

Premises licensing hearings under the Gambling Act 2005

Introduction

From May of this year, bookmakers applying for licences and variations and facing reviews will have to find their way around the wood-panelled corridors of local authority offices. In this article I map out the procedure for hearings before the new licensing authorities.

When are hearings necessary?

In certain circumstances a hearing must be held. For licence applications, this includes where an interested party or responsible authority has made (and not withdrawn) a representation, unless the authority considers such representation to be frivolous or vexatious or certainly not such as to influence the determination of the application.¹ It also includes where the authority proposes to attach an individual condition² or exclude a default condition.³ For reasons which are hard to discern, it does not include when the authority proposes to refuse the application. Perhaps it was thought obvious that the authority would set a hearing in such circumstances. For reviews, the general position is that hearings will be held.

However, the authority is generally entitled to dispense with a hearing otherwise required if both the applicant and a responsible authority or interested party who has made (and not withdrawn) representations agree.⁴

The Regulations

The procedure for hearings is governed by The Gambling Act 2005 (Proceedings of Licensing Committees and Sub-committees) Premises Licences and Provisional Statements) (England and Wales) Regulations 2007.⁵ These can be found at http://www.opsi.gov.uk/si/si2007/uksi_20070173_en.pdf.

Lest there be any doubt, the Regulations state expressly that the Licensing Act 2003 (Hearings) Regulations 2005⁶ have no application. They also give committees a wide power to determine their own procedure where the Regulations do not make express provision. The Regulations provide for the following stages in the life of an application.

Stage 1: setting the hearing date

The relevant committee have to arrange for the hearing to be commenced as soon as is reasonably practicable after the expiry of any period for representations made by interested parties or responsible authorities.⁷ Where a hearing is to be held on more than one day, it must be arranged for consecutive working days.⁸

Stage 2: notice of hearing

The committee has to supply a notice of hearing to the applicant and any person who has made and not withdrawn representations about the application. This must specify

¹ S 162(1)(a), (3) GA05.

² S 162(1)(b) GA05.

³ S 162(1)(c) GA05.

⁴ S 162(2), 201(4) GA05.

⁵ SI 2007/173.

⁶ SI 2005/44.

⁷ Reg. 4(1).

⁸ Reg. 4(2).

the place, date and time of the hearing and be sent so as to be received at least 10 working days before the first day of the hearing.⁹

The notice has to be accompanied by a raft of information, which includes the procedure to be followed at the hearing and much else besides.¹⁰ Authorities will no doubt produce pro forma notices containing the requisite information. Where a hearing is required to be held, the applicant must be furnished with any representations made, save those deemed vexatious, frivolous or certain not to influence the determination of the application, as must a person who has made representations which have not been ruled out on those grounds.¹¹ It is extremely important that applicants play close attention to the notice of hearing, because it is likely to contain directions for the hearing, such as how and when to put in documents and notify the authority of the identity of witnesses and the nature of their evidence. If these directions are not obeyed, bookmakers may find that they simply cannot put their case as they would like.

Stage 3: the hearing

The general rule is that hearings are to be public, but there is a discretion to hold all or part of the hearing in private to avoid unfairness to a party or to protect the commercial or other legitimate interests of a party.¹²

A committee may postpone the hearing to a specified date, or arrange for an additional date for the hearing, acting either before or at the hearing. The grounds for postponement are that it needs to consider information or documents provided by a party in response to a notice of hearing or even at the hearing itself, or that there has been difficulty in a party, a representative or a witness in attending the hearing.¹³ Oddly, the grounds do not apparently include the need of a party to consider new documents or information, but doubtless committees will take a pragmatic approach, and treat such cases as falling within the grounds for a postponement.

