

EXPLANATORY MEMORANDUM TO
THE ALCOHOL LICENSING (CORONAVIRUS) (REGULATORY EASEMENTS)
(AMENDMENT) REGULATIONS 2023

2023 No. 990

1. Introduction

1.1 This explanatory memorandum has been prepared by the Home Office (“the Department”) 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”) amended the Licensing Act 2003 (“the 2003 Act”) to make temporary provision to allow sales of alcohol for consumption off the premises by licensed premises that did not have that permission.

2.2 The 2020 Act includes an enabling power whereby the period for which this provision has effect can be extended if the Secretary of State considers it reasonable to do so to mitigate an effect of coronavirus. This enabling power has been used twice previously, namely in the Alcohol Licensing (Coronavirus) (Regulatory Easements) (Amendment) Regulations 2021 and in the Alcohol Licensing (Coronavirus) (Regulatory Easements) (Amendment) Regulations 2022.

2.3 These Regulations amend a date in the 2020 Act to extend the period during which premises with an ‘on-sale’ licence may sell alcohol for consumption off the premises. The new date of the expiry of the temporary scheme is 31 March 2025. This will help to mitigate the fact that the hospitality sector is continuing to feel the effect of the coronavirus pandemic; whilst there are no remaining restrictions in place, many businesses continue to face significant debt burdens as a result of the pandemic. In practice, this extension will mean that on-sales only licence holders will be able to continue to provide off-sales without needing to apply for a variation to their on-sales only licence, which will eliminate the time and cost associated with applying for this variation. It will also enable more businesses to continue to extend their service outdoors and to operate takeaway or delivery services.

2.4 Section 107 of the Licensing Act 2003 was previously amended in 2021 to increase the allowance for temporary event notices (“TENs”) that a licensed premises could give from 15 to 20 and increase the maximum number of days on which temporary events were held at such premises from 21 to 26, in the calendar years 2022 and 2023. There has been limited uptake of this increased allowance - there was a 33% decrease in TENs used in the year ending 31 March 2022 compared with pre-covid numbers. As such, these regulations do **not** further extend the temporary provision relating to TENs.

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 extent of this instrument (that is, the jurisdiction(s) which the instrument forms part of the law of) is England and Wales.
- 4.2 The territorial application of this instrument (that is, where the instrument produces a practical effect) is England and Wales.

5. European Convention on Human Rights

- 5.1 Chris Philp, Minister for Crime, Policing and Fire has made the following statement regarding Human Rights:

“In my view the provisions of The Alcohol Licensing (Coronavirus) (Regulatory Easements) (Amendment) Regulations 2023 are compatible with the Convention rights.”

6. Legislative Context

- 6.1 The Licensing Act 2003 (“the 2003 Act”) enables a regime under which premises can be authorised to be used for certain activities (referred to as “licensable activities”), namely: the sale of alcohol by retail (for consumption on 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 (plays, live and recorded music, indoor sport, films and boxing and wrestling); and the provision of late night refreshment (the provision of hot food and hot drink between 11pm and 5am).
- 6.2 In response to the continued impact of the coronavirus pandemic, in 2021 section 11 of the Business and Planning Act 2020 (“the 2020 Act”) was used to temporarily modify the 2003 Act to allow eligible holders of an on-sale licence an automatic grant of the off-sales permission. Provisions were also made for off-sales reviews to take place on grounds which are relevant to the licensing objectives (as set out in section 4(2) of the 2003 Act).
- 6.3 Section 11(13) of the 2020 Act currently provides that these modifications to the 2003 Act expire at the end of 30 September 2023.
- 6.4 This instrument, which will further extend these modifications to 31 March 2025, is the third use of this power. 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 in 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. In 2021, regulations amended section 107(4) and (5) of the 2003 Act to increase, for 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. As there has been limited take up of this increased allowance, these regulations do **not** extend this provision. As such, on 31 December 2023, the number of TENs which may be given in relation to the same premises in any calendar year will revert back to 15, and the number of days in any

calendar year on which a single premises can be used to carry out licensable activities will revert back to 21 days.

