

**PROCEDURE FOR DEALING WITH APPLICATIONS AND HEARINGS
UNDER LICENSING ACT 2003**

These notes set out the information required for procedural matters under the Licensing Act 2003 (Hearings) Regulations 2005 (Statutory Instrument 2004 No.44) in respect of applications which will be heard and determined by the Sub-Committee of the Licensing Committee (Miscellaneous). References to regulation numbers in the notes refer to the regulations contained in this Statutory Instrument.

**PART ONE
PRE-HEARING PROCEDURES**

Giving Notices – by Plymouth City Council

Period of time within which a hearing is to be held

- Plymouth City Council is required to give notice of the date, time and place where the hearings will be held. Hearings have to be held within a specified time of five, seven, ten or twenty working days beginning with the date after which a particular licence process has been completed.
- In a Case where the hearing is to be held on more than one day, the hearing must be arranged to take place on consecutive working days.
- A full list of the provisions under which the hearing is held and the period of time within which the hearing must be commenced is set out in Regulation 5 and a copy of the Schedule under this regulation is attached to these notes at Appendix A

Notice of Hearing

- Plymouth City Council is required to give advance notice of any hearing that will be held under the Act. This will be:

| | |
|---|---|
| 2 working days' notice (not including the day (or first day) of the hearing) | (a) Cancellation of interim authority notice following police objection (b) Counter notice following police objection to temporary event notice |
| 10 working days' notice (not including the day (or first day) of the hearing) | (a) Review of premises licence following closure order (b) Determination of application for conversion of existing licence (c) Determination of application for conversion of existing club certificate |
| 5 working days' notice (not including the day (or first day) of the hearing) | In all other cases |

- A Notice of Hearing will be sent to the person who made the application and to the other persons specified by Regulation 6 as set out in the copy Schedule under this regulation which is attached to these notes at Appendix B.
- The Notice of Hearing will include the following information:
 - (a) The date, time and place of hearing;
 - (b) The rights of the party to attend the hearing and be represented, whether by a legally qualified representative or not;
 - (c) The rights of the party to give any further information and to call witnesses in support of their application, representations or notice (as applicable); if given permission by the authority to question any other party or witnesses, and to address the authority, subject to any maximum time limit imposed by the Sub-Committee.
 - (d) The consequences if a party does not attend or is not represented at the hearing
 - (e) The procedure to be followed at the hearing
 - (f) Any particular points on which the authority considers that it will want clarification at the hearing from a party.
 - (g) Any information the licensing authority has received in support or opposition of the application
- In the notice of hearing the applicant will be asked if they have any special needs or requirements for the hearing and be requested to notify the licensing authority of any difficulty in attending.

Giving Notices – By the Party

Action following receipt of Notice of Hearing

- Parties to the hearing must send a Notice of Reply to the Council stating:
 - (a) Whether he/she intends to attend or be represented at the hearing;
 - (b) Whether he/she considers a hearing to be unnecessary.
 - (c) A request for permission to call any witness (or other party) at the hearing, and, if so, the name of that witness.
- The party must also include with their notice a written summary of the representations which they wish to make to the sub-committee; (including a brief description of the point or points that their witness may be able to make to assist the Council); together with any documentary or other evidence in support of their application, representations or notice (as applicable). If the hearing proceeds in the applicant's absence, members will consider these written representations.

- The above notice must be sent to the Council by the party within the following time periods:

| | |
|--|---|
| 1 working days' notice (before the day (or first day) on which the hearing is to be held) | (a) cancellation of interim authority notice following policy objection (b) counter notice following police objection to temporary event notice |
| 2 working days' notice (before the day (or first day) on which the hearing is to be held) | (a) review of a premises licence following closure order (b) determination of applications for conversion of existing licence; of existing club certificate; and, by holder of justices' licence for grant of personal licence |
| 5 working days (before the day (or first day) on which the hearing is to be held) | All other cases |

Right to dispense with hearing if all parties agree

- The Council may dispense with holding a hearing if all persons required by the Act have given notice to the Council that they consider that no hearing is necessary.
- If the Council agrees that no hearing is necessary it must then send a notice confirming that it agrees the need for a hearing has been dispensed with.

