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Useful Links

- [IoL Protocol \(Update 3\)](#) (updated 20 April 2020)
- [Letter from Kit Malthouse MP](#) (8 April 2020)
- [LGA Note](#) (updated 17 April 2020)

Q.1 Applications - Can local authorities simply refuse to accept new licence applications?

Most council offices will be closed to the public with staff working from home. Offices may be manned with skeleton staff but will not be able adequately process or advise on applications submitted in person.

There will likely be issues with receiving post at the offices, and once received, passing on paperwork to the appropriate offices.

Different councils will be at different stages in terms of their processes and COVID-19 response. Applicants should seek advice from their licensing authority in the first instance.

A Licensing Act 2003

This is covered in detail in the [IoL Protocol](#) which states:

'The recent Government legislation, and current situation, do not remove the statutory duties on licensing authorities to process and determine licence applications under the Licensing Act 2003 within prescribed periods. These include applications for premises licences, club premises certificates, provisional statements, variations and minor variations, transfers, interim authority notices, Designated Premises Supervisor variations, personal licence applications and temporary event notices. However, the current situation requires some flexibility and creativity in the implementation of the processes to ensure they remain as effective and fair as possible in all the circumstances.'

LGA Note:

Under the LA 2003 and GA 2005, applications that are submitted in full will need to be considered. However, this does not stop councils from having a conversation with applicants about the best way forward given the extraordinary circumstances.

A Gambling Act 2003

The application process is statutory and there is no means for the local authority to simply refuse to accept an application. They can reject an application if the statutory requirements are not met. Applications under GA2005

cannot be made using Gov.UK, so it will be particularly important to confirm the arrangements made by an Authority for dealing with such applications.

LGA Note:

Under the LA 2003 and GA 2005, applications that are submitted in full will need to be considered. However, this does not stop councils from having a conversation with applicants about the best way forward given the extraordinary circumstances.

A Taxi and Private Hire Licensing

See below in renewals (Q3) for full details.

LGA Note:

For taxis and private hire vehicles (PHVs), it is unlikely that new applicants will be able to complete the required pre-application checks/tests so it may be sensible to discourage applicants from submitting them at this time. As there is no mechanism for not accepting applications, any application that is submitted which does not meet the pre-application criteria would need to be rejected; those that do meet the criteria may still be processed.

Q.2 Applications - How can statutory requirements on advertising and consultation be complied with?

A. This is covered in detail within the [IoL protocol](#).

Q.3 Applications - How should licence renewals be processed?

A Taxi and Private Hire Licensing

A local authority cannot grant a licence to a driver or private hire operator unless they are satisfied that they are a fit and proper person (sections 51(1)(a)(i), 59(1)(a)(i), 55(1)(a) Local Government (Miscellaneous Provisions) Act 1976 ("the 1976 Act"). They cannot grant a private hire vehicle unless they are satisfied that the vehicle itself is "in a suitable mechanical condition and safe" (section 48(1)(a) 1976 Act), and whilst there is no equivalent provision relating to hackney carriages most authorities state in their policies that they will take the same approach. In addition, in respect of drivers and operators, they must demonstrate that they have the right to remain and work in the UK (sections 51(1)(a)(ii), 59(1)(a)(ii), 55(1)(b) 1976 Act).

In the absence of any legislative solution an application will have to be made in the conventional way (although this could be undertaken online) and the authority must satisfy itself as to the criteria being met before they can issue a renewed licence. In many cases this is going to prove impossible. The DfT have suggested that short term licences

should be granted for renewals but ultimately it will be for each authority to make its own decision on this which should be made by councillors, rather than officers.

In the case of drivers, these should be stated clearly as being issued “without prejudice to any subsequent decision that the authority might make”. Local authorities will have to decide what period those licences should be granted for, taking into account the fact that they will not have been able to undertake any of the normal checks (e.g. DBS, medical).

Hackney carriage and private hire vehicle MOT is have been extended for 6 months, and again local authorities will need to determine whether to grant licences in the absence of their own inspections.

