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**Sent:** 29 June 2020 09:09  
**To:** info@nabma.com  
**Subject:** Business and Planning Bill - Pavement Licences

# NABMA

the voice of markets

Dear Colleague

## **Business and Planning Bill - Pavement Licences**

At the end of last week, the government published a new Bill. Among the provisions of the Bill is a section on the operation of Pavement Licences to facilitate the service of food and drink in streets with the ability to place table, chairs and street furniture outside of pubs, shops and other premises. The link to the guidance regarding the proposed legislation is

<https://www.gov.uk/government/publications/pavement-licences-draft-guidance>

Such arrangements have existed for some time under various existing legislation particularly the Highways Act 1980 and the London Local Authorities Act 1990 but these new provisions provide for a fast track system of dealing with applications for Pavement Licences and an application fee capped at £100.

NABMA has already received representations from a number of London members about the impact of the proposed legislation, particularly raising issues about the additional work in processing applications, the low cost of the application fee and the fact that there are no additional resources to support the work that will be required to deal with the applications. There are also other issues concerning the interpretation of the new provisions and whether the proposed application fee prevents other charges being made for the actual trading activity.

It accepted that London has specific street trading legislation and applications for these Pavement Licences are likely to be dealt with under the framework of the existing street trading service. In the rest of the country the situation may be different with highway and planning sections involved.

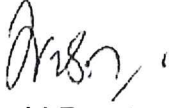
While NABMA acknowledges that the government has introduced these new provisions to assist the food and drink industry we are worried about the impact of significantly extending the outside area of food and drinks premises where such premises are in close proximity to markets. We do not see why the existing provisions cannot be maintained as the introduction of these new provisions, which are considered to be poorly constructed, are likely to add to the problems we already face.

I have already received representations from my former Town Council at Oswestry where there are Public Houses adjacent to the markets area and concerns have been raised about how the respective businesses will work together effectively.

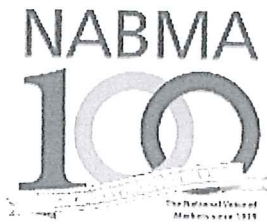
Sadly, there was no previous consultation on the Bill but we have immediately made representations to government highlighting the concerns of our London members and also seeking some assurances on other relevant issues.

I would be grateful for any comments of members about how this will affect the markets service in your area.

Yours sincerely



David Preston,  
NABMA Chief Executive



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1. Home (<https://www.gov.uk/>)
2. Coronavirus (COVID-19) (<https://www.gov.uk/coronavirus-taxon>)
3. Pavement licences: draft guidance (<https://www.gov.uk/government/publications/pavement-licences-draft-guidance>)

1. Ministry of Housing,  
Communities &  
Local Government (<https://www.gov.uk/government/organisations/ministry-of-housing-communities-and-local-government>)

Guidance

# Draft guidance: pavement licences (outdoor seating proposal)

Published 25 June 2020

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This publication is available at <https://www.gov.uk/government/publications/pavement-licences-draft-guidance/draft-guidance-pavement-licences-outdoor-seating-proposal>

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# 1. Pavement licences

## 1.1 What is a pavement licence?

A pavement licence is a licence granted by the local authority, or deemed to have been granted, which allows the licence-holder to place removable furniture over certain highways adjacent to the premises in relation to which the application was made, for certain purposes. This is a streamlined process to allow businesses to secure these licences in time for the summer and, where they are deemed to have been granted, allow these licences to remain in place for a year but not beyond 30 September 2021.

## 1.2 What is the purpose of the new process for pavement licences?

This new process introduces a streamlined and cheaper route for businesses such as cafes, restaurants and bars to secure a licence to place furniture on the highway. This will support them to operate safely while social distancing measures remain in place. This will provide much needed income over the summer months and protect as many hospitality jobs as possible.

## 1.3 How does the new process for pavement licences work?

Pavement licences are presently granted primarily under Part 7A of the Highways Act 1980. The fee varies between local authorities. The new process provides a cheaper, easier and quicker way for businesses to obtain a licence. The fee for applying for a licence under the new process, is capped at £100 and the consultation period is 5 working days (excluding public holidays). It is currently a minimum of 28 calendar days under Part 7A.

If the local authority does not determine the application before the end of the determination period (which is 5 working days beginning with the first day after the public consultation period (excluding public holidays), the licence is deemed to have been granted for a year (but not beyond 30 September 2021) and the business can place the proposed furniture such as tables and chairs within the area set out in the application for the purpose or purposes proposed.

## 1.4 What businesses are eligible?

A business which uses (or proposes to use) premises for the sale of food or drink for consumption (on or off the premises) can apply for a licence. Businesses that are eligible include: public houses, cafes, bars, restaurants, snack bars, coffee shops, and ice cream parlours.

A licence permits the business to use furniture placed on the highway to sell or serve food or drink and/or allow it to be used by people for consumption of food or drink supplied from, or in connection with the use of the premises.

