



HEREFORDSHIRE  
COUNCIL

**The Gambling Act 2005 (Proceedings of Licensing Committees and Sub-committees) (Premises Licences and Provisional Statements) (England & Wales) Regulations 2007**

**HEARING PROCEDURE for the Licensing Committee under the GAMBLING ACT 2005**

N.B. All references to the Committee will include the Regulatory Licensing Committee and any sub-committee of the Regulatory Licensing Committee as appropriate.

**1. Pre-Hearing Date**

- a. In accordance with the Gambling Act 2005 where relative representation(s) are made in relation to an application for a: -
  - premise licence
  - variation of a premise licence
  - transfer of a premise licence
  - re-instatement of a premise licence
  - provisional statement
  - review of a premise licencethe Authority must hold a hearing to consider them unless all the parties have notified the Authority that they consent to the determination of the application without a hearing.
- b. All hearings will be held as soon as is reasonably practicable after the expiry of any period for representations as prescribed.
- c. 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”).
- d. The notice will state the date, time and place at which the hearing is to be held and will be sent out so that in the ordinary course of events it is received no later than 10 working days before the first day on which the hearing is to be held.
- e. The Regulations state that as a minimum requirement the notice of hearing sent to the applicant, and if a review application, to the licensee, 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;
- f. The Licensing Authority has decided that, in the interests of natural justice, these documents will also accompany the notice of hearing when sent to all those who have made representations, without them first requesting copies.

## 2 Time Limits

- a. In certain circumstances, the licensing authority may extend time limits provided for in the Regulations and this Procedure, where it considers this to be necessary in the public interest.
- b. The Committee may at any time postpone a hearing to a specified date or arrange for a hearing to be held on a date specified by the committee.
- c. In any case where the hearing is to be held on more than one day, the relevant committee must arrange for the hearing to take place on consecutive working days.
- d. If a decision is not reached at the hearing then the Authority has 5 working days to reach a decision (Reg. 13 SI 173).

## 3. Attendance, Representations and Supporting Evidence

- a. 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;
  - give further information and respond to any point that the authority has requested clarification on, including the calling of a witness in support of their application, representations or notice (as applicable);
  - question any other party or witness if permission to do so is granted by the committee; and
  - address the licensing authority.
- b. 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**, stating: -
  - i. whether he intends to attend or be represented at the hearing;
  - ii. whether he considers a hearing to be unnecessary;
  - iii. whether he 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. This is to be 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.

## 4. At the Meeting

- a. The decision making process will be carried out with regard to making decisions about premises licences and temporary use notices and should aim to permit the use of premises for gambling in so far as it thinks it is:

- in accordance with any relevant Codes of Practice under section 24 of the Act
  - in accordance with any relevant Guidance issued by the Commission under section 25 of the Act
  - in accordance with the Statement of Principles, and
  - reasonably consistent with the licensing objectives.
- b. At any hearing, the Committee (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 him to return, or
  - (b) permit him to return only on such conditions as the Sub-committee may specify,
  - (c) permit him to submit in writing, before the end of the hearing, any information which he would have been entitled to give orally had he not been required to leave; and
  - (d) take into account that information in reaching a determination of the application or review.
- c. All hearings must take place in public.
- d. However the Committee may direct that all or part of the hearing may be held in private if it is satisfied that it is necessary in all the circumstances of the case, having regard to: -
- Any unfairness to a party is likely to result from a hearing in public; and
  - The need to protect as far as possible, the commercial or other legitimate interests of a party.

## 5. **Procedure at Meeting**

- a. The procedure to be applied is as set out below. The Hearing will take the overall form of a discussion led by the Committee.
- b. The Committee may proceed in the absence of a party (or representative) if the party has: -
- informed the committee that he or she does not intend to attend or be represented at a hearing,
  - failed to inform the committee whether he or she intends to attend; or
  - left the hearing in circumstances enabling the committee to reasonably to conclude that he does not intend to participate further.
- c. If a party, who has indicated that he or she intends to attend, fails to attend or be represented at a hearing the Committee may: -
- 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 hold the hearing in the party's absence.
- d. Where the authority holds the hearing in the absence of a party, the Committee will consider at the hearing the application, representations or notice made by that party as set out below.

