



# Westminster City Council

## Report to the Licensing Committee

### The Filming of Licensing Sub-Committee meetings. Excluding the public from Licensing Sub-Committee meetings.

#### Appendix A - Guidance on the approach to be adopted

##### The Filming of Licensing Sub-Committee meetings.

1. The Openness of Local Government Bodies Regulations 2014 came into force on 6<sup>th</sup> August 2014. They were made pursuant to sections 40 and 43(2) of the Local Audit and Accountability Act 2014. Section 40 of the Local Audit and Accountability Act 2014 gives the Secretary of State power, by regulations, to make provision for allowing persons to film, photograph or make sound recordings of proceedings of meetings of local authorities; for allowing those not present at meetings to see and hear the proceedings; and for allowing reporting and commentating on the proceedings.
2. The question arising in this part of the guidance is the right of people to film and take photographs at hearings of the Licensing Sub-Committee.
3. The Openness of Local Government Bodies Regulations 2014 appear to give a right to film all Committee and Sub-Committee meetings which members of the public can attend. On the face of the regulations, that seems to include all Licensing Sub-Committee meetings.
4. Nothing is contained in the plain English guide to the regulations issued by the DCLG (which is not classed as statutory guidance) that excludes such meetings from the application of these new provisions. In fact, that guide states that councils and other local government bodies are required to allow any member of the public to take photographs, film and audio-record the proceedings, and report on all public meetings. It further states that, while no prior permission is required to carry out this activity, it is advisable that any person wishing to film or audio-record a public meeting let their local government staff know so that all necessary arrangements can be made for the public meeting.

5. The Openness of Local Government Bodies Regulations 2014 achieve their purpose by amending Part VA of the Local Government Act 1972 which (by virtue of a complicated legislative process)<sup>1</sup> does not apply to any functions of the licensing authority under the Licensing Act 2003.
6. Section 7 of the Licensing Act 2003 provides that all matters relating to the discharge by a licensing authority of its licensing functions are referred to its Licensing Committee and section 10 provides that the Licensing Committee may arrange for the discharge of any of its functions by Sub-Committee.
7. Section 9 of the 2003 Act states that regulations may make provision about proceedings of the Licensing Sub-Committee; public access to those meetings and agendas, records and other information about those meetings; and publicity to be given to those meetings. Subject to the Licensing Act 2003 (Hearings) Regulations 2005, the Licensing Committee can regulate its own procedure and that of its Sub-Committees. Nothing in the Hearings Regulations 2005 or the Council's own rules of procedure specifically permits or prevents the recording or filming of Sub-Committee hearings.
8. Despite the fact that the 2014 Regulations do not apply to any functions of the licensing authority under the Licensing Act 2003, it is considered that the filming of Licensing Sub-Committee meetings should generally be allowed subject to a number of criteria to reflect the fact that the Licensing Sub-Committee is conducting public hearings where evidence is given by the parties involved. These proceedings are not judicial hearings as such. They are technically regarded as administrative hearings to reflect the fact that the hearing is conducted as a discussion that is led by the authority. Parties can give evidence but cross-examination is rarely allowed.
9. The plain English guide to the 2014 Regulations provides as follows:

*The council or local government body should consider adopting a policy on the filming of members of the public, and ensure that they protect children, the vulnerable and other members of the public who actively object to being filmed, without undermining the broader transparency of the meeting.*

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<sup>1</sup> In accordance with section 100E(3)(a) of the 1972 Act, Part VA only applies to Committees and Sub-Committees appointed under section 102 of the 1972 Act. Section 102 provides that a local authority can appoint a sub-committee for the purpose of discharging any function in pursuance of arrangements made under section 101 of the 1972 Act. Section 101(15) provides that nothing in section 101 applies in relation to any function of a licensing authority under the Licensing Act 2003.

10. The DCLG guide does recognise that there may be circumstances where members of the public attending the meeting may want to object to being filmed and also recognises that there might be other circumstances where filming should possibly be restricted. Because of the special nature of the hearings held under the Licensing Act 2003, it is considered that a similar approach to the public filming and recording of such hearings should be adopted to the one adopted by the Courts. That means that the proceedings should not be filmed as of right because the filming itself could interfere with the “quasi-judicial” process. Some witnesses may be reticent in giving their evidence or may even be reluctant to give evidence at all if the proceedings are being filmed. Knowledge of such a procedure may even result in some people deciding not to make any representations in the first place.
11. The purpose of this guidance is to suggest an amendment to the rules of procedure for all hearings before the Licensing Sub-Committee so as to remove any suggestion that there is an automatic right to film and take photographs at hearings of the Licensing Sub-Committee but also to set out the criteria that will be used to determine whether filming and the taking of photographs of the hearing will be allowed.
12. So far, this guidance has been addressing the situation where a hearing is held concerning the functions of the licensing authority under the Licensing Act 2003. It has been explained that the new 2014 regulations do not apply to such hearings. However, the new regulations will technically apply to hearings in front of the Licensing Sub-Committee that consider applications under any other legislation, including the Gambling Act and applications for a sex establishment licence under the Local Government (Miscellaneous Provisions) Act 1982. Although they will be determined by the Licensing Sub-Committee, they are not functions under the Licensing Act 2003 and, consequently, section 101(15) does not come into play. This is the provision referred to in the footnote on page 2 of this guidance note.
13. Different statutory regulations apply to hearings that are held pursuant to the Gambling Act 2005. In addition, functions under legislation other than the Licensing Act 2003 and the Gambling Act 2005 are subject to different rules of procedure. In particular, the Council has specific rules of procedure for dealing with applications for sex establishment licences pursuant to the Local Government (Miscellaneous Provisions) Act 1982. Nothing in those regulations or rules of procedure specifically permits or prevents the recording or filming of Sub-Committee hearings.

