

**Guidance document**

**Temporary Pavement Licensing**

**1. Temporary Pavement licences**

**1.1 What is a temporary pavement licence?**

A temporary pavement licence is a licence granted by the local authority which allows the licence-holder to place removable furniture over certain highways next to the premises in relation to which the application was made. Once granted these licences will usually remain in place for a year but not beyond 30 September 2021.

**1.2 What is the purpose of the new process for temporary pavement licences?**

This new process will support cafes, restaurants, pubs and similar premises to operate safely while social distancing measures remain in place. This will provide much needed income over the summer months and protect as many hospitality jobs as possible.

**1.3 How does the new process for pavement licences work?**

The consultation period is 5 working days (excluding public holidays).

If the local authority does not determine the application before the end of the determination period (5 working days after the end of the public consultation period (excluding public holidays)), the licence is deemed to have been granted for a year (but not beyond 30 September 2021). The business can then place the proposed furniture such as tables and chairs within the area set out in the application.

**1.4 What businesses are eligible?**

A business which uses (or proposes to use) premises for the sale of food or drink for consumption (on or off the premises) can apply for a licence. Businesses that are eligible include: public houses, cafes, bars, restaurants, snack bars, coffee shops, and ice cream parlours including where such uses form an ancillary aspect of another use, for example supermarkets, or entertainment venues which sell food and drink.

A licence permits the business to use furniture placed on the highway to sell or serve food or drink and/or allow it to be used by people for consumption of food or drink supplied from, or in connection with the use of the premises.

**1.5 What furniture can be permitted by a licence?**

The furniture which may be used is:

* counters or stalls for selling or serving food or drink;
* tables, counters or shelves on which food or drink can be placed;
* chairs, benches or other forms of seating; and
* umbrellas, barriers, heaters and other articles used in connection with the outdoor consumption of food or drink.

This furniture is required to be removable. In principle this means it is not a permanent fixed structure, and is able to be moved easily, and stored away of an evening.

**1.6 How much do applications cost?**

The application fee is £75.

**1.7 Are there any exclusions from this provision?**

Licences can only be granted in respect of highways listed in section 115A(1) Highways Act 1980. Generally, these are footpaths restricted to pedestrians or are roads and places to which vehicle access is restricted or prohibited.

**1.8 Where does this new process apply?**

This process applies to England only, including London and other areas where statutory regimes other than the regime in the Highways Act 1980 may be relevant to the grant of licences for street furniture.

**1.9 How does this interact with other regulatory process, such as alcohol licensing?**

It is important to note the grant of a pavement licence only permits the placing of furniture on the highway. If you wish to sell alcohol there will still be a need for an alcohol licence. It will also be necessary to comply with registration requirements for food businesses.

If the applicant has a licence to serve alcohol on-premises temporary amendments to the Licensing Act 2003 will allow them to sell alcohol for consumption off the premises until 11pm without needing to apply for a variation of their licence.

Local authorities will also need to have regard to the Public Sector Equality Duty, under the Equality Act 2010 when devising and implementing the new licensing regime, which includes the need to have due regard to eliminate discrimination, harassment, victimisation and any other conduct that is prohibited by or under the Act. Any businesses which apply for a pavement licence will also need to have regard to their own duties under the Equality Act 2010, such as their duty under s.29 of the Act not to discriminate in providing their service.

**1.10 Does the applicant need planning permission as well as the licence?**

No. Once a licence is granted, or deemed to be granted, the applicant will also benefit from deemed planning permission to use the land for the purposes of the licence, during the licence period.

**2. Duration**

**2.1 How long are pavement licences valid for?**

The authority can specify the duration of the licence, subject to a minimum of 3 months. Local authorities will ordinarily grant licences for 12 months or more unless there are good reasons for granting a licence for a shorter period such as plans for future changes in use of road space.

If a licence is ‘deemed’ granted because the authority does not make a decision on an application before the end of the determination period, then the licence will be valid for a year. However, if, when implemented, a licence that has been deemed granted does not meet the conditions set out in the legislation or any local conditions, it can be revoked at any time on the grounds that it has breached the conditions.

A licence granted or deemed to be granted will not be valid beyond 30 September 2021.

**2.2 How long will the new process be in place?**

This is a temporary measure to support businesses while social distancing measures may still be in place. The new process will remain in place until the end of September 2021.

