



Licensing Committee agenda

Date: Wednesday 9 September 2020

Time: 6.30 pm

Venue: Via video conference

Membership:

C Jackson (Chairman), S Renshell (Vice-Chairman), D Barnes, M Hussain JP, S Lambert, J Lowen-Cooper, N Marshall, I McEnnis, S Morgan, G Powell, J Read, J Rush, N Southworth, Sir B Stanier Bt and H Wallace

Webcasting notice

Please note: this meeting may be filmed for live or subsequent broadcast via the council's website. At the start of the meeting the chairman will confirm if all or part of the meeting is being filmed.

You should be aware that the council is a data controller under the Data Protection Act. Data collected during this webcast will be retained in accordance with the council's published policy.

Therefore by entering the meeting room, you are consenting to being filmed and to the possible use of those images and sound recordings for webcasting and/or training purposes. If members of the public do not wish to have their image captured they should ask the committee clerk, who will advise where to sit.

If you have any queries regarding this, please contact the monitoring officer at monitoringofficer@buckinghamshire.gov.uk.

Agenda Item	Page No
1 Apologies for Absence	
2 Declarations of Interest	
3 Minutes of the previous meeting	3 - 8
The committee is asked to note the minutes of the previous meeting held on 1 July 2020.	



Agenda Item 3
Buckinghamshire Council
Licensing Committee

Minutes

MINUTES OF THE MEETING OF THE LICENSING COMMITTEE HELD ON WEDNESDAY 1 JULY 2020 VIA VIDEO CONFERENCE, COMMENCING AT 6.30 PM AND CONCLUDING AT 7.38 PM

MEMBERS PRESENT

C Jackson (Chairman), S Renshell (Vice-Chairman) D Barnes, M Hussain JP, J Lowen-Cooper, N Marshall, I McEnnis, S Morgan, G Powell, J Read, J Rush, N Southworth, Sir B Stanier Bt and H Wallace

OTHERS IN ATTENDANCE

None.

Agenda Item

1 ELECTION OF CHAIRMAN

It was proposed by Councillor J Rush that Councillor C Jackson be elected Chairman of the Licensing Committee for the ensuing year. This proposal was seconded by Councillor S Renshell and agreed at a vote.

Resolved:

That Councillor C Jackson be elected Chairman of the Licensing Committee for the municipal year 2020-21.

2 APPOINTMENT OF VICE-CHAIRMAN

It was proposed by Councillor C Jackson that Councillor S Renshell be appointed Vice-Chairman of the Licensing Committee for the ensuing year. This proposal was seconded by Councillor Sir Beville Stanier and agreed at a vote.

Resolved:

That Councillor S Renshell be appointed Vice-Chairman of the Licensing Committee for the municipal year 2020-21.

3 APOLOGIES FOR ABSENCE

Apologies were received from Councillor S Lambert.

The committee members introduced themselves and stated the area they represented.

4 DECLARATIONS OF INTEREST

There were no declarations of interest.

5 VIRTUAL LICENSING COMMITTEE PROCEDURAL RULES

The Committee received a report setting out the procedural rules that would apply to virtual Licensing Committee meetings whilst physical meetings were unable to take place.

Resolved:

That the Virtual Licensing Committee Procedural Rules be noted.

6 IMPACT OF COVID-19 ON LICENSING SERVICES - UPDATE REPORT

The Committee received a report which updated members on the impact of Covid-19 on Licensing Services. The report set out the changes which had been made to the level of service received by businesses and individuals due to the Covid-19 situation, including how services had been delivered and the fee level charged.

Work was underway to reinstate services as lockdown restrictions were eased whilst adhering to safe working guidance issued by government and support was being given to businesses planning to reopen. Many businesses and individuals had been, and continued to be, subject to business closure regulations as a result of the Covid 19 situation. Those that had continued to operate had been suffering significant business impacts and have had to make changes to the way that they operate.

The Government had encouraged councils to take a pragmatic approach to the delivery of licensing services during this period where there was the discretion to do so, whilst also recognising that licensing services were critical to supporting and facilitating key business sectors such as the food and drink industry.

The Local Government Association had produced advice for licensing authorities on managing licensing and related issues during the Covid-19 pandemic and the overarching principles within this advice had been used to underpin decision making to date.

Members were advised that Licensing Services across the Buckinghamshire area had been approached by licensees seeking advice and support about how they should be operating their businesses and raising concerns about the payment and collection of licence fees. In dealing with these queries and requests the Services have had to consider how the licensing regime could continue to be delivered in a supportive, appropriate and consistent manner.

Section 5 of the report set out the financial impact to the Council, including the projected loss of income for Licensing Services during the Covid-19 period and the breakdown of this across all the licensing areas by regime. There had been deferment of some fees and a lower level of applications received during the pandemic. The Committee was advised that as lockdown was to be eased, an upturn in activity and subsequent income was expected as businesses made plans to re-open. Planning was also underway to reinstate affected Licensing Services as soon as possible and to process any backlog accrued.

A member asked a question about license fees which had been paid for temporary event notices and whether, where events had been cancelled, these fees could be refunded or carried through to 2020/21. It was clarified that the statutory framework around licensing activities made it difficult for the Council to act flexibly when it came to temporary event notices and because of this legislation, the Council was not in a position to waive, refund or defer fees particularly for new licenses or new applications. Flexibility was able to be offered for the deferment of annual fees where premises held an existing license.