7. Policy background

What is being done and why?

- 7.1 The 2020 Act introduced a number of temporary and permanent measures that enabled certain business sectors to operate whilst managing the risks arising from the pandemic. This included the introduction of temporary measures relating to alcohol licensing.
- 7.2 Specifically, the 2020 Act made temporary provision to enable those premises with an existing on-sales licence to automatically be permitted to make off-sales, even if they didn't have an off-sales licence. The effect of that automatic permission enabled those premises with a pavement licence to serve alcohol for consumption in the area covered by that pavement licence, even if they only had an on-sales licence. More broadly, it enabled premises that only had an on-sales licence to sell alcohol for consumption off the premises (often known as 'takeaway pints'), and also enabled business to operate alcohol delivery services.
- 7.3 In 2020/21, premises licensed to sell alcohol operated under various covid-related restrictions that limited their ability to trade as normal. The temporary measure by the 2020 Act of the off-sales permission - which applied 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.
- 7.4 The Government previously extended these regulations twice, and is now extending the off-sales permissions for a third time until 31 March 2025. In the intervening period between the previous extension and this extension, the Government consulted on options for long-term arrangements.
- 7.5 In respects to whether to deem the area covered by a pavement licence as part of the premises plan, respondents highlighted unintended adverse consequences. Subject to further technical consultation, the Government believes that the unified pavement licence should include licensing consent for the consumption and sale of alcohol in the outside pavement area. This will reduce the administrative burden of cafes, pubs and restaurants having to apply for multiple consents from their council. Local residents and responsible authorities would still be able to make representations on the merits of such a licence, and the terminal hours may differ outside from those inside. The Government will seek to develop a unified licensing regime before the temporary provision lapses on 31 March 2025.
- 7.6 The Government also consulted on whether to extend the increased number of TENs and based upon the results of the consultation and the limited uptake of the increased provision, indicated within the impact assessment, we have decided not to extend this element of the provisions.
- 7.7 Businesses continue to experience economic pressures as a result of the coronavirus pandemic. 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. We will keep these provisions under review.

8. European Union Withdrawal and Future Relationship

8.1 This instrument does not relate to withdrawal from the European Union or 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 The Government ran a public consultation from 6 March to 1 May 2023 to seek the views of the licensed sector, local authorities and other interested parties to understand whether there would be support for making permanent the provisions in the 2020 Act.

10.2 The consultation asked several questions in relation to the regulatory easements, including whether to make the off-sales easement permanent. We received 174 responses to the consultation which were usable. The results of the consultation showed 65% of respondents in favour of returning to the pre-covid provisions of the Licensing Act. 63% of respondents were opposed to making the temporary event notice easement permanent.

10.3 A further question was asked in relation to whether respondents were aware of any change in the level of crime and / or anti-social behaviour as a result of the off-sales easement. Only 35% of respondents advised that there had been. However, the majority of respondents (65%) advised that they had not seen a change in anti-social behaviour and crime as a result of the off-sales provision.

10.4 The Government welcomed the responses to the consultation. However, due to the ongoing covid-related economic ramifications faced by the hospitality sector, we have determined that a further extension to the off-sales provision is justified on this occasion. This will help to support economic recovery for a sector that has faced many financial challenges.

10.5 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 31 March 2025. 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 An [impact assessment](#) has been 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 by extending the period of flexibility in how they are able to operate.

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.”

15. Contact

- 15.1 Home Office Alcohol Policy team can be contacted with any queries regarding the instrument [Alcoholteam2@homeoffice.gov.uk].
- 15.2 Paul Regan, Head of the Neighbourhood Crime Unit, can confirm that this Explanatory Memorandum meets the required standard.
- 15.3 Chris Philp, Minister for Crime, Policing and Fire at the Home Office, can confirm that this Explanatory Memorandum meets the required standard.