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## Pavement Licences – Has COVID finally delivered a café society?

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### Summary

- Pre July 2020 statutory framework.
- Business and Planning Act 2020.
- Transitional arrangements September 2021 and 2022.
- Levelling-Up Bill – a permanent fix?
- Practical issues

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### Existing Regulatory Regime

*"I want to place tables and chairs on the pavement outside my bar. What permission do I need?"*

- Highways Act 1980.
- Town and Country Planning Act 1990.
- (London in particular) Street Trading Legislation.

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**Highways Act 1980**

- Usually County Council or London Borough is responsible.
- Offence under S.137 to wilfully obstruct free passage without lawful authority along the highway.
- Tables and chairs constitute a wilful obstruction unless a permit obtained.
- "Highway Permit" provides lawful authority.
- S.115E allows Local Highways Authority to grant permission to use objects on the highway which result in the production of income.

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**Procedure**

- Application form.
- Detailed diagram with measurements.
- Photographs?
- Insurance.
- Fee.
  
- Fees in discretion of Local Highway Authority.
- Vary widely.
- Renewal.

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**Town and Country Planning Act**

- Placing of tables and chairs on public highway can constitute a "material change of use".
- "Use" of pavement is as a highway.
- Placing of tables and chairs changes that use, therefore query material change.
- Some councils therefore require planning permission
- Time.
- Cost.

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**Street Trading Legislation**

Outside Greater London:

- Street trading governed by Local Government (Miscellaneous Provisions) Act 1982, and defined differently compared with London legislation.
- 1982 Act – “Selling or exposing or offering for sale of any article ... in a street”.
- Refers only to articles and not provision of services, e.g., selling food and drink.
- Therefore, outside Greater London street trading not generally an issue.

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**Street Trading Legislation**

Within Greater London:

- London Local Authorities Act 1990 (as amended).
- City of Westminster Act 1999.
- City of London (Various Powers) Act 1987 (as amended).
- Few London Councils even reference street trading.
- Rather confused picture in London.

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**Street Trading Legislation**

- Existing regime criticised as costly, time consuming and unnecessarily complex.
- Inconsistent approaches nationwide.

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**COVID**

- Scientific evidence of reduced transmission outdoors compared to indoors.
- Early summer 2020, licensed trade desperate to open.
- 4<sup>th</sup> July 2020 mandatory closure of pubs and bars etc revoked.
- 22<sup>nd</sup> July 2020 Business and Planning Act comes into effect.
- Due to statutory consultation periods, no operator could benefit until mid-August at the earliest under the new provisions.
- What were those provisions?
  - Authorises use of the highway without the need for a Highways Act permit.
  - Constitutes deemed planning permission.
  - Removes any requirement for a Street Trading Licence.
  - Fee fixed at £100.
  - Short consultation (7 days) and determination (7 days) periods.

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**COVID**

- Other benefits:
  - / deemed grant of one year.
- Drawbacks:
  - Local Authority could in theory only grant for three months at a time.
  - Some very COVID-focused standard conditions (waiter / waitress service etc)
  - Other standard conditions
  - not excluded from effect of a PSPO

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**COVID**

- First death knell of the Highways Act of the "Highways permit" (under the 1980 Act etc)?
- S.7 (4) prohibits Local Authorities from requiring a Highways Act application rather than a Pavement Licence.
- If you don't need a Highways permit, you also don't need planning permission nor, if you are in London, need worry about street trading legislation.

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**Transitional Provisions**

- All Pavement Licences were due to expire on 30<sup>th</sup> September 2021.
- The 2020 Act included an enabling power whereby the Pavement Licence provisions could be extended if “reasonable to do so to mitigate an effect of Coronavirus”.
- Regulations in July 2021 extended Pavement Licences until 30<sup>th</sup> September 2022.
- Some teething problems during transition.
- Again extended by similar Regulations on 22<sup>nd</sup> July 2022.

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**Levelling Up and Regeneration Bill**

- Introduced in May 2022.
- Currently going through Parliament.
- Section 184 and Schedule 17.

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**Levelling Up and Regeneration Bill**

Main Effects

- Paragraph 2 (1) amends the Business and Planning Act 2020 to remove the expiry date of the temporary pavement licence provisions.
- In effect, removes sunset clause and makes pavement licence regime permanent

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**Levelling Up and Regeneration Bill**

Fees

- Removes old £100 fee cap.
- Introduces two new fee caps.
  - £350 for a renewal application.
  - £500 in the case of "Any other application".
- Both fee caps are the maximum the local authority is able to charge.
- Local authorities should only charge to cover their costs.
- Local authorities are able to set a fee structure within the cap.
- Secretary of State can amend the fee caps.

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**Levelling Up and Regeneration Bill**

Renewals

- Paragraph 5 amends section 2 of the 2020 Act regarding renewal applications.
- Introduces a more streamlined application process for renewals.
- New s 2(10) "If... (b) it is in respect of the premises to which the existing licence relates.
- No need for a full application but simply any additional evidence that the local authority may ask for.
- Must be made by a person who already holds a pavement licence and must begin on the expiry of the existing licence and "on the same terms".
- Query, what if the application is for a slightly larger area, or a different number of tables and chairs?
- Is this "on the same terms"?
- Cheaper if renewal

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**Consultation and Determination**

- Paragraph 6 amends the consultation period from seven days to 14
- Paragraph 7 amends the determination period from seven days to 14.
- Paragraph 8 – Duration – up to two years.
  - No minimum duration?

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**Enforcement and Revocation**

- Paragraph 9 introduces a new subsection (4) to section 6 of the 2020 Act.
- Section 6 currently permits revocation or a notice to remedy breach, and cost recovery from licence holder
- No ability to simply 'amend' the licence if the pavement environment changes, for example parts of it become unsuitable and therefore 'in breach'
- Instead of revoking licence or issuing a notice, the new 6(4) would allow a local authority to amend a pavement licence if:
  - highway is no longer suitable for the use granted by a licence
  - risk to public health or safety, increased antisocial behaviour, a highway was being obstructed or the no obstruction condition
  - Must be with agreement of licence holder.

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**Other considerations**

Paragraph 11 amends the Highways Act 1980 so that all applications for a pavement licence that could be granted under the regime introduced by the 2020 Act should be granted through those provisions.

Proposed amendments to Schedule 17.

Legacy conditions from COVID

B&PA/Levelling Up Bill Pavement Licences and PSPOs?

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