

premises, or a body representing such persons, or a person involved in a business in that vicinity, or a body representing such businesses, has been repealed by the PSRA 2011 in respect of applications lodged after 25 April 2012. A 'responsible authority' includes most of the statutory authorities such as the police, fire authority, the planning authority and the enforcing authority for the purposes of health and safety at work. This latter authority would usually be taken to mean the local Environmental Health Department, but could also include the Health and Safety Executive. It also includes a body interested in protecting children from harm and recognised by the licensing authority as being competent to give advice on children, as well (now) as the Primary Care Trust or Local Health Board for any area in which the premises are situated.

For the avoidance of any doubt, the Act makes it quite clear that a responsible authority which is applying for a review can be part of the same local authority as the relevant licensing authority. This provision was specifically included, as at one stage during the passage of the Bill, it was suggested that a licensing authority could not sit in judgment on an application to review a premises licence which had been brought effectively by part of its own internal machinery. Although the licensing authority in those circumstances would not be an independent and impartial tribunal as required by Article 6, that requirement is met by the right of appeal to a magistrates' court and therefore the procedure as a whole is compliant with the European Convention on Human Rights.

A review will automatically be triggered after a closure order has been made and considered by the magistrates.

<sup>1</sup> Licensing Act 2003 (Premises Licences and Club Premises Certificates) Regulations 2005, SI 2005/42.

**1.346 Procedure** <sup>1</sup> Regulations<sup>2</sup> require the applicant for review of a premises licence to give notice to the holder of the licence and also requiring the relevant licensing authority to advertise the application and invite representations about the application to be made to it by interested parties and responsible authorities. Effectively this means that an application which has been commenced by one individual can initiate a process whereby the relevant licensing authority itself invites representations from those who might previously not have expressed sufficient concerns about the subject premises to justify taking action.

<sup>1</sup> LA 2003, s 51(1).

<sup>2</sup> Licensing Act 2003 (Premises licences and club premises certificates) Regulations 2005, SI 2005/42.

**1.347 Condition precedent to a review of a premises licence** The application for the review of a premises licence<sup>1</sup> must relate to one or more of the licensing objectives<sup>2</sup>. If the licensing authority is not so satisfied, it may reject the application for review forthwith even without a hearing.

It may also reject an application (other than one submitted by a 'responsible authority') at any time if it takes the view that the ground is 'frivolous or vexatious' or that the ground is 'repetitious (identical or substantially similar to an earlier review following which a 'reasonable interval' has not lapsed since the earlier application, or alternatively since the initial grant of the premises

licence.) Once again, we can expect some litigation on the question of what would be a 'reasonable interval' for the purposes of this part of the Act.

Because this section provides that the application can be rejected on these grounds at any time, it seems that it can be rejected without a hearing (it has been held<sup>1</sup> that the licensing authority has no power to stay such proceedings where it is suggested that there has been an abuse of process). There is no appeal to the magistrates against this decision and the only remedy would be judicial review.

If the relevant licensing authority decides that an application is to be rejected because it is frivolous or vexatious or repetitious, then it must notify the applicant of its decision.

This section also allows the relevant licensing authority to determine that any part of an application for review is frivolous or vexatious, and strike out that part of the application, leaving it with power to continue to determine any other parts of the application which it feels are responsibly brought.

<sup>1</sup> LA 2003, s 51(4).

<sup>2</sup> LA 2003, s 4(2).

<sup>3</sup> *R (on the application of TFC Projects Ltd) v Newcastle Justices* [2006] EWHC 1018 (Admin), [2006] All ER (D) 116 (May), [2006] LLR 499.

**1.348 Determination of the application for review** Where the appropriate procedural notices have been properly given and advertised in accordance with the regulations, and the authority is satisfied that the application is not frivolous or vexatious or repetitious, then it must hold a hearing to consider the application for review and any relevant representations.

'Relevant representations' can be made by the holder of the premises licence, the responsible authority or any other party, and seem to be tied to the period during which the licensing authority first receives the appropriate application. This seems to preclude parties raising new issues at the hearing which were not disclosed in the original notice (but see *R (on the application of Khan) v Coventry Magistrates' Court*).

It is important also to note that relevant representations can only relate to the four licensing objectives. Any representations which do not fall within the general ambit of those objectives cannot form part of the authority's considerations.

