

Change in the Law - Members can now call for a Review of Alcohol and Entertainment Licences

The legislation has changed so that under the Licensing Act 2003, elected Members are now 'Interested Parties' in their own right.

This means that you, as an elected Member, can request a Review of a Premises Licence or a Club Premises Certificate. Additionally, you can put in Representations about new and variation applications for such Licences. You are not required to live in the vicinity or in the same ward as the premises you are seeking to review or are making representation about, and you are not required to have been asked to act by any other person or body. You will, however, need to be able to put forward evidence which links to the specific premises to support your Review request or Representation.

Previous to this change Members could only make Representations or request a Review if they lived in or had a business in the vicinity of the premises, or had been specifically asked to represent a constituent(s) in such matters.

Lacors have provided a useful FAQ fact sheet for members.

For further information contact Rachel Andrew, Principal Licensing Officer on 01453 754401 or email rachel.andrew@stroud.gov.uk

Elected members as Interested Parties: FAQ

In offering this advice LACORS wishes to make it clear that:

- *Legislation may change over time and the advice given is based on the information available at the time the guidance was produced. It is not necessarily comprehensive and is subject to revision in the light of further information.*
- *Only the courts can interpret statutory legislation with any authority.*
- *This advice is not intended to be a definitive guide to, nor substitute for, the relevant law. Independent legal advice should be sought where appropriate.*

Please note that this list is not exhaustive and will be updated whenever new questions and scenarios are submitted to LACORS.

Q. Can all councillors in England and Wales make representations and call for reviews?

A. Nearly all councillors are now “interested parties” under the Licensing Act 2003 and can make representations in their own right in response to premises licence and club premises certificate applications in the area of the authority for which they are also members.

If your council is a licensing authority for the premises or club in question, then you are an interested party. If your council is not a licensing authority then you are not an interested party.

Q. What is the status of Parish/Town councillors?

A. Parish/town councillors are not interested parties in their own right, but can be involved as representatives of interested parties, including the parish/town council itself, instead. For example, a parish or town councillor can speak at a hearing on behalf of a parish/town council, individual resident or organisation that has made a representation.

Q. What is the status of elected mayors?

A. Elected mayors are not interested parties. This is because elected mayors are not included in the statutory definition of “member of the relevant licensing authority”. Section 39(5A) of the Local Government Act 2000 states that a reference in any enactment to a member or councillor of a local authority does not include a reference to an elected mayor. There are specific exceptions to this provision, which are listed in other regulations, and the Licensing Act 2003 is not included in those regulations.

Q. Do I need to represent the ward in which the premises is located?

A. No, you can make representations or apply for a review in relation to any premises in any ward within your council’s area.

Q. Can I make representations or call for a review even when none of my constituents has approached me formally to do so?

A. Yes. The new provisions mean that all elected members of local authorities that are licensing authorities are now “interested parties” in their own right under the Licensing Act 2003 in the area of the authority for which they are also members.

Q. Can I act as a representative at a hearing on behalf of a resident or local business or other local organisation who have asked me to speak on their behalf?

A. Yes; you can represent another interested party (or parties) who has made a representation. You are subject to the rules of conduct for councillors set out in the National Model Code of Conduct (The Local Authorities (Model Code of Conduct) Order 2007 ("the Model Code") when you take part in the hearing.

In this scenario you do not need to have made a representation in your own right, but you must ensure that you can demonstrate to the licensing authority that you have been requested to represent the interested party or parties in question.

Q. I am a member of the licensing committee. Can I make representations and call for reviews? Can I address the licensing sub-committee as an interested party at a hearing?

A. Yes, but the Model Code prohibits you from sitting as a member of the sub-committee when it considers the application that you are involved in. You should also consult the DCMS Guidance which addresses this point in detail.

Please also see LACORS leaflet "Elected Member Guidance on the Licensing Act 2003" for more information, and take advice from your council's monitoring officer for more specific guidance.

Q Does a representation or call for review by a councillor carry more weight than those submitted by residents?

A. No. There is no provision within the Licensing Act 2003 for councillor representations or review applications to be given any priority or additional consideration by the licensing sub-committee.