A question was raised on suspension of taxi licensing fees and members were advised that the

Council had not been able to process new driver applications due to the high level of safeguarding checks and inability to carry out face to face verification. This service was now being brought back and it was confirmed that the fee had not been suspended at any point. Where existing drivers had been due to renew their license, the period after expiry where they could choose not to renew had been increased to three months during the pandemic. In response to safeguarding measures it was clarified that ongoing advice and guidance had been provided to the taxi and private hire trade and the Council had been sharing government guidance with operators, along with guidance on face masks and the provision of protective screens.

A member queried whether the in-house MOT testing centre would be available from 6 July 2020. The Committee was advised that the in-house centre only supported vehicles in the Aylesbury area, with those in other areas continuing to go to private approved test centres who had continued to operate during the pandemic. The Aylesbury centre had now re-opened after staff and resilience issues on a phased basis with social distancing measures in place.

The Committee requested that a further update report on the impact of Covid-19 be presented at the next committee meeting in September.

Resolved:

That the report be noted.

7 PROGRESS UPDATE ON THE DEVELOPMENT OF THE BUCKINGHAMSHIRE COUNCIL TAXI AND PRIVATE HIRE LICENSING POLICY

The Committee received a report which provided an update on the development of the Buckinghamshire Council Taxi and Private Hire Licensing Policy. The creation of Buckinghamshire Council presented an opportunity to create a new policy that promotes the highest possible standards to secure public safety, support the Council's key priorities of protecting the vulnerable, improving the environment and promoting the local economy.

A new draft policy document was in the process of being prepared with public safety being the main focus. The timetable for the adoption of the new policy was set out in paragraph 1.13 of the report. A full and comprehensive consultation exercise would be undertaken once the draft policy had been produced. Stakeholders would be invited to comment and all views would be referred back to the Licensing Committee and Cabinet Member for consideration before any final policy decisions were made.

At present, the former district areas in Buckinghamshire operated under separate policies and procedures and the importance of having a single policy and set of procedures across the Buckinghamshire Council area was highlighted. James Button & Co solicitors were commissioned to prepare the new policy after being provided with a detailed brief from the Council. The first draft of the policy had been provided on the day of this committee meeting and would be thoroughly reviewed by officers and shared with members in due course. It was expected that the policy would be presented at the next meeting of this committee prior to going out to consultation. In response to a question on the fees paid to James Button & Co for preparing this policy, it was advised that the cost was in the region of £10k.

A member raised the concern that taxi and private hire vehicles licensed by TfL operating in Buckinghamshire displayed very little signage aside from a small sticker in the back window and queried whether there were any means to address this so that it was further highlighted that they were legitimate private hire vehicles. Members were advised that the Council had little control on enforcing against vehicles from other areas coming into Buckinghamshire, although

there was an option for the Committee to make a representation to TfL outlining its concerns. It was agreed to feedback to TfL the need to at least have licence numbers displayed on the plates on the back of the vehicles so that they could be easily identified. In relation to drivers licensed by other authorities and plying their trade in Buckinghamshire, it was explained that where drivers and vehicles were appropriately authorised and licensed it was legal for them to operate in Buckinghamshire. It was added that many drivers licensed in Buckinghamshire also operated outside of the area.

Resolved:

That the report be noted.

8 UPDATE ON THE UNMET DEMAND SURVEY (AYLESBURY AREA)

The Committee received an update on the unmet demand survey covering the Aylesbury 'Town' zone, which was commissioned by the former Aylesbury Vale District Council Licensing Committee in March 2020.

Members were informed that Section 16 of the Transport Act 1985 permitted the Council to limit the number of hackney carriages (taxis) it licenses in a particular zone, if the Council was satisfied that there was no significant demand that was unmet. The Aylesbury 'Town' zone was the only area of Buckinghamshire Council subject to a numerical limit, which was currently 50. The only feasible way of establishing unmet demand was through a survey, which must be conducted at regular intervals to remain reliable and withstand legal challenge.

Following the decision of the former Aylesbury Vale District Council Licensing Committee to commission the survey, a specialist traffic and transportation survey company was instructed to commence the survey work forthwith and dates in mid-March 2020 were agreed to perform the physical observation element of the surveys. However, shortly after agreeing the dates, the Covid-19 virus started to have an impact and it was deemed appropriate to suspend work on the survey as the information gathered would not be representative.

The Committee were advised that it was difficult to envisage at this stage when hackney carriage and private hire operations might return to 'normal' operation. Until such time as this occurs, it was deemed sensible to refrain from conducting a survey.

Furthermore, depending on the outcome of the pending taxi and private hire policy review, it might be deemed not appropriate or necessary to proceed with the survey work. A survey was only required to provide evidence to support a numerical limitation policy. Should the Council decide not to impose a limit then no survey would be required, however such a decision should be subject to stakeholder consultation.

In response to a question on how the trade viewed this survey, it was explained that many of those operating in the limitation zone favoured maintaining the status whilst hackney carriages operating outside the town zone were keen to see the limit removed or increased. The survey cost in the region of £10k.

A member asked whether this numerical limitation would be covered in the draft taxi and private hire policy and was advised that this had been asked for in the brief given to James Button & Co Solicitors and would be reviewed.

Resolved:

That the report be noted.

9 ANY OTHER BUSINESS

A member raised a point on Public Space Protection Orders (PSPOs) and questioned whether there would be a new policy on these for the new council and whether they could be extended to include drug paraphernalia. It was confirmed that PSPOs would carry on at present as they had under the previous authorities and would be reviewed. The PSPOs for parks in Aylesbury were due to be reviewed and an officer would make contact with the member to discuss this separately.

10 DATE OF NEXT MEETING

Wednesday 9th September 2020 at 6.30pm.

