

Briefing Notes

Miscellaneous Licensing Sub-Committee
5 August 2020

Licensing Team Leader

This note contains information to keep Members informed of matters relating to the work of the Cabinet or a committee but where no decisions from Members are needed.

If Members have questions relating to matters shown, they are asked to contact the Officer indicated.

Business & Planning Act 2020

Pavement Licences

Parliament passed a new bill on 22 July 2020 in response to the impact of COVID-19 on the leisure and entertainment industry: the Business and Planning Act 2020. This legislation introduces a new licensing scheme for pavement licences and it is intended to promote outdoor dining and socialising. This scheme will allow businesses to apply to place tables, chairs, barriers and similar items on the highway adjacent to the premises concerned, for the consumption of food and drink.

This is a streamlined process to allow businesses to secure these licences quickly and easily, and where granted, they will remain in force for a year but not beyond 30 September 2021. The new pavement licence scheme does not replace the existing scheme, where councils may give consent for tables and chairs to be placed on the highway. However, it does provide a cheaper, easier and quicker way for businesses to obtain a pavement licence for the short term.

1. Consultation

Consultation will be undertaken in the normal way including with relevant ward Members.

However, under the new pavement licensing scheme, consultation periods are limited to 5 working days (previously it was 28 days).

2. Conditions

Pavement licences are issued subject to conditions published by the licensing authority and those imposed by the Act. This authority have existing licensing conditions, adopted as part of the Street Scene Policy.

In addition, the Act imposes two further conditions:

a) **No-obstruction condition** ([Taken from national guidance](#))

The no-obstruction condition is a condition that the licence must not have the effects set out in section 3(6) of the 2020 Act. When determining whether furniture constitutes an unacceptable obstruction in light of the no-obstruction condition, the provisions require that local authorities consider the needs of disabled people. In order to do this, authorities should consider the following matters when setting conditions, determining applications (in the absence of local conditions), and when considering whether enforcement action is required:

- Section 3.1 of Inclusive Mobility sets out a range of recommended widths which would be required, depending on the needs of particular pavement users, but is clear that in most circumstances 1500mm clear space should be regarded as the minimum acceptable distance between the obstacle and the edge of the footway,
- any need for a barrier to separate furniture from the rest of the footway so that the visually impaired can navigate around the furniture, such as colour contrast and a tap rail for long cane users. In some cases, it may be appropriate to use one or more rigid, removable objects to demarcate the area to which the licence applies, for example wooden tubs of flowers. However, this will need to be balanced to ensure any barriers do not inhibit other street users, such as the mobility impaired, as such barriers may create a further obstacle in the highway;
- any conflict of street furniture with the principal lines of pedestrian movement particularly for disabled people, older people and those with mobility needs. The positioning of furniture should not discourage pedestrians from using the footway. The available route must be entirely clear and not pass through an area with tables and chairs;
- so that where possible furniture is non-reflective and of reasonable substance such that it cannot easily be pushed or blown over by the wind, and thereby cause obstruction – for example, the local authority could refuse the use of plastic patio furniture, unless measures have been taken to ensure it is kept in place.

b) **Smoke-free seating condition** ([Taken from national guidance](#))

The national smoke-free seating condition seeks to ensure customers have greater choice, so that both smokers and non-smokers are able to sit outside, in order to protect public health by reducing risks of COVID transmission.

It is important that businesses can cater to their customers' preferences. The Business and Planning Act 2020 imposes a smoke-free seating condition in relation to licences where seating used for the purpose of consuming food or drink has been (or is to be) placed on the relevant highway. The condition requires a licence-holder to make reasonable provision for seating where smoking is not permitted. This means that where businesses provide for smokers, customers will also have the option of sitting in a non-smoking area. Ways of meeting this condition could include:

- Clear 'smoking' and 'non-smoking' areas, with 'no smoking' signage displayed in designated 'smoke-free' zones in accordance with Smoke-free (signs) regulations 2012 which can be viewed [here](#).
- No ash trays or similar receptacles to be provided or permitted to be left on furniture where smoke-free seating is identified.
- Licence holders should provide a minimum 2M distance between non-smoking and smoking areas, wherever possible.

Further, business must continue to have regard to smoke-free legislation under The Health Act 2006, and the subsequent Smoke-free (Premises and Enforcement) Regulations 2006.

3. Delegations

Members will be aware that Council resolved to delegate decision making authority to the Director of Environment in consultation with the vice-chair of the Licensing Committee to:

- a) Determine contentious applications
- b) Revoke licences

Any person aggrieved by the decision of the Director of Environment in consultation with the vice-chair of the Licensing Committee can apply to the Miscellaneous Licensing Sub-Committee for a review of this decision.

4. Repeal of the Act

Pavement licences under the Business and Planning Act 2020 will have effect until 30 September 2021. Assuming there are no amendments to the Act to amend this date, all licences issued under the 2020 Act will cease when the 2020 Act is repealed.

Businesses who want to continue to place tables and chairs on the highway will need to re-apply for consent under the Highways Act 1980 and each application will be determined afresh and based on its individual merits.

Guidance has been issued by the Government and is available online:

<https://www.gov.uk/government/publications/pavement-licences-draft-guidance/draft-guidance-pavement-licences-outdoor-seating-proposal>

Automatic entitlement to off-sales for all premises licences

The provisions in the Act temporarily modify the Licensing Act 2003 to provide an automatic extension to the terms of most premises licences that only permit the sale of alcohol for consumption on the premises, to allow the sale of alcohol for consumption off the premises. This will make it easier for licensed premises to sell alcohol to customers for consumption off the premises in England and Wales, which will allow businesses to trade and maintain social distancing.

The new off-sales permission will permit off-sales to be made at a time when the licensed premises are open for the purposes of selling alcohol for consumption on the premises, subject to a cut off time of 11pm or the closure time of an existing outside area, whichever is earlier. Measures also temporarily suspend existing licence conditions in so far as they are inconsistent with the new off-sales permission.

Conditions on existing dual premises licences (permitting both on-sales and off-sales) that would prevent one or more of the following are also suspended under the temporary off-sales permission:

- i. off-sales being made at a time when the premises are open for the purposes of selling alcohol for consumption on the premises (subject to a cut off time of 11pm or the closure time of an existing outdoor area, whichever is earlier);
- ii. off-sales being sold in an open container; and,
- iii. deliveries to buildings used for residential or work purposes

The new off-sales permission is authorised under section 172F(2) of the Licensing Act 2003 in respect of on-sales licences and section 172F(5) of the Licensing Act 2003 in respect of dual licences.

Guidance has been issued by the Government and is available online:

<https://www.gov.uk/government/publications/guidance-for-temporary-alcohol-licensing-provisions-in-the-business-and-planning-bill/alcohol-licensing-guidance-on-new-temporary-off-sales-permissions>

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