Withdrawal of representations

- A party who wishes to withdraw any representations, which have been previously made, may do so, by giving notice no later than 24 hours' before the day of the hearing. Upon receipt of such notice the Licensing Officer, in consultation with the Legal Officer and the Chair of the Licensing Committee (Miscellaneous), may cancel the hearing.
- If a representation is going to be withdrawn at less than 24 hours' notice the person making the representation must do so before the sub-committee at the hearing.

Power to Extend Time

- The Council may extend a time limit for a specified period where it considers this to be necessary in the public interest. Where any authority extends a time limit it must give notice to the parties stating the period of the extension and state the reasons why.

- The Council may also adjourn a hearing to a specified date or arrange for a hearing to be held on specified additional dates where it considers necessary to order for it to consider any representations or notice made by a party. In such circumstances, the Council must forthwith notify the parties of the date, time and place at which the hearing is to be held.
- **Except** the Council may not exercise these powers to such that the effect will be to treat the following applications made during the transitional period as being either granted or rejected:
 - (a) Conversion of an existing licence to a new premises licence
 - (b) Variation of a new premises licence
 - (c) Determination of a club premises certificate application
 - (d) Variation of a new club premises certificate
 - (e) Determination of a personal licence application
- The Council may not exercise these powers if it would fail to reach a determination on the review of premises licence following a closure order.
- In any other case the sub-committee may adjourn a hearing where it considers this necessary in the public interest and must do so if it considers this necessary to prevent any breach of natural justice.

PART TWO HEARING PROCEDURES

Hearing to be public

- A hearing shall take place in public except where it is considered that the public interest in excluding the public (including any party or their representatives) outweighs the public interest in the hearing taking part in public.

Failure of parties to attend the Hearing

- If a party has informed the Council that he/she does not intend to attend or be represented at the hearing, the hearing may proceed in his/her absence.
- If a party fails to attend or be represented without giving notice of intentions, the Council may:
 - (a) Where it considers it to be necessary in the public interest adjourn the hearing to a specified date, or
 - (b) Hold the hearing in the party's absence.
- Where the hearing is held in a party's absence the Sub Committee shall consider at the hearing the application, representations or notice made by that party.
- Where the hearing is adjourned to a specified date the Council must forthwith notify the parties of the date, time and place to which the hearing has been adjourned.

Procedure at Hearing

Step One The applicant will arrive at the appointed hearing time and wait to be called before the Sub Committee. Each matter to be dealt with by the Sub Committee will be called in turn, usually in the order listed on the Sub Committee agenda. However, the Chair may change the order at his/her discretion.

Step Two The Clerk (or Lawyer) to the Sub Committee will, when instructed by its Chair, invite the applicant before the Sub Committee.

- Step Three** The Chair will give a brief introduction and will ask the Sub Committee's Lawyer to take the applicant through the procedures, which will be adopted for the hearing.
- Step Four** The Chair or the Sub Committee's Lawyer will ask the applicants and other parties in the case to identify themselves and will take the applicant through the forthcoming procedures by:
- Taking the applicant through exactly what procedural steps will follow (which are detailed in steps 5 – 12 below), ensuring that the applicant is fully aware of what is going to happen.
 - The parties attending the hearing may be assisted or represented by any person whether or not that person is legally qualified.
 - At this point the Sub Committee shall consider any request made by a party in their Notice of Reply for permission to call any witness or other party to appear at the hearing, such permission not to be unreasonably withheld.
- Step Five** The Chair will ask the Lawyer to the Sub Committee to take the Sub Committee through the nature of the application. Accordingly, the Lawyer will take the Committee through the material facts before them, together with any relevant legislation, by reading through the report, (copies of which will have been circulated to Sub Committee Members and other parties in accordance with time limits set out in Part One of these hearing procedures).
- Step Six** The applicant or their representative will be asked to address the Sub Committee and present their case, and call any witnesses in support of their application, representations or notice (as applicable if permission has been granted). There will also be an opportunity to respond with further information if they have been asked to clarify any points for the Sub Committee's benefit detailed in the Notice of Hearing served upon them. The Chair of the Sub Committee may impose a maximum time limit for the applicant's representations.
- Step Seven** Following the applicant's representations the Members of the Sub Committee may ask questions of the applicant and any other party called by the applicant.
- Step Eight** The Chair will ask for submissions from any other interested parties who have given proper notice to the Council of their intention to make representations at the

hearing. The Sub Committee may impose a maximum time limit on these representations. Where an interested party has made written representations to the Sub Committee, the Members will consider these.

