, the licensing authority must:

- consider what steps it considers appropriate for the promotion of the licensing objectives; and
- decide which interim steps (if there are any) cease to have effect altogether or become the subject of any steps which it considers are appropriate when making its determination on the review.

5.2 The steps the licensing authority can take are:

- the modification of the conditions of the premises licence;
- the exclusion of a licensable activity from the scope of the licence;
- the removal of the designated premises supervisor from the licence;
- the suspension of the licence for a period not exceeding 3 months; and
- the revocation of the licence.

Modification of the conditions of the premises licence can include the alteration or modification of existing conditions or addition of any new conditions, including those that restrict the times at which licensable activities authorised by the licence can take place. Further examples of possible licensing conditions, including those aimed at tackling crime and disorder, can be found in the amended guidance under section 182 of the 2003 Act.

5.3 The licensing authority must:

- advertise the review inviting representations from any persons for no less than seven consecutive days, by notice as described in regulation 38 of the Licensing Act 2003 (Premises licences and club premises certificates) Regulations 2005 (SI 2005/42) and, if applicable, on the licensing authority's website (see regulation 38(1)(b) of the above). The relevant notices should be published on the day after the day of receipt of the chief officer's application.
- advertise that any representations made by the premises licence holder, responsible authority and any other persons should be submitted to the licensing authority within 10 working days of the advertisement of the review appearing.
- give formal notice of the hearing no later than five working days before the day or first day on which the hearing is to be held to the premises licence holder and to every responsible authority².

5.4 A party shall give to the authority a notice no later than two working days before the day or the first day on which the hearing is to be held stating –

- whether he intends to attend or be represented at the hearing;
- whether he considers a hearing to be unnecessary.
- whether he would like permission for any other person (other than the person he intends to represent him at the hearing) to appear at the hearing and, if so, explain on which points that person will be able to contribute.

5.5 The regulations relating to hearings are set out in the Licensing Act 2003 (Hearings) Regulations 2005 (S.I. 2005/44). They apply to final hearings under the section 53A(2)(b) in a similar way to hearings following closure orders under section 167 of the 2003 Act (it should be emphasised that the truncated version of the hearings regulations described in paragraph 4.2 above applies to interim hearings only). The issues they address include who can make representations and what those representations can be about. It is therefore possible for responsible authorities or any other persons to make representations in relation to any of the licensing objectives, not just crime and disorder. Similarly, where it is in the public interest, the regulations relating to the exclusion of individuals from hearings, or conducting the hearing in private, will apply.

5.6 The licensing authority must take into account any relevant representations made. Relevant representations are those that:

² Responsible authorities are defined under sections 13(4) and 69(4) of the 2003 Act.

- relate to one or more of the licensing objectives;
 - have not been withdrawn; and
 - are made by the premises licence holder, a responsible authority or any other person (who is not also a responsible authority).
- 5.7 The licensing authority must notify its decision and the reasons for making it to:
- the holder of the premises licence;
 - any person who made relevant representations; and
 - the chief officer of police who made the original application.

6. Right of Appeal

6.1 An appeal may be made to the magistrates' court within 21 days of the licence holder being notified of the licensing authority's determination on the review. An appeal may be made by the premises licence holder, the chief officer of police and/or any other person who made relevant representations.

6.2 The decision of the licensing authority, following the review hearing, will not have effect until the end of the period allowed for appeal, or until the disposal of the appeal.

[insert name and address of police force]

Example Form

Annex A

CERTIFICATE UNDER SECTION 53A(1)(b) OF THE LICENSING ACT 2003

I hereby certify that in my opinion the premises described below are associated with serious crime / serious disorder / both serious crime and serious disorder³.

*Premises*⁴:

Premises licence number (if known):

Name of premises supervisor (if known):

I am a _____⁵ in the
police force.

I am giving this certificate because I am of the opinion that other procedures under the Licensing Act are inappropriate in this case, because⁶:

.....

³ Delete as applicable.

⁴ Include business name and address and any other relevant identifying details.

⁵ Insert rank of officer giving the certificate, which must be superintendent or above.

⁶ Give a brief description of why other procedures such as a standard review process are thought to be inappropriate, e.g. the degree of seriousness of the crime and/or disorder, the past history of compliance in relation to the premises concerned.

(Signed)

(Date)

Statutory Form For Applying For A Summary Licence Review

Annex B

[Insert name and address of relevant licensing authority and its reference number (optional)]

Application for the review of a premises licence under section 53A of the Licensing Act 2003 (premises associated with serious crime or disorder)

PLEASE READ THE FOLLOWING INSTRUCTIONS FIRST

Before completing this form please read the guidance notes at the end of the form. If you are completing the form by hand please write legibly in block capitals. In all cases ensure that your answers are inside the boxes and written in black ink. **Use additional sheets if necessary.**

I [on behalf of] the chief officer of police for the police area apply for the review of a premises licence under section 53A of the Licensing Act 2003.

1. Premises details:

Postal address of premises, or if none or not known, ordnance survey map reference or description:

Post town:

Post code (if known):

2. Premises licence details:

Name of premises licence holder (if known):

Number of premises licence holder (if known):

3. Certificate under section 53A(1)(b) of the Licensing Act 2003 [Please read guidance note 1]:

I confirm that a certificate has been given by a senior member of the police force for the police area above that in his opinion the above premises are associated with serious crime or disorder or both, and the certificate accompanies this application.

(Please tick the box to confirm)

4. Details of association of the above premises with serious crime, serious disorder or both:

[Please read guidance note 2]

Signature of applicant:

Date:

Capacity:

Contact details for matters concerning this application:

Address:

Telephone number(s):

Email:

Notes for guidance:

1. A certificate of the kind mentioned in the form must accompany the application in order for it to be valid under the terms of the Licensing Act 2003. The certificate must explicitly state the senior officer's opinion that the premises in question are associated with serious crime, serious disorder or both.

Serious crime is defined by reference to section 81 of the Regulation of Investigatory Powers Act 2000. In summary, it means:

- conduct that amounts to one or more criminal offences for which a person who has attained the age of eighteen and has no previous convictions could reasonably be expected to be sentenced to imprisonment for a term of three years or more; or
- conduct that amounts to one or more criminal offences and involves the use of violence, results in substantial financial gain or is conduct by a large number of persons in pursuit of a common purpose.

Serious disorder is not defined in legislation, and so bears its ordinary English meaning.

2. Briefly describe the circumstances giving rise to the opinion that the above premises are associated with serious crime, serious disorder, or both.



Home Office



ISBN: 978-1-84987-918-7
Published by the Home Office

© Crown Copyright 2012