This page is intentionally left blank



Report to Licensing Committee

Date: 17th August 2020

Title: Impact of Covid-19 on Licensing Services – further update report

Relevant councillor(s): Licensing Committee, Cllr Fred Wilson, Cabinet Member for Regulatory Services.

Author and/or contact officer: Lindsey Vallis, Transition Head of Licensing, Cemeteries & Crematoria

Ward(s) affected: none specific

Recommendations: To note and comment on the content of the report.

Reason for decision: None required

Executive summary

In response to the Covid-19 situation Licensing Services have had to make a number of changes to the level of service received by businesses and individuals, including how the services are delivered and the fee level charged. A report on the impact of Covid -19 on Licensing services was provided to the Committee on the 1st July 2020. At the request of the Committee this report provides a further update on the return to business as usual within the Licensing Service following the easing of lockdown restrictions, and also summarises the financial impacts of Covid-19 at this point in time.

Content of report

1. Buckinghamshire Council provides a range of licensing services to businesses and individuals including premises licensed for the sale of alcohol and entertainment and gambling, late night sale of hot food and drink and street traders, scrap metal operators, caravan sites, the taxi trade and people operating businesses involving animals. Many of these businesses and individuals have been, and continue to be, subject to business closure regulations as a result of the Covid 19 situation. Those

that continue to operate are suffering significant business impacts and have had to make changes to the way that they operate.

1.1 Government have encouraged Councils to take a pragmatic approach to the delivery of licensing services during this period where there is the discretion to do so (Ministerial letter from Kit Malthouse MP, Minister of State for Crime and Policing, to Chairs of Licensing Committees dated 8 April 2020), whilst also recognising that licensing services are critical to supporting and facilitating key business sectors such as the food and drink industry.

2. Licensing fees

2.1 As previously advised government will not be directing councils to refund licence fees as this is a local decision. The different statutory licensing regimes impact whether the Council is legally able to make a local decision to refund, waive or defer a fee. For example where fees are set centrally such as by the Licensing Act 2003 the Council has little flexibility and there is no clear mechanism to provide refunds or part refunds (neither the Home Office or Gambling Commission are expecting councils to issue refunds for licence fees). LGA advice is that it is not clear that there are legislative provisions in place that enable councils to provide refunds to licensees that wish to retain their licences.

2.2 Where fees are set locally the Council has more discretion with regard to deferred payments and discounts, for example in relation to animal licensing fees or taxi licensing. However the level of uncertainty regarding the length of time that businesses may be impacted and how they may operate in the future makes it difficult to determine an appropriate level of discount or to make a decision to defer a payment either partially or entirely. Licence durations can range from 6 months - 5 years, dependent on the regime, and the fee charged at the point of application may have covered the cost of the administration and issue of the licence and nothing more. However within some of the regimes the licence fee may also cover the cost of ongoing activity associated with that licence, such as inspections and enforcement.

2.3 The LGA have advised that an appropriate way to manage the level of uncertainty in this area is to consider this at the point that the fees are reviewed when an income surplus could reflect a reduction in ongoing activity or enforcement. If this was the case then fees could then be adjusted downwards for future years. The majority of the service costs associated with the Licensing Service are staff resourcing costs which the Council continues to incur.

2.4 Invoices for annual fee payments for licensed and gambling premises have now been processed and sent out to all businesses that are due to pay a fee up to the current date. Ordinarily non-payment of an annual fee would result in the suspension or revocation of a licence. This approach had been paused during the lockdown period but now that businesses are trading again it will recommence. The Licensing Service

will continue to deal with each non-payment on a case by case basis discussing the implications of non-payment with the business and agreeing a payment approach for those affected.

3. Interventions by regime (Part A statutory functions)

3.1 Decisions on interventions implemented to date were made via the Crisis Response Management Team during the early stages of CV19 in view of the wider pressures on business. There are currently no pending decisions to be made.

3.2 Licensing Act 2003 (alcohol entertainment and late night refreshment licences)

Licensing Act Fees are set nationally and the fee forms part of a valid new application. The Council has little flexibility or discretion in this area and there is no clear mechanism to provide refunds or part refunds of fees. The cost of administering and issuing licences needs to be covered by the licensing fee (Note: the current nationally set fee levels are not sufficient to cover this process and review has been proposed for some years).

Adjustments to service provided during lockdown	Current position
Deferred recovery for non-payment of annual fee	All invoices owing have now been issued, licence suspension for persistent non-payment to recommence
Deferred suspension of licence for non-payment of annual fee	All invoices owing have now been issued, licence suspension for persistent non-payment to recommence
Remote licensing hearings for contested applications, deferment only when absolutely necessary	Remote hearings to continue

3.3 Gambling Act 2005

Gambling Act Fees are set locally (with upper limits) and differ considerably across the Council areas. The fee forms part of a valid new application and covers the administration and issue of the licence and ongoing associated activity and enforcement.

Adjustments to service provided during lockdown	Current position
Deferred recovery for non-payment of annual fee	All invoices owing have now been issued, licence revocation for persistent non-payment to recommence
Deferred revocation of licence for non-payment of annual fee	All invoices owing have now been issued, licence revocation for persistent non-payment to recommence

4. Interventions by regime (Part B other licensing functions)

4.1 Taxi Licensing

Taxi licensing fees are set locally and differ across the Buckinghamshire Council areas. Where a fee is locally set councils have more discretion to operate with flexibility. The fee covers the administration and issue of the licence and ongoing enforcement activity. Driver licences are valid for 3 years, operators for 1 or 5 years and vehicles for 6 months or 1 year.