**3. Applications**

**3.1 What information does an applicant need to provide?**

An application to the local authority must:

* specify the premises and, the part of the relevant highway to which the application relates;
* specify the purpose (or purposes) for which the furniture will be used which must be to sell or serve food or drink, and/or for use by other people for the consumption of food or drink. In both cases the food or drink must be supplied from, or in connection with relevant use of the premises;
* specify the days of the week on which and the hours between which it is proposed to have furniture on the highway;
* describe the type of furniture to which the application relates, for example: tables, chairs, and/or stalls;
* specify the date on which the application is made;
* contain or be accompanied by such evidence of public liability insurance in respect of anything to be done pursuant to the licence as the authority may require; and
* contain or be accompanied by such other information or material as the local authority may require.

**3.2 What other information does the local authority require?**

Local authorities may require the applicant to provide other information or material to help them make a swift determination. This authority requires the following information in addition to the application form:

* A plan on which your premises and the proposed temporary Pavement Licence area are clearly outlined – suggested scale 1:100 or 1:150.
* A 1:100 or 1:150 scale site plan (where possible) showing the building line of the application premises and adjacent buildings, the location of the kerb line, the distance between the building line and the kerb line, the precise boundary of the proposed licensed area giving measurements of the width and depth of the area, the location of all accesses on your frontage including fire exits, the location of existing obstructions within or near to the street café area, e.g. lamp posts, bollards, trees etc, the size and location of the proposed tables, chairs and other furniture and the size and location of enclosure barriers.
* Photographs, brochures or scaled drawings showing design, dimensions, colour and materials of the tables and chairs or other furniture you propose to use.
* Photographs, brochures or scaled drawings showing design, dimensions, colour and materials of proposed means of enclosure.
* Design and access statement showing the provision made for people with sensory and physical disabilities.
* Third party public liability insurance certification up to the value of £5 million.
* If you propose to use space heaters you must also provide a risk assessment.

**4. National Conditions**

The 2020 Act sets out two conditions which apply to pavement licences which are granted or deemed to be granted these are: a no-obstruction condition and a smoke-free seating condition. These apply only to licences granted under the Business and Planning Act 2020, not existing licences permitted under Part 7A of the Highways Act 1980, or other relevant legislation.

**4.1 How can the local authority and applicant consider the needs of disabled people when considering whether the requirements of the no-obstruction condition are met?**

When determining whether furniture constitutes an unacceptable obstruction, the provisions require that local authorities consider the needs of disabled people. In order to do this, authorities should consider the following matters when setting conditions, determining applications (in the absence of local conditions), and when considering whether enforcement action is required:

* Section 3.1 of Inclusive Mobility sets out a range of recommended widths which would be required, depending on the needs of particular pavement users, but is clear that in most circumstances 1500mm clear space should be regarded as the minimum acceptable distance between the obstacle and the edge of the footway,
* any need for a barrier to separate furniture from the rest of the footway so that the visually impaired can navigate around the furniture, such as colour contrast and a tap rail for long cane users. In some cases, it may be appropriate to use one or more rigid, removable objects to demarcate the area to which the licence applies, for example wooden tubs of flowers. However, this will need to be balanced to ensure any barriers do not inhibit other street users, such as the mobility impaired, as such barriers may create a further obstacle in the highway;
* any conflict of street furniture with the principal lines of pedestrian movement particularly for disabled people, older people and those with mobility needs. The positioning of furniture should not discourage pedestrians from using the footway. The available route must be entirely clear and not pass through an area with tables and chairs;
* so that where possible furniture is non-reflective and of reasonable substance such that it cannot easily be pushed or blown over by the wind, and thereby cause obstruction – for example, the local authority could refuse the use of plastic patio furniture, unless measures have been taken to ensure it is kept in place.

Section 149 of the Equality Act 2010 places duties on local authorities, to have due regard to: the need to eliminate unlawful discrimination, advance equality of opportunity between people who share a protected characteristic and those who don’t, and foster or encourage good relations between people who share a protected characteristic and those who don’t.

**4.2 What is reasonable provision for seating where smoking is not permitted?**

The national smoke-free seating condition seeks to ensure customers have greater choice, so that both smokers and non-smokers are able to sit outside, in order to protect public health by reducing risks of COVID transmission.

It is important that businesses can cater to their customers’ preferences. The Business and Planning Act 2020 imposes a smoke-free seating condition in relation to licences where seating used for the purpose of consuming food or drink has been, (or is to be) placed on the relevant highway. The condition requires a licence-holder to make reasonable provision for seating where smoking is not permitted. This means that where businesses provide for smokers, customers will also have the option of sitting in a non-smoking area. Ways of meeting this condition could include:

* Clear ‘smoking’ and ‘non-smoking’ areas, with ‘no smoking’ signage displayed in designated ‘smoke-free’ zones in accordance with Smoke-free (signs) Regulations 2012.
* No ash trays or similar receptacles to be provided or permitted to be left on furniture where smoke-free seating is identified.
* Licence holders should provide a minimum 2 metre distance between non-smoking and smoking areas, wherever possible.

