



Licensing Committee – 5 October 2011

Procedure for dealing with Expedited Reviews under the Licensing Act 2003 as amended by the Violent Crime Reduction Act 2006

Purpose of report To consider the procedure for dealing with expedited reviews under the Licensing Act as amended, and a change to the Terms of Reference of Licensing Panels to reflect the situation

Attachment(s)

- Appendix 1 Procedure for dealing with Expedited Reviews
 - Appendix 2 Government Guidelines issued October 2007
 - Appendix 3 Proposed change to the delegation arrangements – Licensing Panels
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1.0 Expedited Reviews

- 1.1 The Licensing Act 2003 as amended by the Violent Crime Reduction Act 2006 permits police to request an expedited review of a premises licence.
- 1.2 This power came into force on 1 October 2007 and may be used when police consider that premises are associated with serious crime or serious disorder or both.
- 1.3 Expedited reviews apply only to premises operated under a premises licence which authorises the sale of alcohol. They do not apply to premises operating under the provisions of a club premises certificate.
- 1.4 East Northamptonshire Council does not have a policy/procedure for dealing with expedited reviews.

2.0 Procedure

- 2.1 A procedure for dealing with expedited reviews has been written and is attached at Appendix 1.
- 2.2 This procedure follows the guidelines attached at Appendix 2 issued in October 2007 by the Department for Culture Media and Sport.
- 2.3 To date there has been no application for an expedited review in East Northamptonshire although Northamptonshire Police have made two applications elsewhere in the County.
- 2.4 Members should note that the determination of any interim steps cannot be delegated to an officer (see paragraph 7 of the procedure). In view of the need to act swiftly, it will not be possible to give notice of a meeting of the Licensing Panel under the terms of the Local Government Act 1972. It is likely that a discussion would need to be undertaken by telephone or by e-mail. To cover the situation, a change will be required to the Terms of Reference of the Licensing Panels and the emboldened wording set out in Appendix 3 is proposed.

3.0 Equality and Diversity Implications

- 3.1 There are no equality and diversity implications arising from this report

4.0 Legal Implications

4.1 There are no legal implications arising from the report

5.0 Risk Management

5.1 There are no identifiable risks arising from the report.

6.0 Financial Implications

6.1 There are no financial implications arising from the report

7.0 Corporate Outcomes

7.1 There are no corporate outcomes arising from the report.

8.0 Recommendations

8.1 It is recommended that the Committee -

- (1) adopts the procedure attached as Appendix 1 for dealing with expedited reviews and
- (2) approves the changes to the Terms of Reference of the Licensing (Liquor and Gambling) Panels as shown in Appendix 3.

Legal	Power: Licensing Act 2003 as amended by Violent Crime Reduction Act 2006.				
	Other considerations:				
Background Papers:					
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Date: 31 August 2011					
CFO		MO		CX	

(Committee Report Normal Rev. 22)

Licensing Act 2003 as amended by the Violent Crime Reduction Act 2006

Expedited Reviews

1. On receipt of an application and a certificate issued by a Senior Police Officer stating that in his/her opinion named premises are associated with serious crime or serious disorder (or both) this council will take the following steps.
2. Within 48 hours of receipt of the application and certificate the Licensing Authority (LA) must consider whether it is necessary to take interim steps pending determination of the premises licence. The LA must in any event undertake a review within 28 days of receipt of the application. This initial review may be by telephone or email as long as a record is kept of any discussion and decision.
3. The range of options open to the authority at the interim steps stage are:
 - modification of the conditions of the premises licence;
 - exclusion of the sale of alcohol by retail (or other licensable activities) from the scope of the licence;
 - removal of designated premises supervision for licences;
 - suspension of the licence.

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

4. Within 48 hours of receipt of the application the LA must give the premises licence holder and responsible authorities a copy of the application and a copy of the certificate.
5. The LA must give immediate notice of its decision and reasons for so making to holder of premises licence and Chief Officer of Police who made application.
6. The police will be consulted about the steps which may be necessary to address the immediate problems with the premises. Interim steps may be taken without the holder of the premises licence having been given the opportunity to make representations. If it is possible and appropriate the licence holder may be visited to make representations.
7. Interim steps may not be delegated to an officer of the LA. Relevant decisions must be taken by the relevant licensing committee, (or panel) or by the Council acting as a whole.

8. There is no requirement for a formal hearing and discussion by committee members may be by phone or email. A written record will be produced as soon as possible after the decision has been reached.
9. The interim steps the authority must consider taking are:
 - the modification of the conditions of the premises licence;
 - the exclusion of the sale of alcohol by retail (or other licensable activities) from the scope of the licence;
 - the removal of the DPS from the licence, and
 - the suspension of the licence.

