



HEREFORDSHIRE  
COUNCIL

**LICENSING ACT 2003 PROCEDURE FOR HEARINGS**

**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 Licensing Act 2003 where relative representations are made the Authority must hold a hearing to consider them.
- b. All hearings will be held within the time limits specified within the regulations and notice of hearing shall be given accordingly.
- c. Where a hearing is to be held on more than one day the hearing will be arranged to take place on consecutive working days.
- d. A notice detailing the date, time and place at which the hearing is to be held will be made in accordance with the regulations.
- e. Notice of hearing will contain the following information:
  - The rights of the parties
  - The consequences if the party does not attend
  - The procedure to be followed at the hearing
  - And particular points on which the Authority request clarification from the parties for the hearing.all in accordance with the regulations.
- f. Notice of hearing shall be accompanied by relative documents as described in Schedule 3 of the regulations.
- g. A 'notice of intention' which contains the following information will be sent to the parties concerned to state whether or not: -
  - they will be attending the hearing or represented
  - they consider the hearing to be unnecessary and the reasons why
  - they request permission for another person to appear at the hearing to make on their behalf a point or points on which that person may be able to assist the authority in respect of the application, representation or notice
  - the applicant wishes to be kept updated by email.

- h. The Authority may dispense with a hearing if all parties have agreed in writing that it is unnecessary. The Authority will forthwith give notice to the parties concerned to this effect.
- i. Any representation may be withdrawn by giving written notice to the Authority not less than 24 hours before the hearing or orally on the day of the hearing.
- j. The Authority may extend a statutory time limit (defined within the regulations) where it considers this to be necessary in the public interest and will give notice to the parties concerned forthwith of the period of extension and reason(s) for it. The Authority may not extend a time period beyond the period in which the application would either be automatically granted or rejected under the Licensing Act 2003.
- k. The Authority may adjourn a hearing to a specified date or to arrange for a hearing to be held on specified additional dates where it is considered necessary for consideration of any representation or notice made by a party. The Authority will notify the parties concerned of the date, time and place of the hearing or the additional dates, times and places.
- l. Where the Authority has given notice to a party that they require clarification of a particular point then that party shall give further information in support of their application, representation or notices.
- m. When a party has informed the authority that they do not intend to attend the hearing or be represented at it, then it may proceed in their absence.
- n. When a party has not informed the authority that it will not be attending, or if they fail to attend or to be represented at the hearing, then the authority may either: -
  - a) adjourn the hearing to a specified date, where it considers it to be necessary in the public interest to do so; or
  - b) hold the hearing in their absence
- o. If the hearing is adjourned the parties will be notified forthwith of the new date, time and place of the hearing. If the hearing is held in their absence then the authority will consider their application and any representation or notice made by them.
- p. It shall be the responsibility of the applicant to produce evidence that the required press notice for a variation of a premises licence or club premises certificate or application of provisional statement has been published in the local press.
- q. The Committee at its discretion may adjourn the hearing until a date agreed by all parties to allow the evidence to be produced.

## **2. The Hearing**

- a. The hearing will take the form of a discussion led by the Authority
- b. A party may attend a hearing and may be assisted or represented by any person whether legally qualified or not
- c. The hearing will take place in public unless a decision is made by the Committee to exclude the public from all or part of the hearing if they consider it to be in the public interest to do so. A party and any person assisting or representing a party may be treated as a member of the public.
- d. Where any notice received from a party containing a request for a named person together with a brief description of the point or points on which that person made be able to assist the authority is made such permission shall not be unreasonably withheld.
- e. If a party has informed the Authority that they do not intend to attend or be represented at the hearing, the hearing will proceed in their absence.
- f. If a party is not attendance and has failed to inform the Authority that they do not intend to attend or be represented at the hearing, the Committee may adjourn the hearing, if they consider it necessary to do so in the public interest or they may proceed in the party's absence.
- g. If the hearing proceeds in the absence of the party the Committee will consider the application and any representations or notice made by the party.
- h. If a party wishes to withdraw any representations and has not done so prior to the hearing, they may do so orally at the hearing.
- i. Information requested by the authority in respect of clarification of a particular point shall be provided to the committee at the hearing in support of any application, representation or notice.

### **3. The Procedure**

- a. The Chair of the Committee will introduce all parties present, including the applicant and representatives and will explain the procedure to be followed at the hearing.
- b. The Committee will then consider: -
  - i) Any notice received from a party containing a request for a named person together with a brief description of the point or points on which that person made be able to assist the authority: and/or
  - ii) Any application by a party for an extension of the 10-minute time period.
  - iii) Any request to produce further documentary or other information in support of an application, representation or notice
- c. Officers will present a report outlining the application to be considered by the Committee and a summary of the issues identified.
- d. Parties who have made representations will be invited to address the Committee within the 10 minute allocated time slot (unless otherwise agreed) in the following order where applicable: -
  - West Mercia Police
  - Hereford and Worcester Fire Brigade
  - Representatives from the Health and Safety Executive
  - Local Authority Officers
  - Other persons making relevant representations
  -
- e. The applicant will then be invited to address the Committee.
- f. Parties will be given the opportunity to request permission from the Committee to cross-examine any other party.