Adjustments to service provided during lockdown	Current position
New driver applications are not being processed as we are unable to undertake necessary verification and safeguarding checks required	New driver applications have been processed since the 13 th July 2020 with all face to face verification appointments and safeguarding checks being carried out in accordance with office and service risk assessments
Renewal applicants are being issued with electronic licences only to be used in conjunction with their existing out of date driver badges and vehicle plates. Physical driver badges and vehicle plates have not been issued since lockdown restrictions were imposed (some have been processed in the Wycombe area).	All backlog vehicle livery plates and door signs have now been issued. Most backlog driver badges have been issued with a small number remaining outstanding in the Aylesbury area. These should all be issued by 1 st September 2020 at the latest.
New vehicle licence applications are not being processed in the Aylesbury area, a	The in-house MOT testing centre in Aylesbury is now fully operational and

<p>small number are being accepted in the Wycombe and Chiltern and South Buckinghamshire areas.</p>	<p>testing both new and renewal vehicles. Licensing staff are working alongside mechanics at the testing centre to undertake new and renewal enhanced vehicle tests (taxi test). The service is facing some disruption as a result of the handover of the new vehicle maintenance workshop (not Covid-19 related) which is due to take place imminently. This is being managed between the Services to reduce any impacts on customers.</p>
<p>Renewal vehicle MOT tests in the Aylesbury area are being carried out by private MOT test centres. Vehicles are not receiving the enhanced vehicle test (taxi test) carried out by licensing staff.</p>	<p>All vehicles (over 300) that were issued with a renewal licence during the lockdown period have now had an enhanced vehicle test carried out by Licensing staff operating in accordance with office and service risk assessments.</p> <p>Any vehicle that was issued a licence during the lockdown period and has failed to return for the mandatory Council inspection (and to collect the new style licence plates/window cards/door stickers) has been suspended until the vehicle has been satisfactorily inspected.</p>
<p>Voluntary vehicle suspensions are being issued where requested to reduce insurance costs for the vehicle proprietor</p>	<p>This offer remains available to the vehicle proprietor</p>
<p>Renewal driver applicants who are not currently working are able to delay the renewal of their current licence by up to 3 months after the date of expiry without the need to undertake a new driver assessment, English language assessment or provide a medical from their GP (this will need to be provided within 3 months of the licence being granted). NOTE: a new enhanced DBS</p>	<p>From 31 August 2020 the 3 month grace period will stop and any driver who fails to renew before their expiry date will be treated as a new driver from 1 September 2020. Communications on this were provided to the trade in mid-July.</p>

certificate must be provided at the point of application. Drivers with limited duration licences due to immigration status must continue to apply to extend their licences in the normal manner.	
Mandatory safeguarding training courses for drivers has been delivered online rather than face-to-face	At the current time we consider it appropriate to retain an online training offering. This should be kept under review as returning to an exclusively face-to-face training model may or may not be appropriate in the future.
Renewal driver applicant appointments have been held remotely online	In order to reduce the level of risk to staff and applicants renewal driver application appointments continue to be held remotely. New applicants are all verified face to face.

4.2 Street Trading

Street trading consents are issued under schemes that were established under adoptive legislative controls in each Buckinghamshire Council area. The schemes are very different in nature and the number of consented street trading pitches differs considerably (market traders are managed outside of this regime). Fees are also set locally and range considerably. Chiltern and South Buckinghamshire areas do not have any consented street trading pitches. In the Aylesbury area consents were due for renewal on the 1st April and traders on consent pitches pay in installments via a monthly direct debit. In the Wycombe area they pay an annual fee on renewal which was due in April.

Adjustments to service provided during lockdown	Current position
Street trading consents have been renewed (on application) in the Aylesbury and Wycombe areas but payment has been deferred at this time.	Review of fees owed currently underway with recovery pending.

4.3 Animal Licensing

Animal licensing fees are set locally and differ across the Buckinghamshire Council areas. Where a fee is locally set councils have more discretion to operate with flexibility. The fee covers the administration and issue of the licence and ongoing activity and inspections. Animal licences are issued for up to 3 years dependent on the type of activity undertaken and the level of compliance at inspection.

Adjustments to service provided during lockdown	Current position
<p>The regime requires that an inspection is carried out prior to the issue of a licence and at the mid-term point of the licence.</p> <p>New licences are not being issued as inspections cannot be carried out by Officers</p> <p>DEFRA have advised that existing licences due for renewal can be extended for 3 months, where it is deemed necessary, to reduce the need for inspection.</p>	<p>Officers are now able to carry out site visits and inspections in accordance with Service risk assessments. Inspections and site visits recommenced on the 3rd August 2020 and Officers are carrying out new and renewal inspections in accordance with priority.</p> <p>Mid-term licence inspections have not yet recommenced</p>

5. Financial Impact

5.1 At the time of the last report to the Committee the projected loss of income for Licensing Services during the CV19 period was £105k per month which reflected the significant reduction in the number of applications that were being received by the Council during the enforced lockdown restrictions.

5.2 As lockdown restrictions have eased Licensing Services have seen an upturn in applications and associated income. Whether income returns to pre-CV19 levels will be dependent on the longer term impact on businesses and individual licensees.

