

10 Appeals

10.1 This Chapter provides advice about entitlements to appeal in connection with various decisions made by a licensing authority under the provisions of the 2003 Act. Entitlements to appeal for parties aggrieved by decisions of the licensing authority are set out in Schedule 5 to the 2003 Act.

General

10.2 Other than in the case of personal licences, an appeal has to be made to the magistrates' court for the petty sessions area (or any such area) in which the premises concerned are situated. In the case of personal licences, the appeal must be made to the magistrates' court for the petty sessions area in which the licensing authority (or any part of it) which made the decision is situated.

10.3 An appeal has to be commenced by the giving of a notice of appeal by the appellant to the justices' chief executive for the magistrates' court within a period of 21 days beginning with the day on which the appellant was notified by the licensing authority of the decision to be appealed against.

10.4 The licensing authority will always be a respondent to the appeal, but in cases where a favourable decision has been made for an applicant licence holder, club or premises user against the representations of a responsible authority or an interested party or the objections of the chief officer of police, the holder of the premises or personal licence or club premises certificate or the person who gave an interim authority notice or the premises user will also be a respondent to the appeal and the person who made the relevant representation or the chief officer of police will be the appellants.

10.5 On determining an appeal, the court may:

- dismiss the appeal;
- substitute for the decision appealed against any other decision which could have been made by the licensing authority; or
- remit the case to the licensing authority to dispose of it in accordance with the direction of the court.

10.6 The court may make such order as to costs as it thinks fit.

10.7 The court, on hearing any appeal, may therefore review the merits of the decision on the facts and consider points of law or address both.

Licensing policy statements and section 182 Guidance

10.8 In hearing an appeal against any decision made by a licensing authority, the magistrates' court concerned will have regard to that licensing authority's statement of licensing policy and this Guidance. However, the court would be entitled to depart from either the statement of licensing

policy or this Guidance if it considered it is justified to do so because of the individual circumstances of any case. In other words, while the appellate court will normally consider the matter as if it was “standing in the shoes” of the licensing authority, it would be entitled to find that the licensing authority should have departed from its own policy or the Guidance because the particular circumstances would have justified such a decision by the licensing authority. In addition, the appellate court is entitled to disregard any part of a licensing policy statement or this Guidance that it holds to be ultra vires the 2003 Act and therefore unlawful. The normal course for challenging a statement of licensing policy or this Guidance should be by way of judicial review, but where it is submitted to an appellate court that a statement of policy is itself ultra vires the 2003 Act and this has a direct bearing on the case before it, it would be inappropriate for the court, on accepting such a submission, to compound the original error by relying on that part of the statement of licensing policy affected.

Giving reasons for decisions

- 10.9 In anticipation of such appeals, it is therefore important that licensing authorities should give comprehensive reasons for its decisions. Failure to give adequate reasons could itself give rise to grounds for an appeal. It is particularly important that reasons should also address the extent to which the decision has been made with regard to the licensing authority’s statement of policy and this Guidance. Reasons should be promulgated to all the parties of any process which might give rise to an appeal under the terms of the 2003 Act.

Implementing the determination of the magistrates’ courts

- 10.10 As soon as the decision of the magistrates’ courts has been promulgated, licensing authorities should not delay its implementation. Any attempt to delay such implementation will only bring the appeal system into disrepute. Standing orders should therefore be in place that on receipt of the decision, necessary action should be taken forthwith unless ordered by the magistrates’ court or a higher court to suspend such action (for example, as a result of an on-going judicial review). Except in the case of closure orders, the 2003 Act does not provide for a further appeal against the decision of the magistrates’ courts and normal rules of challenging decisions of magistrates’ courts will apply.

Provisional statements

- 10.11 For the avoidance of confusion, it should be noted that a right of appeal only exists in respect of the terms of a provisional statement that is issued rather than one that is refused. This is because the 2003 Act does not empower a licensing authority to refuse to issue a provisional statement. Following the receipt of relevant representations and the consideration of them, the licensing authority may only indicate, as part of the statement, that it would consider certain steps to be necessary for the promotion of the licensing objectives when, and if, an application was made for a premises licence following the issuing of the provisional statement. Accordingly, the applicant or any person who has made relevant representations may appeal against the terms of the statement issued.