## 1.5 What furniture can be permitted by a licence?

The furniture which may be used is:

- counters or stalls for selling or serving food or drink;
- tables, counters or shelves on which food or drink can be placed;
- chairs, benches or other forms of seating; and
- umbrellas, barriers, heaters and other articles used in connection with the outdoor consumption of food or drink.

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This furniture is required to be removable. Local authorities should be pragmatic when determining what is 'removable' but in principle this means it is not a permanent fixed structure, and is able to be moved easily, and stored away of an evening.

## **1.6 How much do applications cost?**

Fees will be set locally, but are capped at a maximum of £100.

## **1.7 Are there any exclusions from this provision?**

Licences can only be granted in respect of highways listed in section 115A(1) Highways Act 1980. Generally, these are footpaths restricted to pedestrians or are roads and places to which vehicle access is restricted or prohibited. Highways maintained by Network Rail or over the Crown land are exempt (so a licence cannot be granted).

## **1.8 Where does this new process apply?**

This process applies to England only, including London and other areas where statutory regimes other than the regime in the Highways Act 1980 may be relevant to the grant of licences for street furniture.

## **1.9 How does this interact with other regulatory process, such as alcohol licensing?**

It is important to note the grant of a pavement licence only permits the placing of furniture on the highway. Other regulatory frameworks still apply such as the need for alcohol licenses and the need to comply with registration requirements for food businesses.

If the applicant has a licence to serve alcohol on-premises temporary amendments to the Licensing Act 2003 will allow them to sell alcohol for consumption off the premises without needing to apply for a variation of their licence.

## **1.10 Does the applicant need planning permission as well as the licence?**

No. Once a licence is granted, or deemed to be granted, the applicant will also benefit from deemed planning permission to use the land for anything done pursuant to the licence while the licence is valid.

# **2. Duration**

## **2.1 How long are pavement licenses valid for?**

If a local authority determines an application before the end of the determination period (which is 5 working days, beginning with the first day after the public consultation period, excluding public holidays) the authority can specify the duration of the licence, subject to a minimum duration of 3 months. The expectation is that local authorities will grant licences for 12 months or more unless there are good reasons for granting a licence for a shorter period such as plans for future changes in use of road space.

If a licence is 'deemed' granted because the authority does not make a decision on an application before the end of the determination period, then the licence will be valid for a year.

A licence granted or deemed to be granted will not be valid beyond 30 September 2021.

## **2.2 How long will the new process be in place?**

This is a temporary measure to support businesses while social distancing measures may still be in place. As it is uncertain how long some form of social distancing measures will be in place for, the new process will remain in place until the end of September 2021 – giving certainty to businesses for the foreseeable future,

supporting them to operate safely while social distancing measures are in place. It will also allow them enough time to apply for new licences under the existing process if they want to extend beyond the end of September 2021.

### 3. Applications

#### 3.1 What information does an applicant need to provide?

An application to the local authority must:

- specify the premises and, the part of the relevant highway to which the application relates;
- specify the purpose (or purposes) for which the furniture will be used which must be to sell or serve food or drink, and/or for use by other people for the consumption of food or drink. In both cases the food or drink must be supplied from, or in connection with relevant use of the premises;
- specify the days of the week on which and the hours between which it is proposed to have furniture on the highway;
- describe the type of furniture to which the application relates, for example: tables, chairs, and/or stalls;
- specify the date on which the application is made;
- contain or be accompanied by such evidence of public liability insurance in respect of anything to be done pursuant to the licence as the authority may require; and
- contain or be accompanied by such other information or material as the local authority may require.

Local authorities may require applications to be made on a standard application form.

#### 3.2 What other information may the local authority require?

Local authorities may require the applicant to provide other information or material to help them make a swift determination. This could be included in their standard application form. Any requirements imposed should be reasonable and should be kept as minimal as possible. Examples of the information a local authority might require might include:

- a plan showing the location of the premises shown by a red line, so the application site can be clearly identified (some authorities may require this on an OS Base Map);
- a plan clearly showing the proposed area covered by the licence in relation to the highway, if not to scale, with measurements clearly shown;
- the proposed duration of the licence (for e.g. 3 months, 6 months, or a year);
- evidence of the right to occupy the premises e.g. the lease;
- contact details of the applicant;
- photos or brochures showing the proposed type of furniture and information on potential siting of it within the area applied;
- evidence that the applicant has met the requirement to give notice of the application (for example photograph);
- (if applicable) reference of existing pavement licence currently under consideration by the local authority; and
- any other evidence needed to demonstrate how any local and national conditions will be satisfied.

#### 3.3 What happens if an applicant has already made an application under the current regime?

If an applicant has already applied for permission to place furniture on the highway under the existing regime and their application has not been determined they may proceed with that application. However, that applicant may opt to make a fresh application for a pavement licence under the new process. In those circumstances

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the pending application will be deemed to have been withdrawn. If the fee for the pending application was paid the authority will not be permitted to charge a fee for the new application for a pavement licence.