5.3 The projected income loss by Licensing area and the actual income loss April to July is detailed below:

Licensing regime	Forecast loss of income (April to July)	Actual loss of income (April to July)
Licensing Act 2003 & Gambling Act 2005	-£40,000	-£23,386
Taxi Licensing	-£348,000	-£71,120
Street Trading	-£20,000	-£20,000

Animal Licensing	-£12,000	-£10,470
TOTAL	-£420,000	-£124,976

5.4 The actual loss of income into the Service is lower than anticipated in the early stages of the CV19 pandemic. This can be seen most significantly in the area of taxi licensing where income levels have increased as lockdown restrictions have eased. The reopening of retail and hospitality businesses and the formation of return to school plans will have had a positive impact on the taxi trade. It is likely that taxi operators and drivers will have applied for new or renewal licences to enable them to be in a position to respond to this increase in demand. The longer term impacts of CV19 on retail and hospitality businesses are not yet known and it is likely that there will be a reduction in income associated with these types of businesses this year and into the next financial year.

5.5 The shortfall of income in the Licensing Service is reported monthly and recorded as an impact on the Council as a result of the CV19 pandemic.

6. Return to Business as Usual

6.1 Throughout the CV19 pandemic consideration has been given to the use of digital technology as an alternative to face to face interaction and this has been implemented wherever possible. Digital technology will continue to play a role in the way that licensing services are provided where this can be appropriately balanced against risk.

6.2 Licensing Services play a key role in promoting town centre and business recovery as CV19 restrictions are eased and the Service is actively contributing to the cross-council partnership approach on supporting town centre and business recovery. The new pavement licence regime under the Business & Planning Act 2020 is an example of this.

Legal and financial implications

(Information provided above).

Corporate implications

- Property – Reinstatement of affected Licensing Services has been undertaken in conjunction with the planning for building a safe workplace environment for staff returning to the workplace.
- HR - Reinstatement of affected Licensing Services has and continues to be undertaken in consideration of HR policies relating to staff returning to the workplace

- Equality (does this decision require an equality impact assessment) – N/A
- Data (does this decision require a data protection impact assessment) – N/A

Consultation and communication

Information for applicants and licensees on changes to Services is available on the website. Regular updates are also provided to some licensees by email where appropriate to do so.

Next steps and review

Committee may wish to request a further future update on the impact of CV19 on Licensing Services

Background papers

- [LGA Note on approaches to managing licensing during the COVID-19 pandemic](#)
(updated 17 April 2020)
- [Ministerial letter from Kit Malthouse MP, Minister of State for Crime and Policing, to Chairs of Licensing Committees dated 8 April 2020.](#)

This page is intentionally left blank



Report to Licensing Committee

Date: 10th August 2020

Title: Business & Planning Act 2020

Relevant councillor(s): Licensing Committee, Cllr Carl Jackson, Chairman of Licensing Committee, Cllr Fred Wilson, Cabinet Member for Regulatory Services.

Author and/or contact officer: Lindsey Vallis, Transition Head of Licensing, Cemeteries & Crematoria

Ward(s) affected: none specific

Recommendations: To note the temporary changes to the Licensing Act 2003 introduced by the Business & Planning Act 2020. To confirm the level of fee charged and duration of pavement licences issued under the Business & Planning Act 2020.

Reason for decision: to support business recovery, help businesses adjust to new ways of working in response to Covid 19 and to facilitate delivery of the new pavement licence regime.

Executive summary

The Business and Planning Act 2020 received royal assent on the 22nd July 2020 and was enacted with immediate effect. The Act aims to support business recovery, help businesses adjust to new ways of working and create new jobs. It introduces a number of urgent measures to help businesses succeed over the coming months, and to remove short term obstacles that could get in their way. Almost all measures are temporary, with some limited exceptions. There are two key areas within the Act relevant to Licensing Services; firstly the provisions in the Act temporarily modify the Licensing Act 2003 to provide an automatic extension to the terms of most premises licences which only permit the sale of alcohol for consumption on the premises, to allow the sale of alcohol for consumption off the premises. Secondly the Act introduces a new 'fast-track' pavement licence process to facilitate the provision of outdoor dining and drinking by businesses.

Content of report

1. The hospitality industry has been severely impacted by the Covid19 pandemic and associated lockdown restrictions. As of the 4th July 2020 lockdown restrictions for these businesses were relaxed enabling them to begin to operate again, albeit with strict social distancing procedures in place. The Government has issued safer working guidance for restaurants, pubs and bars which must be adhered to by businesses returning to operation.
 - 1.1 In other countries affected by the pandemic the easing of lockdown restrictions has resulted in the increased use of outdoor space by the hospitality sector. Forecasts indicate that businesses may need to utilise outdoor space to provide up to 80% of their business activity. The Council has a significant role to play in supporting businesses to trade in a safe and responsible manner and contributing towards the rebuilding of the local economy whilst ensuring that our public spaces continue to meet the needs of local communities. As part of this process due consideration should also be given to the impacts that the increased use of outdoor space can have on our high streets, town centres and communities.
2. **Alcohol Licensing – Temporary Off-Sales Permissions**
 - 2.1 A licence is required where alcohol sales are taking place in an outdoor area i.e. if there is an outside bar or a member of staff walking around with drinks for sale. If customers are taking drinks from inside a licensed premises to an outside area, or staff are taking orders and are delivering drinks to an outdoor area from a licensed premises, then the area concerned does not need to be licensed.
 - 2.2 Given this the licensing impact of providing additional outdoor seating for a business holding an existing premises licences may not be significant. However, the provisions in the Act temporarily modify the Licensing Act 2003 to provide an automatic extension to the terms of most premises licences which only permit the sale of alcohol for consumption on the premises, to allow the sale of alcohol for consumption off the premises. This means that in the main alcohol can be sold for consumption in either an outdoor area covered by a premises licence (on-sales) and an outdoor area which is not covered by a premises licence (off-sales) e.g. public highway. Premises will also be able to use any area outside of their premises within their control to provide tables and chairs for those consuming food or drink without requiring changes to their existing premises licences. The purpose of this is to make it easier for licensed premises to sell alcohol to customers for consumption off the premises which should allow businesses to trade and to maintain social distancing requirements. The temporary off-sales permission and any conditions attached to it will lapse on 30 September 2021; unless it is extended by regulations made by the Secretary of State or is otherwise suspended, removed or varied.

