

BRIEFING	TO:	Tactical / Gold
	DATE:	6 th April 2021
	LEAD OFFICER <i>(Full name, title and Directorate)</i>	Alan Pogorzelec Licensing Manager, Regeneration and Environment 01709 254955
	TITLE:	Proposed approach to the enforcement of conditions attached to licences issued under the Highways Act 1980.

1. Background

- 1.1** Many local businesses provide outdoor seating areas for their customers to use when consuming food and / or drink purchased from the premises. If the outdoor area is situated on the public highway then the business owner must obtain planning permission in the first instance which is subject to consultation, then subsequently a licence from the Council's Highways and Street Works Service – this licence would be issued under the Highways Act 1980.
- 1.2** As part of the Government's response to support business recovery during the Coronavirus pandemic, the application process for a licence to place tables and chairs on the public highway has been temporarily streamlined. The streamlined process will allow licences to be issued in 10 working days (as opposed to at least 28 days for licences issued under the Highways Act 1980) with fewer obligations placed on the applicant as part of the application process (for example there is no requirement for the applicant to obtain planning permission for the outdoor area).
- 1.3** The streamlined procedure is detailed within the Business and Planning Act 2020. Processes are in place that will allow applications that are received under the Act to be determined within the prescribed timescales using existing resources.
- 1.4** The streamlined procedure is intended to be temporary, and licences issued under the Act will automatically come to an end on 30th September 2021 (however this date is subject to review and it is possible that this date will be extended).
- 1.5** Premises that are already benefiting from a licence issued under the Highways Act 1980 do not need to obtain a licence under the Business and Planning Act 2020. In addition, businesses that are seeking permanent permission to place tables and chairs on the highway may choose to obtain a licence under the Highways Act rather than the Business and Planning Act.
- 1.6** Licences issued under the Business and Planning Act cannot be used to provide outdoor facilities for the consumption of alcohol if the premises is located in an area

	<p>covered by a Public Spaces Protection Order (PSPO). The exception to this would be if the outdoor area is covered by an existing Premises Licence or other authorisation issued under the Licensing Act 2003 – in all other circumstances, a business will require a licence issued under the Highways Act. Premises located within a PSPO will require a licence issued under the Highways Act in order to place tables and chairs on the public highway.</p> <p>1.7 Following a recent review and comparison of the two licensing regimes a concern has been identified in relation to two conditions that are applied to Highways Act licences, where the outdoor area will be used for the consumption of alcohol. The conditions are:</p> <ol style="list-style-type: none"> 1. The licensed area must be cleared of customers and all furniture by 20:00hrs even if the main premises can continue to operate beyond this time. 2. The license holder shall ensure that drinks are served in ceramic cups or polycarbonate glasses or bottles. <p>1.8 These conditions are attached to existing Highways Act licences but neither of these conditions will be attached to licences issued under the Business and Planning Act – this has the potential to introduce a two-tier licensing system with different rules applying to premises that hold different licences.</p> <p>1.9 This paper proposes an option that will mitigate against the effect of this two-tier arrangement and seeks the agreement of Gold for its immediate implementation.</p>
<p>2. Key Issues</p>	
<p>2.1</p> <p>2.2</p> <p>2.3</p> <p>2.4</p> <p>2.5</p>	<p>As has been referred to above, the introduction of a two-tier licensing arrangement could undermine the effectiveness of the measures introduced by the Government to support local businesses as they will affect the ability of local businesses to trade during periods when they are required to operate under national / local restrictions (such as the closure of indoor hospitality venues, or the requirement for social distancing within venues).</p> <p>In addition, attempts to control the spread of Coronavirus may be hindered if venues are unable to make use of external facilities after a specific time (with customers being forced to use internal parts of the premises instead).</p> <p>It is also the case that many local businesses will be unwilling or unable to comply with the requirement for polycarbonate drinking vessels, either due to a lack of stock or due to matters of cost. This has the potential to create an unfair trading advantage for premises that have a licence issued via the streamlined process rather than an existing Highways Act licence.</p> <p>In order to rectify this situation, it is being proposed that a temporary amendment is applied to the two conditions outlined above. If agreed, this proposal will be retrospectively applied to all existing licences that have been issued under the Highways Act, and any future licences that are issued during the period that the Business and Planning Act is in effect.</p> <p>The proposed text of the temporary amendment is as follows:</p> <p><i>During the period that any Pavement Licences issued under Part 1 of the Business and Planning Act 2020 remain in effect (which does not apply to areas where there is a PSPO in place), the following conditions will apply to licences issued under s.115E of</i></p>

the Highways Act 1980 [premises licenced to sell alcohol] as a temporary amendment:

