

EXPLANATORY MEMORANDUM TO
THE ALCOHOL LICENSING (CORONAVIRUS) (REGULATORY EASEMENTS)
(AMENDMENT) REGULATIONS 2021

2021 No. [XXXX]

1. Introduction

- 1.1 This explanatory memorandum has been prepared by the Home Office and is laid before Parliament by Command of Her Majesty.

2. Purpose of the instrument

- 2.1 The Regulations include three measures intended to assist the recovery of the hospitality industry in response to the coronavirus pandemic. This instrument extends provisions in the Business and Planning Act 2020 (“the 2020 Act”) to allow sales of alcohol for consumption off the premises to licensed premises that did not have that permission for a further year (to 30 September 2022). It also amends the limits prescribed in section 107 of the Licensing Act 2003 to increase the allowance for temporary event notices that a licensed premises can give from 15 to 20, and increases the maximum number of days on which temporary events may be held at such premises from 21 to 26, in the calendar years 2022 and 2023. Finally, it amends the Licensing Act 2003 (Permitted Temporary Activities) (Notices) Regulations 2005 (S.I. 2005/2918) (“the 2005 Regulations”) to prescribe a revised version of the form, respectively, of a temporary event notice and counter-notice.

3. Matters of special interest to Parliament

Matters of special interest to the Joint Committee on Statutory Instruments

- 3.1 None.

Matters relevant to Standing Orders Nos. 83P and 83T of the Standing Orders of the House of Commons relating to Public Business (English Votes for English Laws)

- 3.2 This entire instrument applies to England and Wales only, as it is made under sections 107(12) and 197(2) of the Licensing Act 2003, and section 11(14) of the Business and Planning Act 2020, which extend to England and Wales only.
- 3.3 The instrument does not have any minor or consequential effects outside England and Wales.
- 3.4 In the view of the Department, for the purposes of House of Commons Standing Order No. 83P of the Standing Orders of the House of Commons relating to Public Business, the subject-matter of this instrument would be within the devolved legislative competence of the Northern Ireland Assembly, if equivalent provision in relation to Northern Ireland were included in an Act of the Northern Ireland Assembly as a transferred matter and the Scottish Parliament, if equivalent provision in relation to Scotland were included in an Act of the Scottish Parliament.
- 3.5 The Department has reached this view as this instrument relates to the sale and supply of alcohol, which is a transferred matter within the legislative competence of the Northern Ireland Assembly. The sale and supply of alcohol is similarly within the devolved legislative competence of the Scottish Parliament.

4. Extent and Territorial Application

- 4.1 The territorial extent of this instrument is England and Wales.
- 4.2 The territorial application of this instrument is set out in Section 3 under “Matters relevant to Standing Orders Nos. 83P and 83T of the Standing Orders of the House of Commons relating to Public Business (English Votes for English Laws)”.

5. European Convention on Human Rights

- 5.1 The Minister for Crime and Policing has made the following statement regarding Human Rights:

“In my view the provisions of The Alcohol Licensing (Coronavirus) (Regulatory Easements) (Amendment) Regulations 2021 are compatible with the Convention rights.”

6. Legislative Context

- 6.1 The Licensing Act 2003 (“the 2003 Act”) enables a regime under which premises are authorised to be used for certain activities (referred to as “licensable activities”), namely: the sale of alcohol by retail (for consumption on or off the premises); the supply of alcohol by or on behalf of a club to, or to the order of, a member of the club; the provision of regulated entertainment; and the provision of late night refreshment. Provision for the regulation of the sale and supply of alcohol includes the granting of premises licences. Should a licensee with permission to sell alcohol only for consumption on the premises (“on-sales”) wish to sell alcohol for consumption off the premises (“off-sales”), they are required to apply for a variation of their licence.
- 6.2 In response to the coronavirus pandemic, section 11 of the 2020 Act temporarily modifies the 2003 Act to allow eligible holders of an on-sale licence an automatic grant of the off-sales permission for a limited period. The provisions also apply temporary conditions to licences where there is a pre-existing permission for off-sales, to enable those premises to operate in the same ways as those that are granted the new permission, by suspending existing, more restrictive conditions. The 2020 Act also provides for off-sales reviews to take place on grounds which are relevant to the licensing objectives (set out in section 4(2) of the 2003 Act), enabling an off-sales review to take place if there are problems relating to crime and disorder, public nuisance, public safety or the protection of children associated with the new permission or its associated conditions. Such a review would take place within 28 days and interim steps to prevent a recurrence of problems before the review could be put in place within 48 hours if necessary.
- 6.3 Section 11(13) of the 2020 Act provides that these modifications to the 2003 Act expire at the end of 30 September 2021. Section 172F(10)(d)(i) of the 2003 Act, as that Act has effect by virtue of section 11(2) of the 2020 Act, similarly prescribes the “relevant period” during which off-sales are authorised by the modifications as ending on 30 September 2021 or, if earlier, the revocation or expiry of the premises licence or exclusion of off-sales from the scope of the licence. Regulation 2 of this instrument extends the application of the modifications, and the relevant period (subject to earlier revocation, expiry or exclusion), to the end of 30 September 2022.
- 6.4 This instrument is the first exercise of the Secretary of State’s power, in section 11(14) of the 2020 Act, to extend the duration of the temporary provision. The Secretary of State considers it reasonable to substitute the date specified in section