2.3 The new temporary off-sales permission permits 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. Any licensee who wished to open for longer hours would need to apply to the licensing authority for a licence variation in the normal manner.

2.4 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:

- a) 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);
- b) off-sales being sold in an open container; and,
- c) deliveries to buildings used for residential or work purposes

2.5 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.

2.6 Exclusions:

This temporary permission is only provided to businesses operating with a premises licence and organisations with club premises certificates are therefore not covered by the provisions in the Act. Club premises certificate holders must seek permission from the licensing authority in the normal way if they wish to provide off-sales and their existing licence does not currently permit it. In addition, a premises licence that only permits on-sales will be excluded if, within the three years preceding 22 July 2020:

- a premises licence application was made for a licensed premises and permission for off-sales was refused;
- a licence variation seeking permission for off-sales was refused;
- a licence variation seeking to exclude the off-sales permission was accepted; or
- the premises licence was varied or modified on review to exclude off-sales.

This is a safeguard to ensure that where it has recently been decided that the licensee should not have the permission, they do not receive it through the new legislation. Premises wishing to make use of the temporary off-sales permission are required to notify the licensing authority of their intention to do so and must display a section 172F statement on the premises alongside their summary premises licence

advising that they are making use of the temporary off-sales permission and detailing the relevant temporary conditions.

2.7 Enforcement:

If there were problems of crime and disorder, public nuisance, public safety or the protection of children arising from how the premises operated using the new temporary off-sales permission, any responsible authority, including the police or environmental health, could apply for a new off-sales review. The off-sales review process is modelled on the existing summary review process within the Licensing Act 2003.

A responsible authority can apply for an off-sales review at short notice and the licensing authority must decide within 48 working hours (weekends are excluded) whether to take any interim steps against the licence. For those who have simply been granted off sales for the first time, those interim steps could include excluding off sales from the licence or suspending those off sales.

For those who already have off sales but are benefiting from suspension of conditions relating to time, sealed containers or deliveries the licensing authority can amend those conditions, restricting the manner of off sales or preventing them.

An interim steps hearing can take place without the licence holder but operators have the opportunity to request a further hearing to review the interim steps. There is also a mandatory full review hearing 28 days after the application was made by the responsible authority but this relates only to the issue of off sales and the rest of the licence and its permissions are not open to restriction or modification. It is also possible to appeal against the decisions, both for interim steps and the final review.

3. Pavement Licences

3.1 Prior to the enactment of the Business & Planning Act a complex legislative regime underpinned trading outdoors including:

- a requirement for planning permission (in most cases),
- a requirement for a pavement licence (issued under highways provisions and which controls the provision of tables and chairs on the highway)
- a requirement for a premises licence issued under the Licensing Act 2003 (where there is the supply or sale of alcohol and the sale of alcohol takes place in the outdoor space)
- a street trading licence or consent in designated street trading areas.

The normal application process for these requirements is lengthy and was considered to be a barrier to a swift return to trading outdoors for hospitality businesses affected by Covid-19 lockdown restrictions.

3.2 The Act removes the requirement for planning permission prior to the grant of a pavement licence for removable furniture. Once a pavement licence is granted, or deemed to be granted, the applicant also benefits from deemed planning permission to use the land for anything done pursuant to the licence while the licence is valid. No additional authorisation is required for street trading in areas covered by a pavement licence. The new regime is a licensing function (rather than a highways function) and responsibility for administering it rests with the Licensing Service.

The new pavement licence process within the Act places a number of additional requirements on the local authority that are not currently required for pavement licences issued under highways legislation. This includes:

- The display of a public Notice by the applicant on the premises applying for the licence for a 7 day period
- The publication of the application by the local authority inviting representations within a 7 day period
- Consultation with highways colleagues on all licences applications
- The requirement to determine and issue the licence within 7 days of the end of the consultation period (any licences not determined within this timeframe are given deemed consent in the form applied for)

3.3 The local authority can add conditions to the licence and can publish conditions which it proposes to add to pavement licences. There are a small number of national conditions relating to highway obstruction and smoking that must be included on all licences granted.

3.4 Information on pavement licences and how to apply online can be found at <https://www.bucksc.gov.uk/services/transport-and-roads/licences-and-permits/apply-for-a-pavement-licence-business-and-planning-act-2020/>

Officers have produced a set of standard conditions for pavement licences in consultation with Highways, Environmental Health and the Police and these are attached as Appendix 1. These conditions reflect Government guidance on assessing whether the needs of disabled people are met when considering the no obstruction requirement and the reasonable provision of seating in non-smoking areas.

3.5 In respect of the former, the guidance states that in most cases it is clear that a minimum of 1500mm clear space between obstacles and the edge of the footway is an acceptable distance. The guidance provides further advice concerning barriers, lines of site and construction of furniture which has been incorporated into the conditions.

3.6 In respect of non-smoking areas, the Council has a statutory obligation to have regard to Secretary of State guidance. Government guidance on this matter provides

that a minimum of 2m distances should be provided between smoking and non-smoking areas, ash trays should be removed in non-smoking areas and appropriate no smoking signage should be displayed. These measures have similarly been incorporated into the conditions.