The authority should also take note of evidence issued under S182 Licensing Act re possible conditions.

10. The authority must give immediate notice of its decision and its reasons for doing so to the holder of the licence and to Chief Officer of Police who made application. This need not be in writing especially when the decision is to have immediate effect. Communication may be by a phone call to be followed by confirmation in writing giving reasons for making that decision.
11. A full review must be held within 28 days of the application being received by the authority. If the licence holder makes representation against the interim steps a full review must be held within 48 hours (non working days do not count towards 48 hours).
12. The authority must give advance notice of hearing to the premises licence holder and Chief Officer of Police. The hearing cannot be adjourned to a later date if the licence holder fails to attend.
13. At this hearing the authority must:
 - consider what steps it considers necessary for the promotion of the licensing objectives; and
 - consider what steps should be taken to secure the promotion of the licensing objectives including whether the interim steps should be made permanent.
14. When considering the case the authority must take into account:
 - the modification of the conditions of the premises licence;
 - the exclusion of the sale of alcohol by retail (or other 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.

15 The licensing authority must advertise the review for at least seven days starting the day after the receipt of the chief officers certificate.

16 The licensing authority must notify its decision and the reason 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.

17. There is a right of appeal within 21 days of the licensing authority's decision. The appeal is by way of Magistrates Court.



department for
**culture, media
and sport**

LICENSING ACT 2003

(as amended by the Violent Crime
Reduction Act 2006)

EXPEDITED/SUMMARY LICENCE REVIEWS GUIDANCE

October 2007

improving
the quality
of life for all

Our aim is to improve the quality of life for all through cultural and sporting activities, support the pursuit of excellence, and champion the tourism, creative and leisure industries.

INTRODUCTION

1.1 This Guidance explains how to use new provisions in the Licensing Act 2003 (the 2003 Act) 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). These provisions were inserted at section 53A of the 2003 Act by the Violent Crime Reduction Act 2006 and came into force on 1 October 2007. This guidance has no statutory basis but is intended to assist police forces and licensing authorities when considering using the new procedures.

1.2 The new powers apply only where a premises licence authorises the sale of alcohol. They do not apply in respect of other premises licences, nor to those operating under a club premises certificate. The purpose of the new powers is to complement existing procedures in the Licensing Act 2003 for tackling crime and disorder associated with licensed premises. The existing powers, in Part 8 of the 2003 Act, provide for the instant closure of premises by the police in some circumstances, and the review of premises' licences by the licensing authority. The new powers, which are in Part 3, are aimed at tackling serious crime and serious disorder, in particular (but not exclusively) the use of guns and knives.

1.3 The new powers will 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.

1.4 In summary, the process is:

- a local chief officer of police 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 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 of receipt of the application.

1.5 The range of options open to the licensing authority at the interim steps stage are:

- modification of the conditions of the premises licence;
- the exclusion of the sale of alcohol by retail (or other licensable activities) from the scope of the licence;
- removal of the designated premises supervisor from the licence; and
- suspension of the licence.

1.6 Following the full licence review the Licensing Authority may do any of the above or may revoke the licence.

1.7 The purpose of this guidance is to:

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

1.8 The process is set out in the diagram at Annex A.

THE STEPS

2. Triggering the expedited review

2.1 Section 53A of the Licensing Act 2003 determines who may apply for an expedited review and the circumstances where it might be used.

Application for expedited review

2.2 The chief officer of police for the local area 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 B to this guidance.**
- **Serious crime:** The tests to determine the kinds of conduct that amount to serious crime are set out in Section 81(3)(a) and (b) of the Regulation of Investigatory Powers Act (2000). Those tests are: (a) that the conduct constitutes an offence for which a person 21 years of age or over with no previous convictions could reasonably be expected to be sentenced to imprisonment for 3 or more years or (b) that the conduct 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 understood in its ordinary English sense, as is the case under section 12 of the Public Order Act 1986, where 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 s.53A of the Licensing Act 2003. The application must be made on a form prescribed by Schedule 8A to the

Licensing Act 2003 (Premises licences and club premises certificates) Regulations 2005 (SI 2005/42). Schedule 8A was inserted by the Licensing Act 2003 (Summary Review of Premises Licences) Regulations 2007 (SI 2007/2502), and must be accompanied by the certificate issued by a senior officer. The form which must be used is reproduced in annex C 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 – 165 in Part 8 of the Licensing Act 2003 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 felt 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 wish to make representations to the licensing authority suggesting that they modify the conditions of premises' licence to require searches of customers for offensive weapons upon entry. Under the new power 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 paras 3.6 and 3.7 below).