- e. The Sub-committee will not take into account any written comments or documentary evidence from a party which is first produced at the hearing, without the consent of all parties in attendance at the hearing.
- f. Cross-examination shall not be permitted unless the Committee considers that cross-examination is required for it to consider the representations, application or notice as the case may require.
- g. The precise format and order of events on the day, however, is a matter for the Chairman.
- h. Appointment of Chairman by the Members from amongst their number where one has not been appointed in advance.
- i. The Chairman of the Committee will-
  - (i) introduce those present at the hearing and outline their role where appropriate;
  - (ii) ensure that the parties to the hearing 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.
- j. 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.
- k. 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 an officer.
- l. 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.
- m. 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.
- n. Any party may question any other party on any matter that is relevant to the application or a review or to any representations made on the

application or review, where the relevant Sub-committee considers that in all the circumstances it is appropriate to do so.

- o. Each party must also be allowed to provide further information on, or explanation of, any matter on which the relevant Sub-committee has indicated that it wants further clarification.
- p. After each speaker has given evidence, a question or questions may be put: -
  - to that person, with the consent of the Committee and through the Chairman, by:
    - another party to the hearing (in order of officers of the responsible authorities, interested parties, the applicant and or licensee, or their representative, as determined by the Chairman);
    - the officer or their representative to clear up any points raised in that questioning;
    - the applicant or their representative to clear up any points raised in that questioning; and
    - the legal advisor, on behalf of and with the consent of the Chairman only, to assist in their advice to the Committee on the meaning of the evidence submitted in relation to interpretation of statement of principles, guidance and legislation;
    - to any person by the Members of the Committee.
- q. The Chairman will invite the applicant or licensee to comment upon any ground of objection not yet addressed by the Committee (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 Committee.
- r. The applicant should be prepared to answer any questions by Members of the Committee about those objections.
- s. 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 applicant or licensee
- t. The Committee will then adjourn to make its determination of the application. All parties will then withdraw, directly or through retirement of the Committee. 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 Clerk acting solely in that role and the Committee's legal advisor. The legal advisor's role is to:
  - (i) advise the Committee 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 Committee in formulating their reasoning and any conditions.
- v. Neither the administrator nor the legal advisor may advise the Committee on the merits or otherwise of granting, refusal or revocation of a licence (including modification of conditions).
  - w. If further information is required from one party, the Committee will reconvene the hearing for all parties to be present whilst it is obtained.

## **6. Committee Decision**

- a. The Committee will normally make its determination at the conclusion of the hearing.
- b. Where that is the case, all parties will be recalled and the determination 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.
- c. Where the Committee cannot make its determination at the conclusion of the hearing, it must (where permitted) make its determination within the period of five working days beginning with the day after the last day on which the hearing was held.
- d. Formal notification of the Committee's determination and related information will then be issued to all parties to the hearing, in writing and as soon as practicable.
- e. A Committee may disregard any irregularity resulting in a failure to comply with the 2007 Hearing Regulations where that irregularity comes to its attention prior to making a determination of the application or review, subject to taking such steps as it considers necessary to remedy any prejudice to any person caused by the said irregularity.
- f. A relevant Committee may correct clerical mistakes in any document recording a determination of the Sub-committee, or errors arising in such a document from an accidental slip or omission.
- g. 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 Committee's findings of fact, the decision and the reasons for that decision.

## **7. Interpretation**

"the Act" means the Gambling Act 2005;  
"applicant" means a person who makes an application;

"application" means an application made under sections 159, 187, 188, 195, 197 or 204;

"relevant committee", "Sub-Committee" or "Committee" means a licensing committee to which functions are delegated by virtue of section 154(1), or a licensing sub-committee empowered to discharge such functions by arrangement under section 10(1) of the Licensing Act 2003;

"notice of hearing" means a notice given to a party in accordance with regulation 5;

"party" means a person to whom a notice of hearing is given in accordance with regulation 5(1);

"representations" means representations made in accordance with regulations under section 161 in relation to an application, or section 197(6) or 200(5) in relation to a review;

"review" means a review under section 201; and

"working day" means a day which is not a Saturday or a Sunday, Christmas Day, Good Friday or a bank holiday in England and Wales under the Banking and Financial Dealings Act 1971[3].

For the purposes of these Regulations, a reference to a review being determined is a reference to the licensing committee deciding what, if any, action it proposes to take under section 201 following a review.

A reference in these regulations to a numbered section or sub section is a reference to that section or sub section of the Act so numbered, unless the contrary is indicated.

***For avoidance of doubt these notes reflect the intended procedures to be followed at hearings before the Regulatory Committee of the Herefordshire Council. In event of any conflict between these procedures and the relevant regulations namely The Gambling Act 2005 (Proceedings of Licensing Committees and Sub-committees) (Premises Licences and Provisional Statements) (England & Wales) Regulations 2007 then the regulations will prevail.***