

# LEGISLATIVE & INDUSTRY UPDATE - OCTOBER 2024

<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

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### Notable Case

The High Court have ruled that remote hearings are lawful. The appeal was brought against the London Borough of Lewisham by Walk Safe Security Services Ltd on behalf of Silks nightclub which had its licence revoked by police summary review.

One of the grounds of appeal challenged the use of a remote hearing procedure which was initially heard by a District Judge at Bromley Magistrates' Court and ruled to be lawful under the Licensing Act 2003 and the Licensing Act (Hearings) Regulations 2005.

The Appellant appealed against the District Judge's ruling to the High Court. The appeal was heard by Chamberlain J in May 2024.

In dismissing the appeal, the judge held that remote hearings are lawful:

- In the absence of an express statutory definition of "hearing" in either the Act or the Regulations, in principle the term "hearing" could be applied both to an in-person hearing and a remote hearing using video conferencing technology.
- Although the Regulations require a hearing to be held in a "place", that word is not defined either and nor is it accompanied by words connoting a single geographical location (unlike the provisions for ordinary local authority meetings held under the Local Government Act 1972). Without such qualifying language, an online platform could properly be described as a "place".
- Section 9(3) of the Act and Regulation 21 of the Regulations– which permit a licensing committee to regulate its own procedure – reflect an intention to confer maximum procedural flexibility, subject to any contrary provision in the Regulations. Therefore, the question for the court was not whether remote hearings were permitted but whether they were expressly prohibited. In the court's judgment, there was no clear indication in the Regulations that remote hearings were precluded.
- A licensing authority is obliged to act fairly and in accordance with procedural rights to a fair hearing under Article 6 ECHR. This requires the licensing authority to consider whether a remote hearing can be held in a way which is fair to all parties: where it would not be, it is obliged to consider alternative arrangements.

- The fact that express provision for remote hearings had been made in Wales did not affect the interpretation of the Act and Regulations insofar as they apply to England. The Welsh provisions simply show how one would draft a provision if the legislator's intention was to put beyond doubt the question whether "hearing" includes a remote hearing.

*What does it mean for licensing authorities?*

The ruling means that all licensing authorities in England and Wales are authorised to hold licensing hearings remotely – either fully remotely or a hybrid procedure (with some participants attending a physical location and others joining through video conferencing technology).

Although the judgment clearly establishes the principle that remote hearings are lawful, it contains only limited guidance on the practicalities of holding a remote hearing. What is clear, however, from the court's reference to procedural fairness, is that authorities should have a written protocol, setting out:

- Criteria for holding an in-person hearing, fully remote hearing or hybrid procedure what constitutes valid attendance by members of the committee, parties to the hearing, officers and members of the public
- How access to the hearing by members of the public will be ensured additional measures to ensure that a remote hearing will not result in unfairness any party to the hearing

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## Industry News & Updates

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During the State Opening of Parliament on Wednesday 17 July, the King delivered his speech setting out the new Labour Government's legislative agenda for the coming months. This included:

### **English Devolution Bill**

The English Devolution Bill sets out to deliver the Government's manifesto commitment to transfer power out of Westminster and into local communities, allowing them to take back control by strengthening mayoral powers, giving local leaders the tools to kickstart their economies, as well as empowering communities to transform their neighbourhoods, high streets and important community assets.

### **Crime and Policing Bill**

This Bill sets out to halve serious violence and increase confidence in policing and the Criminal Justice System giving police the powers they need to crack down on crime and anti-social behaviour particularly concentrating on knife crime and violence against women and girls, whilst introducing new reforms to ensure that law enforcement agencies including local authorities perform to the highest standards.

### **Terrorism (Protection of Premises) Bill**

The Bill aims to deliver the Government's manifesto commitment to bring in Martyn's Law and strengthen the security of public events and venues.

### **Tobacco and Vapes Bill**

This Bill, if introduced will create the first ever smokefree generation by:

Making it an offence to sell tobacco products to those born on or after 1 January 2009, amending existing legislation to make it an offence for anyone over 18 to purchase tobacco products on behalf of those born on or after 1 January 2009 and reduce the appeal and availability of vaping products.

The Bill will also aim to strengthen enforcement activity, allowing Trading Standards to take swifter action to enforce the law and closing loopholes. It will prevent underage sales of tobacco and vapes by providing enforcement authorities in England and Wales with the power to issue Fixed Penalty Notices for the underage sale of tobacco and vaping products.

At Hillingdon, underage sales are currently enforced by the Trading Standards team and are prosecuted by way of Single Justice Procedure at the Magistrates' Court. There have been approximately 6 successful prosecutions at Hillingdon for underage sales (both tobacco products and alcohol) since 2023.