Private hire operators licences will be similar to drivers licences.

IoL President Jim Button has urged the DfT to look at this as a matter of urgency.

TfL have said that they are extending vehicle licences - see <http://content.tfl.gov.uk/05-20-tph-notice-coronavirus-update-3.pdf> but it is not certain how they are achieving this.

LGA Note:

For taxi/PHV renewals there are various options to consider:

- As MOTs have been extended for six months, councils may want to consider whether a time limited extension can be considered for other vehicle requirements and renewals offered on the basis that these are completed once normal business resumes (recognising that there may be a backlog of MOTs to get through at that point). Where renewals of vehicle licences are due, some councils are requesting an application form but advising that they will not process this until a fee can be paid and all relevant documents are in place.
- Consideration could also be given to voluntary suspension of licences, for example vehicle licences so proprietors who are not planning to use vehicles for work can reduce costs such as insurance whilst not working.
- Where caps on hackney licences are in place, thought may need to be given to how this could work for example holding a licence/plate for three months and then inviting them to reapply.
- Councils do not have the power to extend existing taxi/PHV licences, for example to reflect the fact that taxis and PHVs have been significantly hampered in operating. However, when a licensee’s existing licence ends, council are able to issue temporary, short term licences, for example for a period to reflect the length of the lockdown period.

A Gambling Act 2005

There are several permits granted under the GA05 that require renewal during a specific time period. Failure to apply during the relevant period will result in expiry of the permit and the need to apply for a new one.

A Animal Licensing

LGA Note:

For licences issued under the Animal Welfare (Licensing of Activities Involving Animals) (England) Regulations 2018, councils may wish to extend licences for three months to reduce the need for inspection and the risks involved whilst the outbreak continues. Defra have advised that Regulation 9 allows councils to vary licences with the consent in writing (including email) of the licence holder or where the licence holder makes an application. Councils may wish to consider using this as a mechanism for extending licences for three months where this is deemed necessary, on a case by case basis.

A Other Licences

Many licensing regimes such as those governing sex establishments and street trading specify that if a renewal application is made before the expiry of the current licence, the current licence continues on the same terms and conditions until that renewal application is determined. Local authorities should check the legislative requirements for each licensing regime. Where this does apply, licensees should be encouraged to make a renewal application to enable the existing licence to continue. If no application is made before the existing licence expires, then the licensee will no longer be licensed and cannot continue to trade. A licence can be renewed after expiry, but only if there are extremely good reasons for no application having been made before the current licence expires, and only if there has been a short period of time between expiry and the new application being received by the authority (see Exeter City Council v Sandle [2011] L.L.R. 480 Admin Crt).

LGA Note:

For renewal applications for other licence types, councils have offered licensees the choice to defer renewal for six months. Where all renewal requirements are met, these may still be considered as renewals even though there will have been a gap between the two licences. Others have asked for a small retainer fee to retain a licence plate, with the full renewal fee to be paid at a later date.

Q.4 Applications / renewals – Can licences simply be extended?

See above.

Q.5 Enforcement of conditions - Can licensing authorities take a discretionary approach to compliance with licence conditions?

A. Some conditions may prove impossible for businesses to comply with due to staff illness / self-isolation etc. In the ministerial letter of 8 April, the Minister recommended that Licensing Authorities should take a considered and pragmatic approach to breaches of licence conditions and procedural defects caused by the pandemic:

“Retailers may be operating under licences with conditions that may prove difficult to comply with in the current period due to absenteeism. These include, but are not limited to, conditions that mandate the minimum number of staff or door supervisors on site, training requirements or attending external meetings (such as Shopwatch). A considered and pragmatic approach should be taken to breaches of licence conditions and procedural defects caused by the COVID-19 pandemic, particularly where these breaches or defects do not have a significant adverse impact on the licensing objectives. Licence holders must rectify any breaches as soon as reasonably practicable.”