2.8 However, as the explanatory notes that accompanied the Violent Crime Reduction Act state: '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 wish to consult the police about the steps that it thinks necessary, 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 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 must be taken by the relevant licensing sub-committee, or by the authority acting as a whole (see new section 10(4)(via) of the 2003 Act). 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 (or other licensable activities) 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 altering or modifying existing conditions or adding 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 Guidance to Licensing Authorities issued by the Secretary of State under section 182 of the Licensing Act 2003.

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

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 then 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 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 is empowered to 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, or not significantly different from the version given by phone.

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 a 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 the representations the licensing authority must (if the representations are not withdrawn) hold a hearing within 48 hours of 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) are disapplied 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 Hearings regulations, 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 him or her the maximum practicable opportunity to 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 necessary 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 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 necessary for the promotion of the licensing objectives; and
- consider what steps should be taken to secure the promotion of the licensing objectives including whether the interim steps should be made permanent.

5.2 The steps the licensing authority can take are:

- the modification of the conditions of the premises licence;
- the exclusion of the sale of alcohol by retail (or other licensable activities) 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 altering or modifying existing conditions or adding 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 Guidance to Licensing Authorities issued by the Secretary of State under section 182 of the Licensing Act 2003.

5.3 The licensing authority must:

- advertise the review inviting representations from interested parties² 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 authority's website (see regulation 38(1)(b) of the above Regulations). 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 interested parties 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 authority³.

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). These Regulations apply to final hearings under the new power in a similar way to hearings following closure orders under section 167 of the Licensing Act (it should be emphasised that the truncated version of the Regulations described in paragraph 4.2 above applies to interim hearings only). The issues dealt with by the Regulations include who can make representations and what those representations can be about. It is therefore possible for interested parties or responsible authorities 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 Interested parties are defined under section 13 (3) of the Licensing Act 2003.

³ Responsible authorities are defined under section 13(4) of the Licensing Act 2003.

- 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 an interested party (who is not also a responsible authority).

5.7 The licensing authority must notify its decision and the reasons for making it to:

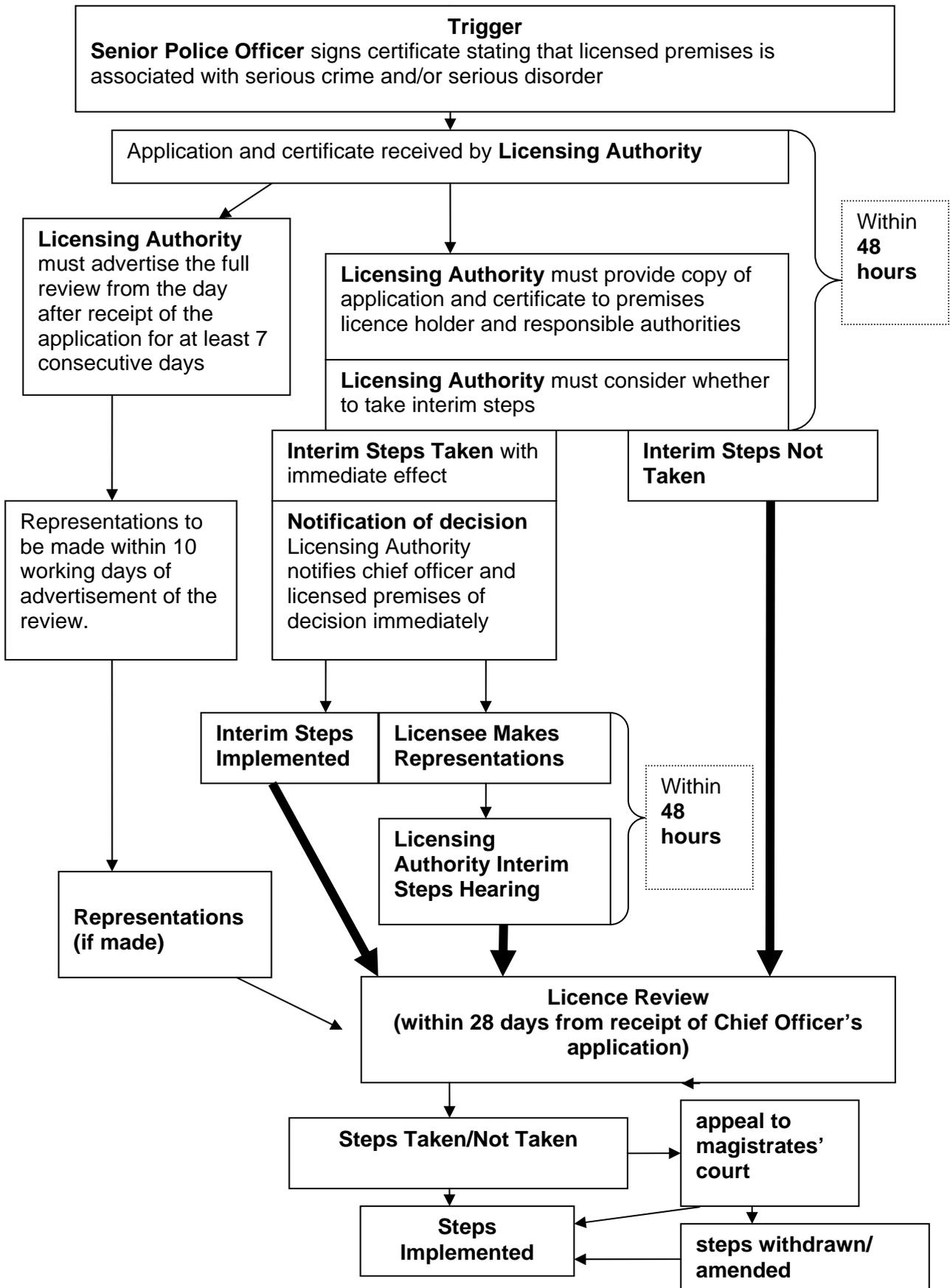
- the holder of the premises licence;
- any person who made relevant representations; and
- the chief officer of police who made the original application.

