

# LEGISLATIVE & INDUSTRY UPDATE - APRIL 2023

<b>Committee</b>	Licensing Committee
<b>Officer</b>	Legal Services
<b>Wards</b>	All

## HEADLINES

This report advises the Licensing Committee of the recent legislative, case law and industry updates under the functions within its remit.

## RECOMMENDATION

**That the Committee notes the report.**

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## Licensing Act 2003

### Legislation Update - Revised Section 182 Guidance – 20<sup>th</sup> December 2022

On 20<sup>th</sup> December 2022 the Home Office issued a revised version of the Section 182 which has not been updated since April 2018. Under section 4 of the Licensing Act 2003 Licensing Authorities whilst carrying out their functions must “have regard to” guidance issued by the Secretary of State under Section 182 therefore the guidance is binding on all Licensing Authorities and departing from it could give rise to an appeal or judicial review – there must be clear, reasoned decisions where there is any deviation from the guidance.

Key changes and highlights and from the previous version include:

- **Changes in the right to work and entitlement:**

Paragraph 4.22:

*“Since 1 July 2021, EEA citizens and their family members require immigration status in the UK. They can no longer rely on an EEA passport or national identity card, which only confirms their nationality, to prove their right to work. They are required to provide evidence of lawful immigration status in the UK, in the same way as other foreign nationals.”*

- **Persons operating an alcohol delivery service "may consider contacting their licensing authority" as opposed to "should" to obtain their view on whether an application to vary the licence is necessary:**

Paragraph 3.10

*“Persons who run premises providing ‘alcohol delivery services’ should notify the relevant licensing authority that they are operating such a service in their operating schedule. This ensures that the licensing authority can properly consider what conditions are appropriate. Premises with an existing premises licence, which choose to operate such a service in addition to their existing licensable activities, may consider contacting their licensing authority for its view on whether this form of alcohol sale is already permitted or whether an application to vary the licence will be required.”*

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- **New section on "Closure Notices"**

Paragraph 4.83

*"Section 19 of the Criminal Justice and Police Act 2001 (the Act) gives licensing authorities, police and local authorities the power to serve a closure notice where any premises are being used (or have been used within the last 24 hours), for the sale of alcohol for consumption on or in the vicinity of the premises; and the activity was not authorised (premises licence, club premises certificate or temporary event notice) or not in accordance with the conditions of authorisation. The notice informs the person with control of, or responsibility for, the activities carried on at the premises (normally the licence holder or the designated premises supervisor) that if unauthorised alcohol sales continue, an application may be made to a court under section 20 for an order to close the premises under section 21 of the Act. Such an application cannot be made less than seven days or more than six months after the service of the closure notice under section 19."*

- **Clarifying that Home Office Immigration Enforcement is not responsible for Clubs**

Paragraph 6.11

*"...Licensing authorities do not have to satisfy themselves that applicants for club premises certificates are entitled to work in the UK before issuing a club premises certificate. Consequently, Home Office Immigration Enforcement is not a responsible authority in relation to club premises certificates."*

- **Updates to TENs statutory limits**

Paragraph 7.15

*"...the number of times a TEN may be given for any particular premises is 15 times in a calendar year (for the 2022 to 2023 calendar years this will increase from 15 to 20)"*  
*"the maximum total duration of the events authorised by TENs in relation to individual premises is 21 days in a calendar year (for the 2022 to 2023 calendar years this will increase from 21 to 26 days)"*

- **Full Variation Process**

Paragraph 8.76 has been amended to include the *phrase "vary substantially the premises to which the licence relates."* In short, if there is to be a substantial change to the premises, there should be a new licence application rather than a full variation.

- **Proposed Condition**

Paragraph 10.5 more emphasis regarding operating schedules including conditions which must be "appropriate and proportionate for the promotion of the licensing objectives."

*"It is not acceptable for licensing authorities to simply replicate the wording from an applicant's operating schedule. A condition should be interpreted in accordance with the applicant's intention and be appropriate and proportionate for the promotion of the licensing objectives."*

- **The "Agent of Change" principle**

Paragraph 14.66

*"...Where the operation of an existing business or community facility could have a significant adverse effect on new development (including changes of use) in its vicinity, the applicant (or 'agent of change')*

*should be required by the local planning authority to provide suitable mitigation before the development has been completed”*

The Agent of Change principle places the responsibility on a person/persons or business (the agent) responsible for the change (to the local/surrounding area) for mitigating impacts from existing noise-generating premises or uses on the proposed new noise-sensitive development. In short, the person or business responsible for the change must also be responsible for managing the impact of the change, the onus will be on the ‘agent’ to put in place noise mitigating measures.

An example would be if a housing development is going to be built near an existing busy pub or airport, it is the responsibility of the housebuilder or developer to ensure the new properties have measures in place (for example sound proofing) to mitigate against the noise pollution.

- **Removal of "Annex A – documents which demonstrate entitlement to work in the UK"**

Annex A of the Home Office’s Employer right to work checks supporting guidance is no longer contained within the revised guidance instead, a link to the Annex A can be found within paragraph 4.9.

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## **The Alcohol Licensing (Coronavirus) (Regulatory Easements) (Amendment) Regulations 2022**

The 2022 Regulations came into effect on 29<sup>th</sup> September 2022 and extends the off-sales provision in section 11(13) of the Business and Planning Act 2020 (modification of premises licences to authorise off-sales for limited period) until September 2023.