Local authorities may consider it useful to apply a test similar to that within the Code for Crown Prosecutors.

This is a two-stage test:

- i) *The evidential stage; followed by*
- ii) *The public interest stage*

In the majority of cases it is unlikely to be in the public interest to take action to enforce conditions or breaches of conditions where such breaches are caused by the pandemic.

All enforcement is discretionary, there are no mandatory requirements to enforce conditions or breaches of licence. Therefore, there is no prohibition on local authorities taking a pragmatic approach. Having said that, there is clearly significant distinction between breaches of conditions that cannot be complied with because of the situation, and flagrant breaches of licence terms and conditions which are not a result of the COVID-19 pandemic. Local authorities will need to carefully consider the public interest test before instigating any prosecutions for breaches bearing in mind the nature of the emergency period we are in.

LGA Note:

A considered and pragmatic approach should be taken to breaches of licence conditions and procedural defects caused by the COVID-19 pandemic, particularly where these breaches or defects do not have a significant adverse impact on the licensing objectives.

Licence holders must rectify any breaches as soon as reasonably practicable.

Q.6 Fees – Licence Fees and Annual Fees - Can licensing authorities waive, reduce or delay payment and do they HAVE to suspend / revoke licences?

There have been calls from licensees in all areas for reduction or suspension of licence application fees. Many businesses have been forced to close or substantially change their operating model, whilst others face an extreme downturn in business.

'Essential' businesses (those involved in retail and off-sales) continue to operate and are in demand.

In London, Night Czar Amy Lame, has written to all councils requesting that they waive fees (Annual Fees and late night levies) for night time economy businesses.

A Licensing Act 2003 - Annual Fees

Section 55A is mandatory. Licensing Authorities are required under the terms of the Act to suspend licences on non-payment of the annual fee (after a 21-day grace period).

This puts licensing authorities in a difficult position as they risk being in breach of a statutory duty if they do not suspend.

That said, section 55A requires that the licensing authority gives the premises licence holder a notice specifying the date on which the suspension takes effect but does not specify a statutory timescale within which the suspension must take effect. This allows some discretion for licensing authorities in that it would be possible to issue a suspension notice in compliance with section 55A but to specify a date in the distant future allowing premises more time to make the payment and so avoiding the suspension from taking effect.

Section 55A is clear that where a suspension has taken effect, and the annual fee is subsequently paid, the licensing authority must issue a receipt and the licence is reinstated.

[The IoL Protocol \(Update 3\) covers this in detail.](#)

A Gambling Act 2005

The Act states that the Licensing Authority shall revoke the premises licence for failure to pay the annual fee (section 193). There is no provision for any date of revocation to be specified. However, an Authority may disapply the requirement to revoke if they think that a failure to pay is attributable to an administrative error.

The Gambling Commission's existing advice is that a local authority would be ultra vires if they sought to reduce or refund fees or offer a pro-rata rate.

LGA Note:

Councils should consider how to respond to non-payment or late payment of an annual premises licence fee. Whilst legislation requires licences to be suspended (LA 2003) or revoked in the case of the Gambling Act 2005 (GA 2005), it is possible to delay when that suspension takes effect. The Home Office has encouraged councils to consider this approach, councils may want to consider whether to adopt a similar approach for gambling premises too.

A Locally Set Fees

Where licensing fees are locally set the council may have discretion to reduce the fees temporarily, delay the payment date or delay any action as a result of non-payment.

Most licensing legislation gives the authority a discretion to levy a fee, so the authority could potentially reduce, defer, or waive them. Another possibility would be to agree payment by instalments. This would ensure that the licence fee is collected in order to cover the costs of administering the licensing function, while providing more flexibility and time for licence holders.

Decisions on local set fees should be made by councillors rather than officers.

LGA Note:

Councils should only issue refunds if they have the legal and financial ability to do so. It is not clear that there are legislative provisions enabling councils to provide refunds to licensees that wish to retain their licences and councils may not feel they are in a financial position to do so, particularly given costs will already have been incurred in relation to different licences.