### **4. Representations**

- a. In considering representations or notice made by a party, the Committee will only consider documentary or other information produced by the party in support of their representations, application or notice either before the hearing or with the consent of the committee and all parties present.
- b. The Authority will disregard any information provided by a party that is not relevant to: -
  - the application or representations; and
  - the promotion of the licensing objectives.

## **5. Examination**

- a. A party may only question another party or address the authority if give permission by the Committee to do so.
- b. The Members of the Committee will be able to ask questions of any party, during the hearing.
- c. Generally cross-examination should not be permitted unless the authority considers that the cross examination is required for it to consider, the representation(s), application or notice as the case may require.

## **6. Time**

- a. The Committee will allow all parties an equal maximum length of time to address the Committee. This period will be restricted to 10 minutes for each party, unless requested by the applicant in writing five working days before the hearing that a longer time is required and stating the reasons for the extension. The Committee shall at their absolute discretion decide whether any such extension shall be permitted

## **7. Disruption of Meeting**

- a. The Committee will require anyone behaving in a disruptive manner to leave the hearing. If they are not permitted to return to address the Committee, the Committee will allow them to submit, in writing, the information they would have been entitled to give orally had they not been required to leave.

## **8. Decision**

- a. The Committee will determine the application in accordance with the requirements of the Licensing Act 2003, the Herefordshire District Council Licensing Policy and the relevant regulations.
- b. Where an application is made for: -
  - (i) an application for a premises licence made at the same time as an application for conversion of an existing licence
  - (ii) an application for a club certificate made at the same time as an application for a conversion of an existing club certificate
  - (iii) a counter notice following police objection to temporary event notice
  - (iv) review of premises licence following closure order
  - (v) determination of application for conversion of existing licence
  - (vi) determination of application for conversion of existing club certificate
  - (vii) determination of application by holder of a justices' licence for grant of personal licence),

the authority will make its determination at the conclusion of the hearing.

In any other case the authority will make its determination within the period of five working days beginning with the day or the last day on which the hearing is held.

- c. Where a hearing has been dispensed with the authority will make its determination within the period of ten working days beginning with the day the authority gives notice to the parties of that affect.
- d. Determination of the hearing will be given forthwith to all the parties concerned unless the regulations make provision of a further period in which case it will be given prior to the expiry of that period.
- e. The notice of determination will be in writing and will contain information regarding the right of appeal. The Chief Officer of Police will be informed of the decision forthwith even if not present.

## **9. MISCELLANEOUS**

- a. A hardcopy record will be kept of the proceedings in respect of any hearing or appeal and will be kept for six years from the date of determination.
- b. Any irregularity resulting from any failure to comply with any provision of the Regulations, before the authority has made a determination shall not of itself render the proceedings void.
- c. In any case of such an irregularity, the authority shall, if it considers that any person may have been prejudiced as a result of the irregularity, take such steps as it thinks fit to cure the irregularity before reaching its determination.
- d. Clerical mistakes in any document recording a determination of the authority or errors arising in such document from an accidental slip or omission may be corrected by the authority.
- e. Any notices required to be given by these Regulations must be given in writing.
- f. The requirement shown in paragraph e. above shall be satisfied where: -
  - (i) the text of the notice—
    - is transmitted by electronic means;
    - is capable of being accessed by the recipient;
    - is legible in all material respects; and
    - is capable of being reproduced in written form and used for subsequent reference;
  - (ii) the person to whom the notice is to be given has agreed in advance that such a notice may be given to them by electronic means; and
  - (iii) forthwith on sending the text of the notice by electronic means, the notice is given to the recipient in writing.
- g. Where the text of the notice is transmitted by electronic means, the giving of the notice shall be effected at the time the requirements of paragraph (2)(a) are satisfied.

## 10. Interpretation

“the Act” means the Licensing Act 2003;

“authority” means, in relation to a hearing, the relevant licensing authority which has the duty under the Act to hold the hearing which expression includes the licensing committee or licensing sub-committee discharging the function of holding the hearing;

“determination” is to be interpreted in accordance with Schedule 4;

“hearing” means the hearing referred to in column 1 of the table in Schedule 1 as the case may require;

“legible in all material respects” means that the information contained in the notice is available to the recipient to no lesser extent than it would be if given by means of a document in written form;

“notice of hearing” means the notice given under regulation 6(1);

“party to the hearing” means a person to whom the notice of hearing is to be given in accordance with regulation 6(1) and “party” and “parties” shall be construed accordingly.

“regulations” means The Licensing Act 2003 (Hearings) Regulations 2005.

*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 notes and the relevant regulations namely The Licensing Act 2003 (Hearings) Regulations 2005 as amended then the regulations will prevail.*