



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.

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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.

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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>

