



# Report to Licensing Committee

**Date:** 22<sup>nd</sup> July 2021

**Title:** Pavement Licensing - The Business and Planning Act 2020 (Pavement Licences) (Coronavirus) (Amendment) Regulations 2021

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**Ward(s) affected:** none specific

## **Recommendations:**

1. To note the changes to the Business & Planning Act 2020 introduced by The Business and Planning Act 2020 (Pavement Licences) (Coronavirus) (Amendment) Regulations 2021.
2. To confirm the proposed duration of pavement licences, subject to The Business and Planning Act 2020 (Pavement Licences) (Coronavirus) (Amendment) Regulations 2021 coming into effect.
3. To confirm the level of fee charged in respect of applications for pavement licences issued under the Business & Planning Act 2020.

## **1. Introduction**

1.1. The Business and Planning Act 2020 obtained Royal Assent on 22 July 2020. The Act introduced a number of powers and requirements on local authorities that affect how they deal with a variety of issues, with the aim of supporting local businesses and helping economic recovery as the COVID-19 restrictions put in place by Government continue to be eased. The two most relevant sections of the Act cover:

- The change in approach to outdoor furniture provision for relevant businesses (as defined in the Act) to enable them to increase their trading space 'pavement licences'.
- Relaxation of off sales of alcohol for licensed premises

1.2. The new powers are temporary, and were originally in place until 30 September 2021, however there are new draft regulations (Business and Planning Act 2020

(Pavement Licences) (Coronavirus) (Amendment) Regulations 2021) which are anticipated to receive royal ascent imminently. These new regulations will amend The Business and Planning Act 2020, extending these powers to 30 September 2022, subject to parliamentary approval.

1.3. Under the Business and Planning Act 2020, pavement licences are currently handled by the Licensing Service, as an alternative to the previous regime which was the responsibility of the Highways Service. As a result of the imminent extension of the powers to 30 September 2022, the Council needs to ensure that processes are in place to allow applications to continue to be made, consulted upon and determined within a short timescale.

## **2. Background**

2.1. The Business and Planning Act 2020 requires Councils to deal with any food and drink related pavement licence applications submitted to them, and also introduces other important changes to the way that these are dealt with. The key requirements of pavement licensing are as follows:

- Any business selling and/or serving food or drink may apply for a pavement licence to have tables and chairs and other street furniture, such as patio heaters, placed on the highway adjacent to their premises for the benefit of their customers. If the land is not a highway and is privately owned land separate consent of the landowner is required.
- Licences will be considered granted unless the Council rejects them within a set statutory period.
- The Council has 14 days to determine an application, with half of that forming a public consultation, and the other half being the time permitted for the consultations received to be considered and a decision made.
- A maximum fee of £100 can be charged for applications.
- All licences issued would expire on or before 30th September 2021. Councils have the ability to issue licences for shorter periods.

2.2. At a meeting of the Licensing Committee on 9th September 2020, members were made aware of the changes introduced by the Act and resolved that a fee of £100 would be charged for each pavement licence and once issued, all licences would be valid for the maximum length, until 30 September 2021, in line with government guidance. Since that meeting, the Council has issued 38 pavement licences.

2.3. Whilst it is difficult to predict the number of new applications that the Council will receive, it is anticipated that as restrictions lift, more premises will open and becoming look to expand, potentially leading to more applications being received for pavement licences. Due to the extension of the current scheme being directly

linked with the COVID-19 pandemic, the future requirements of pavement licensing past September 2022 still remain unclear, nor has government provided any indication as to whether this will be the final extension of these temporary powers.

### **3. Recommended approach**

#### **Duration of licence**

- 3.1. As the pavement licence regime was originally time limited to run through to 30<sup>th</sup> September 2021, all of the licences issued under the scheme are due to expire on this date. As such, if these premises wish to maintain their outside areas currently covered by a licence, they will need to re-apply. As the application process is designed to be as burden free and expedited as possible, this should not cause any delay in re-issuing licences to premises and not be subject to a lengthy process. The legislation does enable the Council to issue a pavement licence for a shorter duration than the length of the scheme, 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 could 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.
- 3.2. In order to promote consistency in our approach, it is recommended that the committee agrees that subject to the new regulations coming into effect, the Council continues to issue pavement licences for the maximum permitted length. This would mean that although premises with existing licences will have to re-apply, their newly issued licences will be valid until 30<sup>th</sup> September 2022. Similarly, all new licences issued will also be valid until 30<sup>th</sup> September 2022.

#### **Fees**

- 3.3. 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.
- 3.4. In 2020 the fee proposed to the Committee for pavement licences was £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 receives. There are also additional associated costs of the regime including 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.

3.5. It is recommended that the Committee confirms to retain the same 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.

#### **4. Legal and financial implications**

(Information provided above).

#### **5. Corporate implications**

- Property – 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
- Climate change – N/A
- Sustainability – 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.
- Data (does this decision require a data protection impact assessment) – N/A

#### **6. Consultation and communication**

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

#### **7. Background papers**

- Draft Business and Planning Act 2020 (Pavement Licences) (Coronavirus) (Amendment) Regulations 2021  
<https://www.legislation.gov.uk/ukdsi/2021/9780348224344/contents>
- 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](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>