As to attendance, the committee must permit all parties to attend the hearing, and be represented or assisted by any person, whether or not that person is legally qualified.¹⁴ The only exceptions are where the committee has directed all or part of the hearing to be held in private,¹⁵ and where a person is excluded for disruptive behaviour.¹⁶ In such a case, provisions are made for that person to make written submissions.¹⁷

What if a party fails to attend? The committee may proceed in his absence where he has informed the committee that he does not intend to attend, and also where he has failed to inform the committee whether he intends to attend and where he has left the hearing in circumstances enabling the committee reasonably to conclude that he does not intend to participate.¹⁸ In addition, if a party indicates that he does intend to attend but then fails to do so, the committee has the option of adjourning the hearing to a specified date if it considers it to be in the public interest, or proceeding in the party's absence.¹⁹ Doubtless, it will wish to ascertain the reason for the party's

⁹ Reg. 5.

¹⁰ Reg. 6(1).

¹¹ Reg. 6(2).

¹² Reg. 8(1).

¹³ Reg. 7.

¹⁴ Reg. 9(1).

¹⁵ See above.

¹⁶ Reg. 11.

¹⁷ Reg. 11(3).

¹⁸ Reg. 10(1).

¹⁹ Reg. 10(2).

absence before taking the latter course. Where it does decide to proceed in a party's absence, it must still consider the party's representations.²⁰

To assist the parties, the committee must explain the procedure it proposes to follow in conducting the hearing.²¹ The watchword is informality, as the Regulations provide that the hearing must amount to a discussion led by the committee, without cross-examination unless required for the proper consideration of the application.²²

My own personal tip is to try to be nice to everybody, particularly the opposition, never to interrupt or get cross, never disagree with the chairman, thank the committee for just about everything and to try to get the final word. Plan out how you are going to react if it is plain that certain members of the committee are anti-gambling. Remember, you need their help, not an argument.

The committee must ensure that each party has the opportunity to address it and call witnesses to give evidence on any matter relevant to the application or any representations, and to provide further information or explanation on any matter on which the committee indicated in the notice of hearing that it wanted clarification.²³ In addition, where the committee considers that it is "appropriate", the committee must permit a party to question any other party or representative on any matter relevant to the application or representations made on the application.²⁴

Finally, the committee must take into account documentary or other information in support of the application or representations produced by a party before the hearing or, with the consent of all other parties attending the hearing, at the hearing.²⁵ This would appear to give the committee a discretion to admit documents or listen to information provided for the first time at the hearing where the other parties object to such admission. If that is right, it represents a considerable improvement on the Licensing Act 2003 (Hearings) Regulations 2005²⁶ which do not appear to confer such a discretion. In exercising its discretion, the Committee is likely to want to take into account the reason for the late provision, any prejudice to other parties, and any means of remedying such prejudice, e.g. by adjourning the hearing either for a short time or until a further date, so as to enable the other parties to consider and, if necessary, reply to the new information.

Stage 4: determination of the application

In the normal course of events, the committee must determine the application within 5 working days of the day after the last day of the hearing.²⁷ So, if the hearing finishes on a Monday, the determination must occur by the following Tuesday. But the committee may extend the time limit for a specified period where it considers an extension to be in the public interest,²⁸ in which case it must give a notice of the

²⁰ Reg. 10(3).

²¹ Reg. 9(2).

²² Reg. 9(5).

²³ Reg. 9(3).

²⁴ Reg. 9(4)(a).

²⁵ Reg. 9(4)(b).

²⁶ SI 2005/44, Reg, 18.

²⁷ Reg. 13.

²⁸ Reg. 14(1).

extension to the parties, together with the period of the extension and the reasons for it.²⁹

Slips and chits

The Regulations wisely provide for a slip rule, enabling the committee to disregard breaches of the regulations or of some other procedure determined by the committee of its own motion, where the regularity comes to its attention prior to determination.³⁰ Where a party has been or may have been prejudiced by any irregularity, the committee must take such steps as it considers necessary to remedy the prejudice before reaching its determination.³¹ The committee also has power to correct clerical mistakes.³²

Finally, all notices and notifications under the regulations must be given in writing.³³ This avoids a long-standing debate in other fields of licensing as to whether “notifications” have to be given in writing. The Regulations further provide that fax and e-mail transmissions must be treated as notices given in writing, again preventing unnecessary debate.

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²⁹ Reg. 14(2).

³⁰ Reg. 16(1).

³¹ Reg. 16(2).

³² Reg. 17.

³³ Reg. 18.