

Business and Planning Act 2020 (Pavement Licences) (Coronavirus) (Amendment) Regulations 2023

These Regulations will extend the temporary pavement licence provisions for 12 months to 30 September 2024. A commencement date is awaited.

The pavement licence provisions create a faster, cheaper and more streamlined consenting regime for the placement of removable furniture, including tables and chairs, on pavements outside premises such as cafés, bars, restaurants and pubs. These measures, which are already in place, have been successful in supporting businesses, making it easier for businesses such as pubs, restaurants and cafés to facilitate al fresco dining and drinking with outside seating.

The Authority recognises that the hospitality sector was one of the hardest hit by the pandemic, and the economic effects of that period persist today. These provisions will be extended until 30 September 2024.

Background

Part VIIA of the Highways Act 1980 sets out a permanent local authority licensing regime for the placement of furniture such as tables and chairs on the highway, previously administered by West Sussex County Council (WSCC) Highways. However, the process involves a legal minimum of 28 days' consultation and associated complexities with the determination of matters by WSCC Highways as the body previously responsible for administering the regime.

From 22 July 2020, temporary pavement licence provisions were introduced in the Business and Planning Act 2020 to support the hospitality sector in response to the coronavirus pandemic. These proposed regulations use enabling powers in the Business and Planning Act 2020 that allow the Secretary of State, where they consider it reasonable to do so, to mitigate an effect of coronavirus to extend the temporary provisions.

The Regulations have been amended to change the four references to the expiry date of these temporary pavement licence provisions in the legislation, amended from 30 September 2023 to 30 September 2024. The Regulations do not change any other part of the temporary placement licence provisions. Subject to the Regulations being approved and made, businesses will be able to apply for a licence under the process set out in the pavement licence provisions in the Business and Planning Act 2020 for the extended period until 30 September 2024. The Regulations do not automatically extend licences that have already been granted under the current provisions, so businesses will need to apply for a new licence should they wish to have one in place during the extended period.

Local authorities are encouraged by the guidance associated with this change (revisions awaited) to take a pragmatic approach in applying the relevant provisions, so that it is as convenient as possible for businesses to apply for a licence during the extended period.

Process

All licence applications are subject to a seven-day public consultation period, starting the day after that on which the application is made, and then a further seven-day determination period, during which the local authority is expected to either grant a licence or reject the application. If the local authority does not determine the application before the end of the

determination period, the licence will automatically be deemed to have been granted in the form in which the application was made, and the business can place the proposed removable furniture within the area set out in the application for the purposes proposed.

Licence application fees are capped at a maximum of £100 for the 12 month period, with further fees proposed at a later date. All licences will be subject to a national non-obstruction condition and smoke-free seating condition, as well as any local conditions set by local authorities.

The granting of a pavement licence covers only the placing of removable furniture on the highway. A pavement licence does not negate the need to obtain approvals under other regulatory frameworks, such as alcohol licensing. Once a licence is granted or deemed granted, the applicant will also benefit from deemed planning permission to use the highway land for anything done pursuant to the licence while the licence is valid, such as using furniture to sell or serve food or drink supplied from or in connection with the relevant use of the premises.

These temporary pavement licence measures have already been very successful in supporting that sector in its economic recovery and emerging from the pandemic.