6. Right of Appeal

6.1 An appeal may be made within 21 days of the licence holder being notified of the licensing authority's decision to a magistrates' court. 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 appeal is disposed of. Any interim steps taken will remain in force over these periods.

EXPEDITED LICENCE REVIEWS: MAIN STEPS





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TERMS OF REFERENCE OF COMMITTEES & SUB-COMMITTEES

Licensing Panels

Licensing Panels function as sub-committees of the Licensing Committee (a statutory Committee) and operate under powers initially delegated to them by the Licensing Committee on 26 January 2005 (Minute 349) and 25 January 2007 (Minute 328) but amended by Council on 21 April 2008 (Minute 418).

The membership of each Panel varies. All Panels consist of 3 Members of the Licensing Committee (who have had training) and determined under delegated powers exercised by the Democratic Services Manager.

Panels conduct hearings which follow the rules of natural justice and are governed by The Licensing Act 2003 (Hearings) Regulations 2005 and The Gambling Act 2005 (Proceedings of Licensing Committees and Sub-Committees) (Premises Licences and Provisional Statements) (England and Wales) Regulations 2007.

Panels have the power to –

- determine applications under the Licensing Act 2003:
 - for personal licence if a representation made;
 - for personal licence with unspent convictions;
 - for premises licence/club premises certificate if a representation made;
 - for provisional statement if a representation made;
 - to vary premises licence/club premises certificate if a representation made;
 - to vary designated personal licence holder if a police representation;
 - to be removed as designated personal licence holder;
 - for transfer of premises licence if a police representation;
 - for Interim Authorities if police representation;
 - review premises licence/club premises certificates.
- determine police representations to a temporary event notice;
- **determine, by e-mail, telephone (or in such other manner as may be deemed appropriate by the Democratic Services Manager or by the Solicitor to the Council), whether it is necessary to take interim steps pending determination of the premises licence the subject of an application and a certificate issued by a Senior Police Officer stating that in his/her opinion named premises are associated with serious crime or serious disorder (or both) (*the requirements of the Local Government Act 1972 concerning the giving of notice of meetings will not apply*)**
- determine applications under the Gambling Act 2005:
 - for a premises licence where representations have been received and not withdrawn
 - for a variation to a licence where representations have been received and not withdrawn
 - for a transfer of a licence where representations have been received from the Commission

TERMS OF REFERENCE OF COMMITTEES & SUB-COMMITTEES

- for a provisional statement where representations have been received and not withdrawn
- for a review of a premises licence
- for club gaming/ club machine permits where objections have been made (and not withdrawn)
- for the cancellation of club gaming/ club machine permits
- for a decision to give a counter notice to a temporary use notice

Minutes will be submitted for information to either the Licensing Committee or to the full Council.