

LICENSING ACT 2003

EXPLANATORY NOTES

COMMENTARY ON SECTIONS

PART 3: Premises licences

Section 34 - Application to vary premises licence

Section 35 - Determination of application under section 34 and

Section 36 - Supplementary provision about determinations under section 35

83. Under these sections a premises licence holder can apply, in the prescribed form and manner, to vary that licence in any way, other than to change the designated premises supervisor (for which there is a separate procedure (see section 37)), to extend the time for which the licence has effect (if it is time limited) or to vary substantially the premises to which it relates. In general the ability to apply for a variation of a premises licence under these sections will concern variation of the conditions attaching to the licence or of the authorised licensable activities. Any such application may be subject to a fee and is subject to regulations under section 17 relating to advertising requirements. The application must also be accompanied by the premises licence (unless that is impracticable when a statement explaining why must be provided).
84. By virtue of section 35, the authority must make the variation as applied for, subject to the mandatory conditions, unless relevant representations are made, in which case a hearing must be held. In order for representations to be 'relevant' they must have been made by an interested party or a responsible authority (see the definitions in section 13) and they must relate to the likely effect on the promotion of the licensing objectives if the application were to be granted. If the representations are made by an interested party there is a further requirement that the licensing authority does not consider them to be frivolous or vexatious. If it thinks they are, it must explain its decision to the person who made the representations. The need for a hearing can be dispensed with by agreement of the authority, the applicant for the variation and all of the parties who have made relevant representations.
85. In any case where relevant representations have been made, subsection (3) of section 35 provides that the licensing authority must, if it considers it necessary for the promotion of the licensing objectives (see section 4), modify the conditions of the licence or reject the application for variation (in whole or in part). If the licensing authority does not consider it necessary to modify the licence or reject the application it will grant the variation in the terms sought. The authority must notify its decision to the applicant, the police and any person who has made relevant representations, and must give reasons for its decision. A variation of a premises licence may impose different conditions on different parts of the premises, or impose different conditions in relation to different licensable activities. The provisions in these sections follow closely the procedure to apply in respect of an original application for a premises licence (see paragraph 58 above).