Further, business must continue to have regard to smoke-free legislation under The Health Act 2006, and the subsequent Smoke-free (Premises and Enforcement) Regulations 2006.

Public Health England has published [guidance for smokers and vapers during the COVID pandemic](https://www.gov.uk/government/publications/covid-19-advice-for-smokers-and-vapers/covid-19-advice-for-smokers-and-vapers).

**4.3 Where an authority has set a local condition covering the same matter as a national condition, which take precedence?**

Where a local authority sets a local condition that covers the same matter as set out in national conditions, then the locally set condition would take precedence over the national condition where there is reasonable justification to do so.

**5. Determining the application**

**5.1 What happens once the information is submitted to the local authority?**

Once the information is submitted to the local authority the authority has 10 working days from the day after the application is made (excluding public holidays) to consult on, and determine the application. This consists of 5 working days for public consultation, and then 5 working days to consider and determine the application after the consultation.

If the local authority does not determine the application within the 10 working day period, the application will be deemed to have been granted.

**5.2 What will a local authority consider when deciding whether to grant a pavement licence?**

**Conditions:**

The local authority will need to consider a number of factors, when determining whether to approve the application. These include whether local conditions might be needed to make it possible to approve an application which would otherwise be unacceptable.

The Secretary of State may specify conditions for pavement licences, in Regulations. This is in addition to the statutory ‘no obstruction’ condition and ‘smoke-free’ seating condition and detailed above at 4.

**Further Conditions**

This Authority proposes to attach the following conditions to any granted Pavement Licences:

1. The licence holder shall display signage reminding customers to be respectful of local residents and not make excessive noise.
2. The licence holder shall ensure that empty glasses and crockery are removed from the licensed area on a regular basis.
3. The licence holder shall ensure that any litter is cleared from the licensed area on a regular basis and that the area is kept in a clean, orderly and tidy manner.
4. A-boards, advertising signs, beer kegs, bottle crates or any other unsightly or unapproved items must not be placed on or adjacent to the licensed area.
5. Tables, chairs and other associated structures must be removed from the public highway after the close of trading hours. The furniture must not be stored on the highway when not in use.
6. The tables, chairs and any other furniture provided, must conform to the details of the Pavement Licence application, unless the licensing authority gives written approval of any change.
7. The licence holder shall be responsible for making good any damage caused to the site in the exercise of this licence.
8. The licence holder must remove the tables, chairs and parasolsfrom the licensed area if:
	1. works to the area are to be undertaken by the Council, the highway authority or a utility provider
	2. so requested by a Police Officer to ensure public safety
9. The licence holder must keep a copy of this licence on the premises and it

must be available for inspection at reasonable times. The licence must be prominently displayed so as to be visible from the highway.

1. When drinks are served on the licensed area in glasses, they must be made of toughened or tempered safety glass.
2. The licence holder shall ensure that social distancing guidelines are complied with, in line with the Coronavirus Regulations 2020 and associated guidance.
3. The holder(s) shall not cause any obstruction of the highways (other than the permitted use) or danger to persons using it and shall not permit persons to gather so as to cause a nuisance or annoyance or danger to any persons lawfully using the highway.
4. All Pavement Licences will be issued with an earliest start time of 08:00 and maximum finish time of 23:00 (11pm) each day. The finish time will be determined on a case-by-case basis.

**5.3 Where an authority has set local conditions covering the same matter as national conditions, which take precedence?**

Where a local authority sets a local condition that covers the same matter as set out in national published conditions, then the locally set condition would take precedence over the national condition where there is reasonable justification to do so. However, this is not the case for the statutory no-obstruction condition which will need to be regarded as set out above.

### 5.4 How can local authorities consider Security?

### When considering public health and safety, local authorities should seek to ensure a balanced consideration for security implications, particularly the risk to groups of people from interaction with hostile vehicles, and the creation of large crowds in new public spaces. Local authorities should consider consulting with Police Licensing Teams, Designing Out Crime Officers and Counter Terrorism Security Advisors for relevant advice.

**5.5 Can local authorities impose conditions which are not published?**

Yes. When they grant a licence, local authorities may impose reasonable conditions whether or not they are published upfront. There is an expectation these will be supported by a clear justification for the need of a condition which is in addition to any published local conditions. Conditions might, for example, limit the maximum number of chairs and tables, or type of furniture, time and days of operation with justification for this.