In *R (Bassellaw District Council) v Worksop Magistrates' Court*,<sup>1</sup> Slade J considered the extent to which the powers created by s 52 could be said to be punitive, or (as had been argued on behalf of the licensee) entirely remedial. The case concerned unlawful sales of alcohol to two 14-year-old girls, who had been sent in by the local Trading Standards Office to make test purchases. The premises licence the licensing authority had determined that the licence should be suspended for four weeks. The district judge had overturned that decision and had substituted the addition of six more conditions to the licence. The licensing authority challenged the district judge's decision on several grounds, including the construction of Act and the guidance issued by the Secretary of State. It contended that the district judge had failed to bear in mind that, where premises had been used for criminal purposes, the licensing authority had a duty to take steps in the interests of the wider community. It further argued that the court had wrongly held that the function of the licensing authority (and on appeal the magistrates' court) was not punitive but entirely

practice for them to give licence holders early warning of their concerns and the need for improvement, and where possible they should advise the licence or certificate holder of the steps they need to take to address those concerns. A failure by the holder to respond to such warnings is expected to lead to a decision to apply for a review. Co-operation at a local level in promoting the licensing objectives should be encouraged and reviews should not be used to undermine this co-operation.<sup>9</sup>

42.13 In *R (Harpers Leisure International Limited) v Chief Constable of Surrey*,<sup>6</sup> the licensee claimed that the police had brought the review process into breach of its own policies, and that therefore the licensing authority should have stayed the review as an abuse of process. The High Court held that as a matter of construction of the Act, the authority had such implied power, and that if there was to be a challenge to the decision bringing the review, then it should be brought against the police in the High Court. Charles J also pointed to the informal nature of the review process, which is intended to eschew legal arguments of this nature:

'28. Further, and to my mind of importance, is that, albeit that the process put in place has a number of formal aspects, at heart, as demonstrated by the provision that the proceedings should take place by reference to a discussion promoted by the sub-committee, and as argued on behalf of the second defendant, the process is intended to be one which has significant areas of informality, an investigatory aspect, and one in which the position of the licence holders is protected by the provisions relating to an appeal and a stay which would fall to be governed by the process adopted in the Magistrates' Court and a stay pending the appeal.'

42.14 In keeping with the scheme of the legislation, and the central importance ascribed to providing the opportunity for participation in the licensing process, the Act (and accompanying Regulations) set out a detailed framework for advertising the application. The applicant for review must give notice of his application to each responsible authority and to the holder of the premises licence in question, which requirement is satisfied by giving them a copy of the application together with any supporting documentation on the same day as the application is given to the licensing authority. The licensing authority must then advertise the review by displaying prominently a notice in the prescribed format<sup>7</sup> or near the site of the premises where the public can conveniently read it from the exterior of the premises. Further provisions apply where the premises concerned covers an area of more than 50 metres square. A notice of the review must also be displayed at the office of the licensing authority, and on the website of that authority (if it

authority has a website). The notices must be displayed for at least 28 consecutive days starting on the day after the day on which the application was given to the authority. In certain magistrates' courts dealing with appeals, failures to advertise the original application for review strictly in accordance with the requirements are being treated as fatal, given that section 52, which provides for determination of the application, is apparently not triggered where there has been full compliance.<sup>8</sup>

42.15 The notice must state the address of the premises, the dates between which representations may be made in respect of the application by interested parties and responsible authorities, the grounds of the application for review, the place where the register of the licensing authority is kept and when the grounds for the review may be inspected (including the website address if applicable), and a warning that it is an offence knowingly to make a false statement in connection with an application, and the maximum fine applicable for such an offence.

42.16 The right to make representations (which must be relevant to one or more of the licensing objectives) in response to or in relation to the application for review is extended to interested parties, responsible authorities and the holder of the premises licence. Any such representations must be made in writing (which includes by e-mail) to the licensing authority at any point during the 28-day period beginning with the day on which the application was first advertised.

42.17 Any determination by the licensing authority that any representation is frivolous, vexatious or repetitious must be notified to the maker of that representation, with reasons. There is no avenue of appeal provided in the Act against such a determination; judicial review is likely to be the only available route.

42.18 The review is to be determined by the holding of a hearing to consider the application and any relevant representations. Unlike the provisions relating to applications for new premises licences or variations, there is no provision permitting the review to be determined without a hearing unless all parties agree. The wording of section 52 is mandatory and squarely clear: a hearing must be held even if the parties to the review agree on the appropriate outcome.

42.19 Otherwise the procedural rules in respect of the conduct of hearings<sup>9</sup> apply. Reference may be made to Chapter 21 (Best Practice in Licensing Hearings).

<sup>6</sup> See Licensing Act 2003, s 52(1).

<sup>7</sup> The Licensing Act 2003 (Hearings) Regulations 2005 and the Licensing Act 2003 (Hearings) (Amendment) Regulations 2005.

<sup>9</sup> EWHC 2160 (Admin).

<sup>8</sup> Detailed requirements of the prescribed form are contained in the Licensing Act 2003 (Hearings) Regulations 2005, reg 38.