172F(10)(d)(i) of the 2003 Act, as that Act has effect by virtue of subsection 11(2) of the 2020 Act, and section 11(13) of the 2020 Act with a later date in order to mitigate an effect of coronavirus on the hospitality industry (as explained in section 7 below).

- 6.5 The 2003 Act also contains a scheme which enables an individual to carry out a licensable activity, on a temporary basis, by virtue of a temporary event notice (“TEN”) without having to obtain a licence. The premises user may instead give a TEN to the licensing authority. The availability and use of TENs are subject to a number of restrictions, including a limitation on the number of TENs which may be given in relation to the same premises in any calendar year (see section 107(4) of the 2003 Act) and the number of days in any calendar year on which a single premises can be used to carry on licensable activities (see section 107(5) of the 2003 Act). Section 107 of the 2003 Act requires a licensing authority to issue a counter-notice on receipt of a TEN where certain permitted limits, including those prescribed in section 107(4) and (5) of the 2003 Act, are exceeded. The effect of giving a counter notice is that the proposed event is not authorised to proceed.
- 6.6 Regulation 3 of this instrument amends section 107(4) and (5) of the 2003 Act to increase, for the 2022 and 2023, the number of TENs which may be given in relation to the same premises in any calendar year, from 15 to 20, and the number of days in any calendar year on which a single premises can be used to carry out licensable activities, from 21 to 26 days.
- 6.7 The Licensing Act 2003 (Permitted Temporary Activities) (Notices) Regulations 2005 (S.I. 2005/42) (“the 2005 Regulations”) prescribe the forms to be used for TENs given by premises users under section 100 of the 2003 Act (see Schedule 1) and the form to be used for counter notices given by licensing authorities under section 107 of the 2003 Act (see Schedule 2). Regulation 4 of this instrument makes a consequential amendment to the 2005 Regulations to revise the form, respectively, for a TEN and counter notice to specify the TENs increases for the calendar years 2022 and 2023.
- 6.8 This takes place in tandem with legislative changes being led by the Ministry of Housing Communities and Local Government (MHCLG) to extend the duration of temporary provision made by the 2020 Act to 30 September 2022 (a temporary fast-track process for businesses selling food or drink to obtain authorisation from the local authority for the placement of furniture, such as tables and chairs on the highway adjacent to their premises). Although legally free-standing and not interdependent, it is envisaged that businesses will benefit from both extensions.

7. Policy background

What is being done and why?

- 7.1 These Regulations are part of the Government’s response to the Coronavirus pandemic. In 2020/21, premises licensed to sell alcohol operated under various restrictions that limited their ability to trade as normal. The most severely affected have been night clubs, which have not been open to customers since March 2020. On 22 February 2021, the Prime Minister announced his roadmap for easing COVID-19 restrictions. Pubs and restaurants have been able to open for outdoor table service since 12 April with indoor service permitted from 17 May. The roadmap envisages clubs re-opening and remaining restrictions being lifted no earlier than 21 June 2021.
- 7.2 Recent evidence from trade organisations and other sources suggests huge financial losses for the hospitality industry as a consequence of the coronavirus pandemic.

CGA (a data and research company) reports that around 6,000 licensed premises closed in 2020 across Britain. The British Beer and Pub Association has estimated a year on year decrease in beer sales of £7.8bn in 2020. The Office of National Statistics reported on the 22 April 2021 that between 6 April and 18 April 2021, 10.1% of hospitality businesses reported no cash reserves. A further 6.9% of such businesses reported having less than 1 month of cash reserves, and 29.7% reported having 1 to 3 months of cash reserves. Only 20.1% reported having more than 6 months of cash reserves. Following the introduction of coronavirus restrictions in December 2020, the hospitality sector saw a decrease from 64% of single-site businesses currently trading in mid-December 2020 to 41% currently trading in early January 2021. This had increased to 48% currently trading in mid-March 2021, but it was still low compared to 74% of single-site businesses currently trading across all industry in the UK at the same time.