On deferred payments or discounts, councils have more flexibility over this issue where licence fees are set locally. • Where fees are set centrally, for example under the Licensing Act 2003 (LA 2003), councils have little flexibility and there is no clear mechanism to provide refunds or part refunds. As noted above, neither the Home Office or Gambling Commission are expecting councils to issue refunds.

Where fees are set locally councils have more discretion, for example in relation to animal licensing fees or taxi licensing. When fees are reviewed councils may find they have a surplus on income because there has been reduced enforcement for example. If this was the case fees could be adjusted downwards for future years.

However, there may be additional areas of work carried out during the COVID-19 outbreak, for example providing advice and guidance to licensees. It will be important for councils to capture this so that it can inform fee setting.

Q.7 Fees - Late night levies

Covered under the [IoL Protocol](#).

Q.8 Licensing Act 2003 - TENS - Can fees be refunded?

Premises users can cancel TENS submitted for events which cannot now proceed but there is no provision for any refund of the fee. It is likely that Councils have already carried out work in processing these TENS. The fee must accompany the notice when it is given to the licensing authority. A temporary event notice can be withdrawn not less than 24 hours before the first day of activity under the notice, but there is no reference in the legislation to any refund in those circumstances.

Q.9 Licensing Committee / Hearings – can they be held remotely?

Local authorities face difficulties in adapting to enable virtual hearings, but this has been addressed through the [IoL Protocol](#) and the Local Authorities and Police and Crime Panels (Coronavirus) (Flexibility of Local Authority and Police and Crime Panel Meetings) (England and Wales) Regulations 2020 (published 2 April 2020), made under section 78 of the Coronavirus Act 2020.

The Regulations make provision to enable local authorities to hold meetings remotely including by (but not limited to) telephone conferencing, video conferencing, live webcast, and live interactive streaming. Part 2 of these Regulations, relating to the holding of remote hearings, only relate to England but not Wales.

Q.10 How can Licensing Authorities review their Statement of Licensing Policy under the Licensing Act 2003 and Statement of Gambling Policy under the Gambling Act 2005?

While the current emergency position will hinder physical meetings, licensing authorities should be able to progress the review and comply with the statutory requirements on consultation with stakeholders.

If an Authority is concerned about its ability to carry out an effective review of policy at this point in time, they may wish to consider consulting on the retention of the existing policy (with any obvious amendments) in the short term, and then subsequently conduct a more detailed review if necessary within the 3 or 5 year cycle.

LGA Note:

Under LA 2003, licensing authorities are required to prepare and consult on a statement of licensing policy (SLP), setting out their strategic approach to local licensing, every five years. A number of councils' policies are due to be reviewed this year to ensure they comply with the five-year cycle.

Councils may want to consider with members whether it would be pragmatic to delay their consultations given the current challenges in effectively engaging with the local trade and residents. The LGA has flagged to the Home Office that this should be acceptable, assuming work is progressed once some level of normality has returned.

Q.11 Local Authority Returns – are they still required?

Local authorities are normally required to submit various returns to the Home Office, DfT, DEFRA, Gambling Commission and DCMS. There have been concessions made as a result of the pandemic as follows:

A Home Office (alcohol and LNR)

The Home Office has cancelled the 2019/20 alcohol and late-night refreshment data collection from local authorities. [More info](#)

A Gambling Commission

2019/20 local authorities returns to the Gambling Commission have been postponed and will be reviewed in due course. [More info](#)

A DEFRA (Air Quality Database)

The requirement for weekly updates to the centralised database has been relaxed. Uploads are required at least monthly during the emergency period (will be kept under review). [More info](#).

A DfT

LGA Note: The Department for Transport and will be going ahead with annual statistical returns but have advised that where it is not possible to fulfil these requests within the timescales that they have set there will be flexibility on receiving an extension to the deadline. This should be raised with them directly.