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## **Industry update**

### **Protect Duty – ‘Martyn’s Law’**

*“The proposed Martyn’s Law will seek to improve the safety and security of our citizens so they can enjoy public premises without fear of terrorism by improving protective security and organisational preparedness at a wide range of locations across the UK”*

The ‘Protect Duty’ also known as “Martyn’s law” is pending legislation.

It will require venues and local authorities to draw up preventative plans against terror attacks, following a tiered model that will be linked to the activity that takes place at a particular venue. A standard tier will apply to venues with maximum capacities of 100 and above, while an enhanced tier will be applied to those venues considered to be high-capacity locations.

### **His Majesty the King’s Coronation – Section 172 Licensing Act 2003**

On 6<sup>th</sup> March 2023 the Government extended licensing hours “...for the sale of alcohol for consumption on the premises, for the provision of late-night refreshment—only where there is also the sale of alcohol for consumption on the premises, and for the provision of regulated entertainment in England and Wales. The order will extend the licensing hours for such premises from 11pm to 1am the following day, on Friday 5 May, Saturday 6 May and Sunday 7 May.”

In November 2022 the Government published its response to the House of Lords Liaison Committee's report following up the Select Committee's post legislative scrutiny report on the Licensing Act 2003. There

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are 21 recommendations which are likely to impact the Licensing regime in the near future some key recommendations include:

- **Coordination between the licensing and planning systems**

*“The Government acknowledges that coordination between the licensing and planning systems is important, but considers that the systems are separate, with two very different and distinct objectives and approaches.”*

*“The powers are there to enable planning and licensing to work together to support the needs and aspirations of local communities and we do not intend to introduce an additional mechanism.”*

- **Access to licensed premises for disabled people**

*“The Government position remains that the Licensing Act should not be used as a means to control other aspects of licensed premises or ensure compliance with other legislation such as the Equality Act 2010. We do not consider it necessary to take new legislative or regulatory measures in addition to the existing legislation.*

*The Equality Act 2010 already provides robust protections for disabled people”*

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## **Gambling Act 2005**

### **Notable Case:**

*Daub Alderney Limited v The Gambling Commission – December 2022*

Daub, a subsidiary of the Rank Group, appealed against the penalty imposed by the Gambling Commission. The appeal was heard by the First Tier Tribunal and was dismissed. At Paragraph: 57 of Judge Finlay’s judgement she reinforced the approach adopted in Hope & Glory in relation to appeals against administrative decisions:

*“As has been repeatedly recognised in appellate case law, decisions of statutory regulators are not to be lightly reversed. They are only to be overturned if they are wrong. The burden of proving that they are wrong lies on the Appellant. Furthermore, the courts have recognised that regulatory decisions are not of the “heads or tails” variety. They are evaluative – which is to say that they are matters of judgment rather than pure fact.”*

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## **Pavement Licences - The Business and Planning Act 2020 (Pavement Licences) (Coronavirus) (Amendment) Regulations 2022**

### **Notable Case:**

- City council settles claim alleging "discriminatory" pavement licensing policy

City of York Council has settled a wheelchair user's judicial review claim, which argued the local authority's pavement licensing policy was discriminatory.

Local Government Lawyer reported that Flick Williams, who is visually impaired, contended that a council policy breached the Equality Act 2010 saying the licensing policy went against Government guidance, which states that: "Where a pavement licence is granted, clear access routes on the highway will need to be maintained, taking into account the needs of all users, including disabled people."

In response to Williams's letter, the council withdrew its policy and changed the criteria against which licence applications are assessed to ensure that a minimum width of 1.5m generally remains available to highway users on footways and that suitable barriers are in place. Williams brought her claim without a solicitor and said she "was quite prepared" to represent herself in court. But the council settled the claim out of court for an undisclosed amount. Announcing the settlement on Twitter, Williams said: *"Importantly the policy has now changed to the benefit of all disabled people & others too."*

The Home Office is consulting to understand whether there is support for making permanent the regulatory easement or whether to return to the allowance set out in the Licensing Act. The consultation is open until 1 May 2023.

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## **Schedule 3 of the Local Government (Miscellaneous Provisions) Act 1982 in respect of Sex Establishment Licences**

### **Notable Case:**

The High Court has allowed a claim for judicial review brought against a local authority's decision to impose no limit on the number of strip clubs it would license.

In *CDE, R (On the Application Of) v Bournemouth, Christchurch and Poole Council* [2023] EWHC 194 (Admin) (03 February 2023), the Claimant sought a Judicial Review of the Defendant Council's decision of 9 November 2021 ("the Decision") to adopt a new Sexual Establishment Policy ("the Policy"). The Policy had two features which are relevant to the Claimant's challenge: the first was a policy to impose no cap on the number of Sexual Entertainment Venue ("SEV") licences that may be granted to establishments in the Bournemouth, Christchurch and Poole ("BCP") areas ("the No Cap Policy" or "the NCP"); the second was a policy that those SEVs already licensed to operate in BCP enjoy a presumption in favour of annual renewal of their licence for the duration of the Policy ("the Acquired Rights Policy" or "the ARP"). The Defendant conducted two consultation exercises in respect of the Policy.

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## **Scrap Metal Dealers Act 2013**

On 2<sup>nd</sup> March 2023 the supplementary guidance was updated helpfully all of the amendments are listed on page 2. Some notable amendments include clarification of the requirements for motor salvage operators (paragraph 2.7) the inclusion of a new section 13 concerning closure notices, orders and the right to enter and inspect premises and when a dealer is uncertain about the provenance of an item payment can be delayed for verification purposes.

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## **Street Trading – London Local Authorities Act 1990**

No further legislative changes/notable cases/industry updates.