3.7 Each pavement licence issued must take into account available footway/road space, social distancing requirements and any temporary traffic management requirements. A plan showing the location of tables and chairs in relation to the highway and street frontages must be submitted as part of the application to enable impacts to be assessed and, in some circumstances a site visit by a highways officer may be needed. In some areas it may not be possible for temporary tables and chairs to be provided given the constraints of the highway in that location.

3.8 Pavement licences issued under the proposed legislation can only be issued for land on the public highway. Property and Assets Services also have setting out licence arrangements in place with some business tenants and the Council are landowners of open and public realm space that businesses may also want to utilise through temporary lease arrangements. Where a pavement licence cannot be granted because the land requested is not within the public highway, Licensing Services have been working closely with colleagues in Economic Growth and Regeneration to ensure that businesses are provided with relevant information for their specific enquiry and signposted to the appropriate team within the Council.

4. Fees

Under the Act pavement licences are a non executive function and are therefore delegated to the Licensing Committee. Officers are appropriately delegated for all functions but the Committee is responsible for the setting of fees. The Act sets a maximum fee threshold of £100.

4.1 The fee proposed to the Committee for pavement licences is £100. The costs to the council of administering the new pavement licence scheme are in the region of £300 per licence application which is far in excess of the fee income that the Council will receive. In addition existing highways pavement licence holders whose licences are due for renewal are also able to take advantage of the new lower cost regime for the period through to 30th September 2021, which impacts the level of income into the Council in this area.

4.2 Additional associated costs of the regime include a likely increased requirement for enforcement activity where businesses are not complying with their licences or with Covid-19 guidance. This falls primarily to the teams working within Licensing and Environmental Health Services alongside the Police. There may also be a requirement for additional highways involvement where issues of concern are raised that impact the public highway.

4.3 In order to facilitate businesses with return to trading as soon as possible after the legislation was introduced, an interim pavement licence fee of £100 was agreed by the Cabinet Member for Regulatory Services and the Chair of the Licensing Committee on the 28th July 2020. This decision was taken following legal advice and in order to be able to offer the new scheme to businesses as soon as possible. Many businesses had been waiting for the legislation to be passed to be able to apply for a licence. There is a 14 day statutory consultation period on a pavement licence and delaying the fee decision could have meant that businesses did not receive their licences until after the summer period. It was considered that this was unlikely to have been government's intention when they passed the Act.

4.4 At the point of application information is displayed on the Council website that states that the pavement licence fee is interim and that if the fee is subsequently reduced by the Licensing Committee then the differing amount will be refunded.

4.5 It is recommended that the Committee confirms a fee of £100 for each pavement licence in line with the maximum amount specified by Government. This will go part way towards the costs of the provision of this service and the associated regulatory activity. Should the Committee agree a different fee amount to that proposed then any business that has paid a £100 fee in the period between 28th July and the 9th September will have the difference in that fee level refunded.

5. **Duration of licence**

The new Pavement Licence regime is time limited with the scheme running through to 30th September 2021. During early engagement with Cabinet Members on the Business & Planning Bill it was initially felt that pavement licences issued under the new legislation could be issued with a limited duration through to the 31st March 2021. In part this was to limit the financial impacts of offering a lower cost scheme (as opposed to the highways pavement licence scheme) but also because it was felt that it was hard to predict what the longer term impacts of Covid 19 on our high streets and communities may be.

5.1 The legislation as passed does enable the Council to issue a pavement licence for a shorter duration than the length of the scheme (which ends on the 30th September 2021). However guidance issued by the Local Government Association indicates that the Council should only consider issuing for a shorter duration than the length of the scheme where there is reasonable reason to do so e.g. where the application is linked to a time limited road closure. The legislation also requires that the licence is issued for no less than a 3 month minimum period so were the Council to agree a shorter licence duration there would be difficulties with this for both businesses and the Council. The spirit of the legislation is such that the general position is that licences should be issued for the full duration of the scheme, so to the end of September 2021.

5.2 It is recommended that the Committee confirms that pavement licences issued under the Business & Planning Act are for the duration through to 30th September 2021.

Legal and financial implications

(Information provided above).

Corporate implications

- Property – as detailed above, links to Estates & Property Services where setting out licences exist and/or the Council is a landowner of open or public realm space
- HR – N/A
- Equality (does this decision require an equality impact assessment) – equalities have been considered and the Councils recommended approach reflects the Government guidance provided on this issue. An Equalities Impact Assessment may be necessary and further details will be provided.
- Data (does this decision require a data protection impact assessment) – N/A

Consultation and communication

Information for applicants and licensees is available on the website. Regular updates are also provided to businesses via email by Communications colleagues.

Next steps and review

Background papers

- Keeping workers and customers safe during COVID-19 in restaurants, pubs, bars and takeaway services, HM Government.
<https://assets.publishing.service.gov.uk/media/5eb96e8e86650c278b077616/Keeping-workers-and-customers-safe-during-covid-19-restaurants-pubs-bars-takeaways-230620.pdf>
- Licensing of Outdoor Drinking & Dining, Local Government Association
https://www.local.gov.uk/sites/default/files/documents/UPDATE%20Outdoor%20eating%20and%20drinking%20guidance_0.pdf

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

This page is intentionally left blank



Directorate for Communities
Licensing
The Gateway
Gatehouse Road
Aylesbury
HP19 8FF

Pavement Licence Conditions

Pavement licences permit the holder to place removable furniture on the relevant highway adjacent to their premises so that it may be used in connection with the serving, selling and consumption of food and drink. Licence holders wishing to sell or supply alcohol will need to ensure that they also have the required permission under the Licensing Act 2003.