Q. What concerns can I include in my representation?

A. Only "relevant representations" can be considered by the licensing authority. Representations complaining about general problems in an area or the fact that there are "too many" licensed premises in an area, for example, **are not** relevant representations. Representations should address the effect of the application on one or more of the licensing objectives, i.e.:-

- The prevention of crime and disorder;
- Public safety;
- The prevention of public nuisance; and
- The protection of children from harm.

Q. What other factors should I be aware of when making a representation?

A. A representation must not be withdrawn, frivolous or vexatious in order to qualify as a relevant representation, i.e. to be considered by the licensing sub-committee. (A representation can only be withdrawn by the person who made it.)

"Frivolous" representations are, for example, concerned with irrelevant details, or details that are not connected to the licensing objectives.

A "vexatious" representation, for example, would be where an interested party makes a representation to annoy or intimidate an applicant rather than on the basis of the licensing objectives.

A DCMS guide for interested parties making representations is available at http://www.culture.gov.uk/images/publications/Guidance_for_interested_parties.pdf

Q. Who decides whether my representation is frivolous or vexatious?

A. The licensing authority itself makes this decision, and the Guidance issued under section 182 of the Licensing Act recommends that this decision is delegated to a licensing officer.

Q. Can I just outline my concerns about a licensed premises verbally to the licensing officer and ask that they draft my representation and obtain supporting evidence from other departments on my behalf?

A. You are again reminded of the need to comply with the Model Code. You can request information about how to apply for a review, and can ask for information about how to obtain supporting evidence that is publicly available, but you cannot request more assistance from officers than any other interested party.

Q. I have a legal enquiry relating to a review I have initiated as an interested party. Can I obtain advice from the Council's legal officer?

A. No, for the same reasons as above, i.e. it would constitute an improper use of advantage in breach of the Model Code.

Q. My constituents have suggested that I should discuss a licensing application that I have made a representation on with a member of the licensing sub-committee in order to point out the strength of their case. Is this problematic?

A. Yes. This would constitute an attempt to improperly influence a decision, and would therefore be a breach of the Model Code. You should not discuss your representations with members of the licensing sub-committee.

Q. I want to have a premises licence reviewed. How do I make a review application?

A. There is a standard application form, which must be completed and sent to the licensing authority, the premises licence holder and a series of statutory bodies known as "responsible authorities". DCMS has provided detailed guidance on how to apply for a review online: <http://www.culture.gov.uk/images/publications/060918GuidanceforInterestedPartiesReviews2007.pdf>

Q. My application for a review has been heard by the licensing sub-committee and I am not happy with the outcome. Can I appeal?

A. You may appeal the decision. The time limit for lodging an appeal is 21 days from the date that you received notice of the licensing sub-committee's decision. Appeals are made to the Magistrates' Court for the "petty sessions" area in which the premises is situated. Further guidance is available in the DCMS leaflet "[Guidance for Interested parties - Appealing licensing decisions in the courts](#)"

Q. What happens if I incur legal costs as an interested party if I decide to appeal the decision of the licensing authority in the courts? Must my council indemnify me?

A. LACORS has received the following advice from the Department for Communities and Local Government:

"Certainly it is a reasonable expectation that a local authority will provide indemnification to their members so that members are not left liable for costs arising from their actions taken in relation to their duties. If the member is acting on behalf of the local authority in seeking a

review of an existing premises license then one would expect the local authority to meet costs. (A councillor cannot be entitled to indemnification against a costs order by the local authority unless s/he is acting with the authority of the local authority. It would be quite inappropriate for all local authorities to give a blanket indemnification of any action by a local councillor.)

If a councillor acts on his or her own initiative in some legal proceedings, there is little reason for treating them any differently as regards the costs of any litigation than how any other litigant is treated. In short, if the member was acting in a non-official capacity then the indemnity would not apply."

Q. I have not been involved in licensing matters before. Where do I find out more information about the procedure involved?

A. LACORS has produced a [Licensing Act 2003 Councillor Handbook](#), available via the link below, which gives an overview of the Act:

<http://www.lacors.gov.uk/lacors/ContentDetails.aspx?authCode=46BEF40&id=18031>

DCMS have provided an extensive overview of the Act, "[Licensing Act 2003 Explained](#)" via its website: http://www.culture.gov.uk/what_we_do/alcohol_and_entertainment/4051.aspx