- 7.3 The measures in this instrument which extend the temporary off-sales permission and temporarily increase premises' allowances of TENs are intended to assist the recovery of the hospitality trade by allowing businesses to operate more flexibly.
- 7.4 The temporary extension by the 2020 Act of the off-sales permission to up to 38,000 licensed premises who did not previously have this permission, was intended to assist the recovery of the hospitality trade. It did this by eliminating the time and cost associated with applying for variation of on-sale only licences. It also enabled more businesses to extend their service outdoors and to operate takeaway or delivery services. The Government is extending the off-sales permissions for 12 months until 30 September 2021. This period is deemed to be appropriate as the restrictions on the operation of licensed premises that have been in place since the autumn of 2020 have delayed the economic recovery of the hospitality sector. In addition, the extension of this measure will allow continued flexibility around the seating of customers.
- 7.5 The Government is also increasing the number of TENs which may be given in relation to the same premises. TENs are used for two purposes. The first is to allow licensable activities such as the sale of alcohol to take place in a building or plot of land that does not have a premises licence. They are often given by markets where a trader intends to sell alcohol and by wedding reception venues. The second purpose is to allow a business that has a premises licence to undertake licensable activities that its licence does not allow. For example, a pub may give a TEN in order to continue serving alcohol beyond its normal hours on occasion. The Government considers increasing the number of TENs available, and number of days, for a period of 2 years appropriate. It will benefit a wide range of businesses by allowing them to stage a greater number of temporary events at which licensable activities take place, and which have been unable to take place during the COVID-19 restrictions. It is therefore anticipated to aid their recovery from the economic effects of the pandemic.

8. European Union Withdrawal and Future Relationship

- 8.1 This instrument does not relate to withdrawal from the European Union / trigger the statement requirements under the European Union (Withdrawal) Act.

9. Consolidation

- 9.1 This instrument amends section 11 of the 2020 Act, section 107 of the 2003 Act and forms contained in Schedules to the 2005 Regulations. There are no plans to consolidate this legislation.

10. Consultation outcome

- 10.1 No formal consultation has taken place on this measure. There has been informal consultation with the Local Government Association through its Licensing Policy Forum. The Home Office will also engage with licensing authorities and relevant licensing stakeholders to explain the measures and to circulate revised guidance.
- 10.2 The Department consulted officials in the Welsh Government on this instrument. Welsh officials raised no concerns in relation to the measures contained in this instrument.

11. Guidance

- 11.1 Published [guidance](#) for the 2020 Act measures will be amended to reflect the new end date of 30 September 2022. Guidance on TENs in the statutory [guidance](#) issued under section 182 of the Licensing Act 2003 will be amended to reflect the temporary changes to allowances. The Institute of Licensing, the National Association of Licensing Enforcement Officers, the Local Government Association and hospitality trade associations will be notified of these changes.

12. Impact

- 12.1 The impact of these regulatory easements on business is expected to be a positive one. These measures will afford businesses increased opportunities to undertake licensable activities. Similarly, we expect a positive impact on charities and voluntary bodies which use their full allowance of TENs. We are however unable to quantify these benefits.
- 12.2 The impact on the public sector is that there will be some increased pressure on local authority licensing departments. They are expected to receive greater quantities of temporary event notices. These must be considered quickly, since the minimum notice period for a standard temporary event notice is ten working days.
- 12.3 An Impact Assessment has not been prepared for this instrument as its impact does not meet the threshold necessitating its requirement. An Economic Note however has been prepared for this instrument.

13. Regulating small business

- 13.1 The legislation applies to activities that are undertaken by small businesses.
- 13.2 This measure will have a positive impact on small businesses. By increasing the premises allowances for TENs and extending the temporary off-sales permission, small businesses will be able to operate more flexibly in response to customer demands and this will reduce regulatory burdens.
- 13.3 Representatives of the licensed trade, including those who represent small businesses will be notified of this change to ensure that businesses employing up to 50 people or more are aware of the revised form.

14. Monitoring & review

- 14.1 The regulation does not include a statutory review clause and, in line with the requirements of the Small Business, Enterprise and Employment Act 2015, the Minister for Crime and Policing has made the following statement: “These are temporary measures with a low, positive financial impact on businesses. Therefore, I

do not consider a statutory review clause necessary.” As such, there are no plans to monitor this legislation.

15. Contact

- 15.1 Andy Parsons at the Home Office telephone: 0792 0089 355 or email: Andrew.parsons1@homeoffice.gov.uk can be contacted with any queries regarding the instrument.
- 15.2 Paul Regan, Head of the Neighbourhood Crime Unit at the Home Office can confirm that this Explanatory Memorandum meets the required standard.
- 15.3 The Minister for Crime and Policing, Kit Malthouse MP, can confirm that this Explanatory Memorandum meets the required standard.