### **The Licensing Hours Extensions Bill (to be reintroduced)**

This bill had previously been laid, seeking to amend the Licensing Act 2003 so that licensing hours Orders can be made by negative resolution statutory instrument, however this bill was not included in the new Government's legislative agenda.

Since this Private Member's Bill did not reach a conclusion, it will need to be reintroduced by the new Labour Government.

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## **Gambling Act 2005**

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### **Updated codes of practice**

From 30<sup>th</sup> August 2024 the Licence Conditions and Codes of Practice issued by the Gambling Commission required all land-based operators to undergo age verification test purchasing regardless of size of operation. Previously operators with an operating licence category of A or B did not have to undergo this requirement.

The Gambling Commission has updated its guidance notes regarding the reporting process, which confirms that licensees must send the Gambling Commission annual returns listing the aggregated results of age verification test purchasing they, or organisations contracted by them, conduct each quarter.

### **Review of Hillingdon's Statement of Gambling Policy**

Hillingdon's Statement of Gambling Policy for 2025 is currently under review. The regular review and adoption of the Statement of Gambling Policy ensures that the licensing framework is up to date and effective in ensuring a safe and regulated environment for users of licensed premises.

The current Statement of Gambling Policy was last formally reviewed in 2022. Legislation requires that the Policy is updated every three years.

The proposed Statement of Draft Gambling Policy for 2025 is currently available to view on Hillingdon's website. The consultation period is currently open and is due to end midnight on 25<sup>th</sup> October 2024.

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

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No further legislative changes/notable cases/industry updates.

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## Scrap Metal Dealers Act 2013

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No further legislative changes/notable cases/industry updates.

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## Street Trading – London Local Authorities Act 1990

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### Notable Case

A street trader in Birmingham has won his appeal over a conviction he received for street trading without a licence.

The council accused Logie of having on three dates traded in the street without a licence in contravention of the Local Government (Miscellaneous Provisions) Act 1982 (the LGA), Schedule 4, Section 10(1)(b).

Logie defended himself in the original proceedings before magistrates on the grounds that he was allowed to sell on the street by holding a Pedlar's Certificate.

Magistrates found he was not trading as a pedlar - as he spent too much time static - and fined him £300 per offence.

Mr Logie appealed to the Crown Court where, the Crown Court concluded quashing his conviction that Logie - a litigant in person - had presented it with a document of uncertain origin that purported to show an informal 15 to 20-minute rule that allowed someone to remain in one place and still be within the pedlars' exemption.

Mr Justice Ritchie said:

*"We do not know the source of that document. It is plainly not a legal authority. It has some kind of discussion but has no authority so far as we are concerned, and it is central to his case. It simply does not reflect our view of the law."*

*"There is no such informal 15 to 20-minute rule. It may be that people sometimes do not enforce it, in the way that people do not enforce speed limits when people travel a couple of miles an hour over the limit, but it does not mean they are not breaking the speed limit."*

Ritchie J said he had to decide the proper interpretation of S.3 of the Pedlars Act 1871, whether Logie was trading as a pedlar within his certificate at the relevant times and whether some of the findings of fact made by the judge were irrational or unlawful for lack of evidential foundation.

He noted the Pedlars Act 1871 at S.3 states:

*"The term 'pedlar' means any hawker, pedlar, petty chapman, 'pedlar', tinker, caster of metals or other person who, without any horse or other beast bearing or drawing burden, travels and trades on foot and goes from town to town or to other men's houses, carrying to sell or exposing for sale any goods, wares, or merchandise, or procuring orders for goods, wares, or merchandise immediately to be delivered."*

Ritchie J said a pedlar may stop on a street for 20 minutes to display merchandise, as a necessary part of trading whilst meandering around a town.

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He said referring to an earlier case: *“A pedlar is not required to be in constant motion. He is allowed to stop and sell his merchandise with some small equipment.”*

But, standing for an hour in a fixed spot selling his merchandise was held to be fixed street trading, not being a pedlar.

To qualify as a pedlar under the Act, the person concerned must have travelled from town to town during the validity of his Pedlar’s Certificate, must trade on foot, not trade from a horse or vehicle, must have goods for immediate delivery and may use moveable equipment.

The pedlar may stop for periods to attract the potential customers for around 20 minutes but not so long as an hour.

Ritchie J explained: *“In my judgment, taking the case law into account, moving between 16 and 24 times per eight-hour shift is sufficient to satisfy the ‘travels whilst he/she trades’ requirement in the majority of cases. So, in my judgment, a usual stopping time of around 20 minutes and a maximum approaching but not as much as 30 minutes is a reasonable, usual temporal limit, depending on the type and size of equipment being used.”* On this basis, Logie had been within the limits.

Mr Justice Ritchie quashed all three convictions received by Andrew Logie.