

EXPLANATORY MEMORANDUM TO
THE ALCOHOL LICENSING (CORONAVIRUS) (REGULATORY EASEMENTS)
(AMENDMENT) REGULATIONS 2022

2022 No. 978

1. Introduction

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

2. Purpose of the instrument

2.1 In response to the coronavirus pandemic, section 11 of the Business and Planning Act 2020 (“the 2020 Act”) made temporary provision to allow sales of alcohol for consumption off the premises to licensed premises that did not have that permission. This temporary provision was originally due to expire on 30 September 2021.

2.2 The 2020 Act included an enabling power whereby the premises licence provisions can be extended through the Business and Planning Act if the Secretary of State considers it reasonable to do so to mitigate an effect of coronavirus. This enabling power has been used once previously in the Business and Planning Act 2020 (Alcohol Licences) (Coronavirus) (Amendment) Regulations 2021 No. 1049 (“the 2021 Regulations”) to extend the period during which this temporary provision applies until 30 September 2022.

2.3 The purpose of this instrument is to use this enabling power to further extend the period during which this temporary provision applies, until 30 September 2023.

3. Matters of special interest to Parliament

Matters of special interest to the Joint Committee on Statutory Instruments

3.1 None.

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 England and Wales.

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 2022 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 2023.
- 6.4 This instrument is the second use of the power in section 11(14) of the 2020 Act, which the 2021 Regulations used for the first time in order to extend the period during which this temporary provision applies, until 30 September 2022. 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 This takes place in tandem with legislative changes that the Department for Levelling Up, Housing and Communities (DLUHC) is leading to extend the duration of temporary provision made by the 2020 Act to 30 September 2023 (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). Both Houses of Parliament have already approved the extension to those regulations which were also due to expire on 30 September 2022. 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 temporary extension by the 2020 Act of the off-sales permission to up to 38,000 licensed premises which 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 a further 12 months until 30 September 2023. In the intervening period, the Government will consult on options for long-term regulatory arrangements.
- 7.2 Businesses need certainty to help them recover economically from the coronavirus pandemic. Evidence from trade organisations and other sources has indicated significant financial losses and wider economic pressures faced by the hospitality industry. The Beer and Pub Association¹ reported that, while consumer confidence is up from 2021, with circa 70% of people feeling confident to visit pubs, bars and restaurants, there is still support needed to bring this up further and ensure a strong and sustainable recovery. The most recent data on sales in the hospitality sector indicates that the sector is still smaller than prior to the pandemic; sales across restaurants, bars and hotels reached £31.6bn in the three months to the end of September 2021, a 73 per cent increase on the summer of 2020 but still 10 per cent down on the same period in 2019, according to data held by industry tracker CGA2.
- 7.3 The measures in this instrument which extend the temporary off-sales permission are intended to assist the recovery of the hospitality trade by allowing businesses to operate more flexibly. Covid restrictions on where people could drink lapsed in January 2022. Therefore, we had hoped earlier in the year that it would not be necessary to extend these provisions. We have kept this position under review as the situation has evolved and as 30 September has approached. Notwithstanding the absence of legal restrictions, it is clear that the licensed sector is continuing to suffer effects from the pandemic and is struggling. We have therefore recently reassessed the situation and concluded that it would be appropriate to extend the off-sales provision for a further year. The 2020 Act sets out that the process for extending the Regulations is by a 'made affirmative' SI. It is necessary to use that urgent process so as to avoid a gap between the current regulations ending on 30 September 2022 and any new regulations coming into effect.

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.

¹ The British Beer and Pub Association <https://beerandpub.com/2022/02/21/bbpa-comment-on-lifting-of-alllegal-covid-restrictions/>

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. However the Government plans to launch a public consultation over the next few months to seek the views of the licensed sector, local authorities and other interested parties to understand whether there would be support for a streamlined process for alcohol licences, which would be a permanent alternative to the current alcohol licensing easements.
- 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 2023. 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 There is no, or no significant, impact on business, charities or voluntary bodies.
- 12.2 There is no, or no significant, impact on the public sector.
- 12.3 As this measure is extending a current provision², no new analysis or impact assessment has been prepared. However an impact assessment is being drawn up to accompany the public consultation on long-term arrangements.

13. Regulating small business

- 13.1 The legislation applies to activities that are undertaken by small businesses. This measure will have a positive impact on small businesses.

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.” However, the Government will review these provisions by means of a public consultation.

15. Contact

- 15.1 Alison Goodall at the Home Office telephone: 07917 243153 or email: Alison.Goodall2@homeoffice.gov.uk can be contacted with any queries regarding the instrument.

² [Analysis to support Economic Recovery Bill \(parliament.uk\)](#)

- 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, Jeremy Quin MP, can confirm that this Explanatory Memorandum meets the required standard.