### 5.6 Where can local authorities find out more about how to manage social distancing?

The government has published the [COVID-19 Secure: safer public places guidance](https://www.gov.uk/guidance/safer-public-places-urban-centres-and-green-spaces-covid-19), which provides owners and operators of public spaces with information and examples of measures that may be undertaken to adapt and manage public spaces in order to help social distancing.

When considering the minimum width needed for clear access, authorities and applicants will need to take into account any social distancing measures in place and ensure that these distancing measures are also applied to allow for safe passing of highway users and for the safety of any customers using the furniture, and any other likely users of the area.

**5.7 What are the outcomes of an application?**

If the local authority determines the application before the end of the determination period the local authority can:

* grant the licence in respect of any or all of the purposes specified in the application,
* grant the licence for some or all of the part of the highway specified in the application, and impose conditions, or
* refuse the application.

**5.8 Is there a route to appeal a decision?**

There is no statutory appeal process for these decisions. However, where an application is refused, this Authority will allow the applicant to appeal the decision to the Assistant Director for Regulatory Services.

**6. Consultation**

**6.1 What steps should an applicant take to engage with their community?**

The applicant is required to display a notice at the premises, so it is easily visible and legible to the public on the day they submit the application to the local authority. They must ensure the notice remains in place for the public consultation period which is the period of 5 working days beginning with the day after the day the application is submitted to the authority. When counting ‘working days’ public holidays are not included. Applicants are encouraged to keep evidence of this. Applicants are encouraged to engage with any services operated in the vicinity for vulnerable customers, for example, care home or disability organisations nearby where individuals may be at particular risk.

**6.2 What must a notice contain?**

The notice must:

* use the template provided by the Licensing Team;
* state that the application has been made and the date on which it was made; and
* indicate that representations relating to the application may be made to that local authority during the public consultation period and when that period comes to an end

The applicant is encouraged to talk to neighbouring businesses and occupiers prior to applying to the local authority, and so take any issues around noise, and nuisance into consideration as part of the proposal.

**6.3 Who must local authorities consult?**

The local authority must consult the highways authority. For security advice, local authorities should consult Police Licensing Teams, Designing Out Crime Officers or Counter Terrorism Security Advisors. The authority must also consult such other persons as the local authority considers appropriate.

In addition to the highways authority, this Authority proposes to consult the following:

* Community Protection Team
* Planning
* Police Licensing Team
* The relevant Parish or Town Council

And any other person the Authority considers it appropriate to consult.

**6.4 How can members of the public make representations about the application?**

Members of the public can contact the council to make representations. Local authorities must take into account representations received from members of the public during the public consultation period which is the period of 5 working days starting the day after the application is submitted (excluding public holidays).

**6.5 How must local authorities publicise the application and seek representations from local communities and other stakeholders?**

This authority will publish details of the application and any information or material which the applicant has submitted with it to meet the requirements of the authority on the Council website.

The local authority will also publicise the fact that representations may be made during the public consultation period and when that period comes to an end.

When publishing applications and publicising the fact that representations can be made, the authority will have regard to their duties under the Equality Act 2010 and will meet the requirements in the Public Sector Bodies (Websites and Mobile Applications) (No 2) Accessibility Regulations 2018, and therefore ensure that these are made accessible.

**7. Enforcement**

**7.1 In what circumstances can the local authority enforce or revoke a licence?**

If a condition imposed on a licence (either by the local authority or nationally) is breached the local authority will be able to issue a notice requiring the breach to be remedied and the authority can take action to cover any costs. The authority may revoke a licence in the following circumstances:

1. For breach of condition, (whether or not a remediation notice has been issued) or
2. Where:
	* There are risks to public health or safety – for example by encouraging users to breach government guidance on social distancing by placing tables and chairs too close together;
	* this use of the highway is causing an unacceptable obstruction, breaching the no-obstruction condition – for example, the arrangement of street furniture prevents disabled people, older people or a wheelchair users to pass along the highway or have normal access to the premises alongside the highway.
	* there is anti-social behaviour or public nuisance – for example, the use is increasing the amount of noise generated late at night and litter is not being cleaned up;
	* it comes to light that the applicant provided false or misleading statements in their application – for example they are operating a stall selling hot food and had applied for tables and chairs on which drinks could be consumed; or
	* the applicant did not comply with the requirement to affix the notice to notify the public for the relevant period.
3. The local authority may also revoke the licence where all or any part of the area of the relevant highway to which the licence relates has become unsuitable for any purpose for which the licence was granted or deemed to be granted. For example, the licensed area (or road adjacent) is no longer to be pedestrianised. The local authority will give reasons where these powers are used.