14. Special considerations have to be taken into account if the Licensing Sub-Committee is considering an application for the grant, renewal or transfer of a sex establishment licence under the Local Government (Miscellaneous Provisions) Act 1982. Although the objectors to an application for a sex establishment licence are not entitled as of right to be heard under the 1982 Act, in practice they are usually heard if they do wish to give evidence. However, the licensing authority is not allowed to reveal the name or address of any objector to the applicant without his or her consent. There would be considerable concern if anyone attempted to film such persons on the basis that they are free to do so in accordance with the Openness of Local Government Bodies Regulations 2014.
15. It has been mentioned above that the plain English guide issued by the DCLG does recognise that, even where the new regulations apply, there may be circumstances where members of the public attending the meeting may want to object to being filmed and also recognises that there might be other circumstances where filming should possibly be restricted. Neither the 2014 regulations nor the plain English guide appear to have considered whether the new provisions should apply to hearings contemplated by this guidance, whether under the Licensing Act 2003 or other licensing legislation. In those circumstances, it is considered to be appropriate to amend all the rules of procedure that apply to any hearings before the Licensing Sub-Committee so as to set out the criteria that will be used to determine whether filming and the taking of photographs of the hearing will be allowed.
16. It is recommended that all rules of procedure that apply to hearings before the Licensing Sub-Committee are amended to include the following:

**The right to film photograph or make sound recordings of the hearing**

- a) The filming and taking of photographs at any hearing of the Sub-Committee is not allowed without the express permission of the Chairman. Permission will usually be granted but may be subject to restrictions to protect children, the vulnerable and other members of the public who actively object to being filmed, without undermining the broader transparency of the meeting;
- b) A request to film or take photographs or make a sound recording should be made as early as possible in advance of the hearing, bearing in mind that it might not be possible to accede to a late request if that has the effect of delaying the consideration of matters on the agenda;
- c) All parties to any application or matter being considered at the hearing and who are present at the hearing will be consulted regarding any request to film or take photographs or make a sound recording of the hearing;
- d) No filming, photography or sound recording will be allowed of any person under the age of 18 years of age;

- e) No filming, photography or sound recording should be allowed of any party or witness (including their representatives) unless they have given their consent in writing;
- f) No person should be put under any pressure to give consent and no payment shall be made for the giving of such consent;
- g) The Chairman will have the final say as to whether any filming, photography or sound recording is to be allowed (either generally or in relation to a particular individual or group of persons);
- h) Any filming, photography or sound recording that does take place must not impede or disrupt the conduct of the proceedings in any way;
- i) All instructions given by the Chairman regarding the filming, photography or sound recording of the hearing must be complied with in full.

**Excluding the public from Licensing Sub-Committee meetings.**

- 17. This part of the guidance addresses the circumstances in which it might be possible to exclude the public from a meeting or part of a meeting of a Licensing Sub-Committee. The default position is that all meetings of the Licensing Sub-Committee are open to the public and all reports can potentially be seen and read by the public, including cases where criminal allegations are made and proceedings are pending.
- 18. Regulation 14 of the Licensing Act 2003 (Hearings) Regulations 2005 states that the hearing shall take place in public, but that the licensing authority may exclude the public from all or part of a hearing where it considers that the public interest in so doing outweighs the public interest in the hearing, or that part of the hearing, taking place in public.
- 19. Regulation 14 is the provision that is relied upon when members of the Sub-Committee decide to retire to consider their decision. In practice, the members leave the meeting room rather than excluding the public but the outcome is the same. Members are not obliged to exclude the public when reaching a decision but legal advice is that they can do so if they wish.
- 20. Apart from the above, there is rarely any need to exclude the public from any hearings of the Licensing Sub-Committee. In most cases, members of the public can attend and watch proceedings and can also have access to reports on the Council's website. However, the police do sometimes seek to exclude the public when they have instituted review proceedings and especially when they have made an application for a summary review under section 53A of the 2003 Act in circumstances where the police are at the early stages of their investigation.

