



NEXSTART

FAST TRACK PAVEMENT LICENCES ADVISORY

This information has been developed by a cross-sector group looking to reduce the risk to licensed premises operating during the current pandemic and so ensure the safety of the public, premises staff and Officers and provide clarity for all involved.

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Introduction

The relaxation of lock down restrictions and the introduction of the Business and Planning Bill 2019-21 which is anticipated to get Royal Assent shortly have given rise to questions being raised by authorities and operators concerning the interpretation and implementation of the new legislation.

In producing this note we have endeavoured to assist all of those involved in the process to provide a safe and successful transition out of the period of hibernation that we have all recently experienced. This note relates to pavement licences that would be granted to existing alcohol licensed premises.

The new process

The Bill introduces a range of measures intended to support businesses and the economy to recover from the severe disruption caused by the Covid 19. This includes helping businesses adjust to new ways of working, and to assist in the challenging process of getting the economy moving again.

Clauses 1 to 10 of the Bill introduce to England a new fast track temporary pavement licence procedure. This streamlined process is designed to support the hospitality industry to recover lost capacity by permitting additional use of the highway. The intention behind this legislation is to assist the businesses in the most challenging operating environment in living memory.

Inevitably the provisions are detailed and contain some ambiguity; however, one issue that has been identified as potentially posing some difficulty for operators is the provision of standard conditions.

Within the legislation it is envisaged that Authorities will have a standard set of conditions to which any licence will be granted. These conditions should be those considered that are “reasonable”. An important factor is they are automatically added as a default on any deemed grant.

Whilst crafting these conditions it might be helpful to consider the aims and objectives behind the legislation and its intention to support business to recover from the impact of Covid 19. It is intended to be a fast track, light touch power which is time limited and so needs to balance the burden on business against the desire to ensure the management of safe external spaces and consideration of local concerns.

Any operator taking advantage of the new fast track pavement licence will update their Covid 19 risk assessment and will also be mindful of any conditions on their existing premises licence that will impact on the use of the outside area. Additionally, the promotion of the licensing objectives will still be of paramount importance in any outside space and enforcement measures provided for under the Licensing Act 2003 would also be applicable in this situation.

As set out in previous notes, the partnership between authorities and businesses is key as we all move forward in the new world. A pragmatic and proportionate approach in relation to standard conditions would avoid the intentions of the legislation being frustrated.

Conditions that might ordinarily be suitable for the existing pavement licence process where one is in place, might need to be reviewed and updated in order to reflect this new and temporary procedure, and indeed the new operating environment which, in the vast majority of cases, is very different to what it was before the lockdown. It is also worth noting that while any existing permission already granted to a business will continue to be in force and subject to its existing conditions, the grant of a new pavement licence will take precedence over any existing or new licence granted under the Highways Act 1980.

As the hospitality industry is wide and varied so we would support standard conditions that reflect the intentions of the legislation, and authorities can be safe in the knowledge that premises that have issues as a result of obtaining a new pavement licence will be swiftly subject to improvement notices and ultimately revocation. It is of course always an option for authorities to identify concerns to premises and request undertakings or additional conditions to be varied into the permission (potentially by way of a new permission) as an alternative to revocation.

The vast majority of licensed premises operate in a socially responsible and professional way and while conditions are important, bearing in mind the unique and fast moving situation some general principles might assist:

Conditions imposed on a licence should be:

- 1) Appropriate, necessary and proportionate;
- 2) Precise, clear and unambiguous;
- 3) Practical, realistic and enforceable;
- 4) Non-duplicative of existing statutory requirements or offences;
- 5) Self-contained;
- 6) Modern and fit for purpose;

And, finally:

- 7) The fewer conditions the better.

Given everything stated above, the pragmatic response we suggest would be to look to create a basic set of conditions as ultimately it is for operators to carry out all necessary risk assessments both in relation to Covid 19 and any new risks as a result of any new outside space such as customer management, security, noise and nuisance. Any compliance issues can be swiftly dealt with under the range of new and existing powers.