The following conditions apply to all pavement licences granted or deemed granted in accordance with Section 5 of the Business and Planning Act 2020. Licences may also be subject to additional conditions specified by the Secretary of State.

General

1. Only 'removable' furniture as specified on the licence, including the type, quantity and location may be used.
2. Only the relevant highway area shown on the approved plans accompanying the licence may be used. The use must be in connection with the serving, selling and consumption of food and/or drink.
3. No fixtures to or excavations of any kind shall be made in the surface of the highway.
4. Furniture may only be placed in the approved area on the days and during the hours specified on the licence.

Prevention of Obstruction

5. Anything done by the licence holder pursuant to the licence, or any activity of other persons which is enabled by the licence, must not have the effect of:
 - a) preventing traffic, other than vehicular traffic, from
 - (i) entering the relevant highway at a place where such traffic could otherwise enter it (ignoring any pedestrian planning order or traffic order made in relation to the highway),
 - (i) passing along the relevant highway, or
 - (ii) having normal access to premises adjoining the relevant highway,
 - (b) preventing any use of vehicles which is permitted by a pedestrian planning order or which is not prohibited by a traffic order,
 - (c) preventing statutory undertakers having access to any apparatus of theirs under, in, on or over the highway, or
 - (d) preventing the operator of an electronic communications code network having access to any electronic communications apparatus kept installed for the purposes of that network under, in, on or over the highway

6. Furniture shall be immediately removed from the relevant area where the use of the highway is required by the council (or anyone working on the behalf of), police, fire and ambulance services, furniture removal or hearses.
7. A minimum of 1500mm of unobstructed, clear passageway shall be provided between the boundary of any designated furniture area and the edge of the footway and any obstruction such as telephone boxes, lamp posts, sign posts, post boxes, street furniture and similar items.
8. Barriers used to separate furniture from the rest of the footway shall be colour contrasted with tap rails and reflective strips, to assist the visually impaired. Any item used as a barrier must not cause an obstruction to those using the highway.
9. The positioning of furniture shall not be positioned so that pedestrians are discouraged from using the footway. Available routes must be visible, entirely clear and not require pedestrians to pass through an area of outside furniture.
10. Furniture shall be non-reflective and of sufficient construction to withstand being pushed or blown over.

Smoking area condition

11. The licence holder must make reasonable provision for seating in an area where smoking is not permitted with 'no smoking' signage displayed in designated 'smoke-free' zones in accordance with Smoke-free (signs) regulations 2012 which can be viewed [here](#).
12. No ash trays or similar receptacles shall be provided or permitted to be left on furniture in designated 'smoke free' zones.
13. Licence holders shall provide a minimum 2 metre distance between non-smoking and smoking areas.

Liability and Insurance

14. The licence holder shall indemnify the Council against all actions, proceedings, claims, demands and liability which may at any time be taken, made or incurred in consequence of the use of the tables and chairs and other projects and for this purpose must take out at the Licensee's expense a policy of insurance approved by the Council in the sum of at least £5 million in respect of any one event and must produce to the Council on request the current receipts for premium payments and confirmation of the annual renewals of the policy. The licence holder shall make no claim or charge against the Council in the event of the tables and chairs or other items being lost, stolen or damaged in any way from whatever cause.

Covid-19

15. The licence holder shall adhere to latest government guidelines surrounding COVID-19 at all times. The licence holder must ensure that they have carried out a suitable and sufficient risk assessment to protect employees and visitors to their premises from risks to their health and safety. A copy of the current risk assessment shall be made available on request to authorised officers of the Council.
16. Within the licensed area, outside furniture such as tables and chairs shall be positioned to give enough space to allow people to pass whilst keeping the appropriate social distance of 2 metres. Where it is not possible to provide a 2

metre gap between furniture, a minimum of 1 metre gap is permitted but appropriate mitigation measures must be introduced and detailed in the risk assessment, which must be made available to officers on request.

17. Clear signage shall be displayed to direct customers to toilets, ordering procedures, opening times, and other relevant information.
18. Outside areas shall only be used by customers who have been identified for 'track and trace' purposes.

Safety

19. Outside furniture shall not be placed in front of any designated emergency exits or prevent easy access for emergency services.
20. Furniture stored inside during opening times shall not obstruct any emergency exit routes.
21. Furniture must be suitable for outside use, so that it can withstand adverse weather and must be maintained in a safe condition. Furniture such as umbrellas and other coverings must be suitably robust and sufficiently weighted to prevent collapse or movement, especially during adverse weather.
22. Items that may cause trip hazards such as trailing cables and weights must be highlighted, covered, removed or positioned out of the way as appropriate. Low lying furniture that may not be easily seen shall not be used.
23. If providing outside heaters the licensee shall ensure adequate fire fighting arrangements and appropriate secure arrangements for storing any fuel are in place.
24. Adequate lighting shall be used if outside areas are used at night or in low light level conditions.
25. Outside electrical systems must be installed, modified and maintained by a competent and suitably qualified electrical engineer.

Prevention of Nuisance

26. The provision of any outside entertainment shall not cause a disturbance to nearby residents.
27. The licence holder shall have a system in place to regularly monitor the use of outside areas by customers to ensure nearby residents are not disturbed by customer noise and the area is kept clear of litter.
28. Outside lighting shall not cause a disturbance to nearby residents.
29. Suitable waste receptacles shall be made available for use by staff and customers.
30. The outside area shall be thoroughly cleaned at the end of each day that it is in use..

This page is intentionally left blank