- **NB** Should there be a number of members of the public present at the meeting who intend to object to the application as interested parties then the Chair has discretion to ask that they appoint a nominated spokesperson to present their representations. The spokesperson will be subject to the same maximum time limit as the other parties to the proceedings.

Step Nine Sub Committee Members may ask questions of any interested party who has made representations. The applicant will also be allowed to ask questions, however these should not be in the form of cross-examination.

Step Ten The applicant will be given an opportunity to make any final comment or submission.

Step Eleven The applicant together with Officers and all interested parties will leave the room, leaving the Sub Committee to deliberate over the application. The Lawyer and Committee Support Clerk will remain with the Members. The Lawyer may give any advice to the Members that is either requested or felt necessary both on law and procedure and the Democratic Support Officer will record the decision.

Step Twelve In the case of hearings that require a determination at the conclusion of the hearing, the applicant and parties will be requested to return and the Chair or Lawyer reads the decision. In any other case the Chair or Lawyer will inform the parties prior to Step Eleven above when notification of determination will be sent.

General Notes to hearing procedure

- Where the Chair of the Sub Committee set a maximum time limit for each party to present their case, this time limit will be equal for all parties.
- The Lawyer advising the Sub Committee may ask questions of parties and witnesses in order to clarify the evidence and any issues in the case.
- The content of any representations and/or evidence should have been disclosed to all parties prior to the hearing within the period of time specified under Notice of Hearing under Part One of the procedure notes. Additional representations and/or evidence, of which proper notice has not

been given, may only be made or submitted at the hearing with the consent of all the other parties.

- Where it is considered that any person attending the hearing is behaving in a disruptive manner that person will be required to leave the hearing and may be
 - (a) Refused to return to the hearing
 - (b) Permitted to return only on such conditions as the sub committee may specify, however, written information provided by the person required to leave may be submitted for consideration by the Sub Committee.
- The Sub Committee shall disregard any information given or evidence produced by a party or a witness which is not relevant to:
 - (a) Their application, representations or notice (as applicable), and,
 - (b) The promotion of the Licensing Objectives or, in relation to a hearing to consider a notice given by a Chief Officer of Police, the Crime Prevention Objective.

PART THREE POST HEARING PROCEDURES

Notification of Determination of Applications

- The following applications are to be determined by the Sub Committee at the conclusion of the hearing –
 - (a) Counter notice following Police objection to temporary event notice
 - (b) Review of premises licence following closure order
 - (c) Determination of application for conversion of existing Premises Licence/Club Premises Certificate
 - (d) Determination of application by holder of a justice's licence for grant of Personal Licence
 - (e) Determination of application for variation of Premises Licence/Club Premises Certificate/Designated Premises Supervisor.
- In any other case (except for those applications where it has been agreed that a hearing can be dispensed with) the Council must make its determination within a period of **five working days**.
- Where a hearing has been dispensed with, the Council must make its determination within **ten working days** beginning with the day the Council gives notice to the parties that the hearing is to be dispensed with.
- The Council must notify a party and where appropriate the Chief Officer of Police of its determination forthwith and a notice explaining the rights of appeal against the determination will accompany that notification.

Record of Proceedings

- The Council shall provide for a record to be taken of the hearing in a permanent and intelligible form and kept for six years from the date of the determination or, where an appeal is brought against the determination, the disposal of that appeal. This shall be the responsibility of the Democratic Support Officer.

Irregularities

- Any irregularity in the procedures may not necessarily make the determination invalid or render the proceedings void, as the Council can

take such steps as it thinks fit to cure the irregularity before reaching its determination if it is felt that any person has been prejudiced as a result.

- Clerical mistakes or errors in a document recording a determination caused by an accidental slip or omission may be corrected.

Notices

- Any Notices required under this procedure must be given in writing
- However requirement that any Notice must be given in writing is satisfied where:
 - (a) 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
 - (b) the person to whom the notice is to be given has agreed that such a notice may be given to them by electronic means and,
 - (c) forthwith on sending the text of the notice of electronic means, the notice is given to the recipient in writing.
- Where the text of the notice is transmitted by electronic means, the giving of the notice shall be effected at the time the text of the notice is received by the recipient and has the information detailed in note (a) of this section above.