21. The purpose of this part of the guidance is to ensure that there is a protocol in place to prevent details of any review hearing being published either on the licensing register or the Council's website which will disclose details of the evidence to the public before the police have had an opportunity to ask for that information to remain confidential.
22. A record of the various applications made to the licensing authority and notices given to the authority must appear in the licensing register kept by the authority pursuant to section 8 of the 2003 Act. The register will usually include copies of the applications and notices. The Licensing Act 2003 (Licensing Authority's Register) (Other Information) Regulations 2005 further provide that the register must include the ground or grounds for any review of a premises licence that may be made under section 51 of the 2003 Act.
23. Where an application is made for a summary review of a premises licence under section 53A of the 2003 Act, the register must record the fact that such an application has been made and that it has been made on the basis of the opinion of a senior police officer that the premises are associated with serious crime or serious disorder or both.
24. Copies of the reports to be considered by a meeting of one of the Council's Licensing Sub-Committees are usually placed on the Council's website a few days in advance of the meeting. There is no statutory obligation to do this in the case of any applications made pursuant to the Licensing Act 2003 as that legislation is not subject to the access to information provisions contained in Part VA of the Local Government Act 1972 (for the reasons set out in the footnote to the first part of this guidance).
25. The recommendation to the members of the Licensing Committee is that the following protocol is adopted whenever an application is received from the police for a standard review of a premises licence or a club premises certificate or for a summary (expedited) review of a premises licence:
  - a. The licensing service will seek to ascertain from the police whether any part of the evidence supporting the application needs to be excluded from public access.
  - b. If the police do initially ask for evidence to be excluded or the licensing service has not been able to ascertain the views of the police, the grounds for the review will be included in the licensing register but the application for review will not be attached. In addition, the report to the Licensing Sub-Committee will not be placed on the Council's website until the hearing or first hearing of the matter before the Licensing Sub-Committee so as to give the police the opportunity to ask for the hearing to be conducted in private.

- c. The only basis for asking for the matter to be heard in private is that the public interest in excluding the public outweighs the public interest in the hearing, or that part of the hearing, taking place in public.
  - d. There is no legal power to exclude the public simply because the review application includes details of the crime and disorder that has allegedly taken place or because the report discloses the names of persons who may be prosecuted, either for breaches of the licensing legislation itself or for other, possibly more serious, offences.
  - e. The usual reason for such a request being made by the police is that any public disclosure of the evidence at that stage of their investigation might prejudice the ongoing conduct of that investigation. The public will obviously have to be excluded from the meeting to enable the Sub-Committee to determine the request itself in private. Assuming that the Sub-Committee does accede to the request from the police, that item on the agenda will then be considered in private and no record of the confidential information will be included in any public record of the decision or in any other public document.
  - f. If the police do not seek to exclude the public at the first hearing of a review application, the item will be considered in public and a copy of the report and any decision relating to the item will be placed on the Council's website.
  - g. Irrespective of any application that may be made by the police to exclude the public, measures must always be taken to ensure that any copies of reports that are made available to the public, including any reports that are published on the licensing register or the Council's website, do not contain the names or addresses of any victims of alleged criminal activity, especially if they are children or alleged victims of sexual assaults.
26. There may be other circumstances where the police will ask for a particular matter to be considered in private. It may be, for example, that the police oppose an application for a new premises licence or a personal licence under the Licensing Act 2003 because there is an ongoing investigation and are concerned that any public disclosure of their evidence will prejudice that investigation. The public interest test described above in paragraph 18 will apply to such matters in the same way that it applies to review hearings.
27. For applications under the Gambling Act 2005, the statutory regulations provide that the hearing must take place in public unless the Sub-Committee is satisfied that it is necessary, in all the circumstances of the case, that all or part of the hearing must be held in private. In reaching such a decision, the Sub-Committee must have regard to (a) any unfairness to a party that is likely to result from a hearing in public; and (b) the need to protect as far as possible, the commercial or other legitimate interests of a party.

It is not considered that the police are likely to ask for a matter under the Gambling Act to be considered in private but, if such a request is made, the Sub-Committee can also have regard to the exempt information provisions contained in Part VA of the Local Government Act 1972 which provide that the public can be excluded if it is likely that there will be disclosure of exempt information as set out in paragraph 7 of Schedule 12A to the 1972 Act, namely any information relating to any action taken or to be taken in connection with the prevention, investigation or prosecution of crime.

28. For applications under other legislation, such as applications relating to sex establishments under the Local Government (Miscellaneous Provisions) Act 1982, the exempt information provisions in Part VA of the Local Government Act 1972 will also apply so as to allow the public can be excluded if it is likely that there will be disclosure of any information relating to any action taken or to be taken in connection with the prevention, investigation or prosecution of crime.
29. If the police do ask for a report to be dealt with as a confidential matter in advance of the first hearing relating to any of the scenarios mentioned in paragraphs 26 to 28 above, a modified version of the protocol can apply so as to ensure that no confidential information is placed on the licensing register or the Council's website until the request has been considered by members of the Licensing Sub-Committee at that first hearing.