- 1. The area to which this licence relates may only be used during periods that the premises is open for the purposes of selling alcohol for consumption on the premises, or until 2300hrs whichever is the earlier. This will be the case unless an earlier time is considered to be justified following consultation, in which case the Council will notify the licence holder of the revised time in writing. The area covered by the licence must be cleared of customers and all furniture during periods that this licence is not in effect.*
- 2. The licence holder is encouraged to serve drinks in ceramic cups or polycarbonate glasses or bottles. This will be mandated by the Council if it is considered to be justified following consultation, in which case the licence holder will be notified of this in writing.*

The Council reserves the right to withdraw this temporary amendment at any time (in whole or in part). Should the amendment be withdrawn, the conditions detailed on licence will become effective immediately.

2.6

Of the 18 licences that have been issued under the Highways Act 1980, only 3 are expected to be affected by the above proposal – all of these are located within Rotherham Town Centre. The remaining premises either do not sell alcohol, or do not use the external area which is covered by the licence after 8pm. It is however likely that more premises will seek a licence under the Highways Act as restrictions are eased.

3. Key Actions and Relevant Timelines

3.1

The premises that are likely to be affected by the proposed amendment have already been identified. If the proposal is agreed, the following Council services / partners will be contacted and given the opportunity to make a representation in relation to the application of the amended conditions to a particular premises:

- RMBC Licensing
- RMBC Planning
- RMBC Community Protection Unit
- RMBC Highways and Street Works
- South Yorkshire Police

3.2

A period of five working days will be allowed for the receipt of representations (this matches the period detailed within the Business and Planning Act).

3.3

Representations that are received within this time period will be considered and if justified the temporary conditions will be amended in accordance the representation that has been received. If no representations are received then the amended conditions will be applied to the licence as detailed above.

3.4

All existing licence holders will be given advanced notice of the amendment as soon as possible. In order to assist with business planning, it is anticipated that this notification will be given in advance of the expected reopening of outdoor hospitality on 12th April. The notice will make it clear that the amendment will only take effect once the Council has considered any representations that have been received in relation to that specific premises.

Representations that are received outside of the five working day period referred to above will still be considered, and the licence conditions amended should this be

3.5	considered to be justified (with licence holders being notified of the change in writing).
3.6	The temporary amendment will cease on 30 th September 2021 (or, if Part 1 of the Business Planning Act is extended beyond this date, the date at which licences issued under the Act cease to have effect).

4. Cabinet Member and Leader Comments

4.1	The Cabinet member for Waste, Roads and Community Safety asked for confirmation of the proposed route for consultation with Ward Councillors. Officers confirmed that Ward Councillors will be included in the list of consultees for any applications under the Highways Act. Confirmation of the approach in terms of requiring polycarbonate or plastic receptacles in some licensed premises was also sought. Officers confirmed that, if smashed glass becomes a problem in relation to a specific premise then the conditions can very quickly be amended to require the use of polycarbonate drinking vessels. The use of polycarbonates outside is recommended in all cases – but would only be required if there is a reason to do so in relation to a specific premise. On the basis of this, the Cabinet Member for Waste, Roads and Community Safety confirmed that she was happy for the proposal to proceed for a decision.
4.2	The Cabinet Member for Jobs and the Local Economy confirmed that she was in agreement with the proposal.
4.3	The Leader of the Council confirmed that he was in agreement with the proposal.

5. Recommendations

5.1	It is recommended that Gold: <ul style="list-style-type: none"> • Authorise the immediate implementation of the proposal outlined in Section 2.5 above, in accordance with the timescales and key actions detailed in Section 3.
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Briefing consultation / sign off

Has the above information be considered by:

Legal	Officer:	Date:	Comments:
	Michelle Scales	01/04/2021	Legal implications dealt with in the body of the report.
HR	Officer:	Date:	Comments:
	Lee Mann	01/04/2021	No HR implications
Finance	Officer:	Date:	Comments:
	Richard Young	01/04/2021	No financial implications.