## 4. Determining the application

### 4.1 What happens once the information is submitted to the local authority?

Once the information is submitted to the local authority the authority has 10 working days from the day after the application is made (excluding public holidays) to consult on, and determine the application. This consists of 5 working days for public consultation, and then 5 working days to consider and determine the application after the consultation.

If the local authority does not determine the application within the 10 working day period, the application will be deemed to have been granted.

### 4.2 What will a local authority consider when deciding whether to grant a pavement licence?

The local authority will need to consider a number of factors, when determining whether to approve the application. These include the scope for national or local conditions to make it possible to approve an application which would otherwise be unacceptable.

The Secretary of State may publish conditions for pavement licences. Annex A is such a condition. This is in addition to the statutory 'no obstruction' condition referred to in 5(4) and 3(6) of the Business and Planning Act 2020.

Authorities are encouraged to publish local conditions subject to which they propose to grant pavement licences so that applicants and those making representations are aware of them. When considering their powers in relation to local conditions they should bear in mind the requirements of [clause 3(5)] and seek to impose conditions which have the same effect as the no-obstruction condition. They should also take into account the national published condition.

When setting local conditions and determining applications. Issues authorities will also want to consider include:

- public health and safety – for example, ensuring that uses conform with latest guidance on social distancing and any reasonable crowd management measures needed as a result of a licence being granted and businesses reopening;
- public amenity – will the proposed use create nuisance to neighbouring occupiers by generating anti-social behaviour and litter; and
- accessibility – taking a proportionate approach to considering the nature of the site in relation to which the application for a licence is made, its surroundings and its users, taking account of:
  - any other temporary measures in place that may be relevant to the proposal, for example, the reallocation of road space. This could include pedestrianised streets and any subsequent reallocation of this space to vehicles;
  - whether there are other permanent street furniture or structures in place on the footway that already reduce access;
  - the recommended minimum footway widths and distances required for access by mobility impaired and visually impaired people as set out in Section 3.1 of Inclusive Mobility (<https://www.gov.uk/government/publications/inclusive-mobility>), and
  - other users of the space, for example if there are high levels of pedestrian or cycle movements.

### 4.3 Where an authority has set local conditions covering the same matter as national conditions, which take precedence?

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Where a local authority sets a local condition that covers the same matter as set out in national published conditions, then the locally set condition would take precedence over the national condition where there is reasonable justification to do so. However, this is not the case for the statutory no-obstruction condition which will need to be regarded as set out in the question above.

#### **4.4 Can local authorities impose conditions which are not published?**

Yes. When they grant a licence, local authorities may impose reasonable conditions whether or not they are published upfront. There is an expectation these will be supported by a clear justification for the need of a condition which is in addition to any published local conditions. Conditions might, for example, limit the maximum number of chairs and tables, or type of furniture, time and days of operation with justification for this.

#### **4.5 Where can local authorities find out more about how to manage social distancing?**

The government has published the COVID-19 Secure: safer public places guidance (<https://www.gov.uk/guidance/safer-public-places-urban-centres-and-green-spaces-covid-19>), which provides owners and operators of public spaces with information and examples of measures that may be undertaken to adapt and manage public spaces in order to help social distancing.

#### **4.6 What are the outcomes of an application?**

If the local authority determines the application before the end of the determination period the local authority can:

- grant the licence in respect of any or all of the purposes specified in the application,
- grant the licence for some or all of the part of the highway specified in the application, and impose conditions, or
- refuse the application.

To the extent that conditions imposed on a licence by the local authority do not have the effects specified in [clause 3(6)] the licence is granted subject to those restrictions. Annex A contains guidance on the relationship between the national published condition and local conditions

#### **4.7 Is there a route to appeal a decision?**

There is no statutory appeal process for these decisions, however, councils may wish to consider the scope for an internal review process, for example permitting appeals to their Licencing committee.

### **5. Deemed licences and conditions**

#### **5.1 What is a deemed licence?**

If the local authority does not determine the application before the end of the determination period, the application is deemed to have been granted subject to any local conditions published by the local authority before the application was submitted.

To the extent that local conditions deemed to be imposed on the licence do not have the effects specified in [clause 3(6)] the licence is granted subject to those restrictions.

Annex A contains guidance on the relationship between the national published condition and deemed local conditions

### **6. Consultation**

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## 6.1 What steps should an applicant take to engage with their community?

The applicant is required to affix a notice to the premises, so it is easily visible and legible to the public on the day they submit the application to the local authority. They must ensure the notice remains in place for the public consultation period which is the period of 5 working days beginning with the day after the day the application is submitted to the authority. When counting 'working days' public holidays are not included. Applicants are encouraged to keep evidence of this.

## 6.2 What must a notice contain?

The notice must:

- be in the form which the local authority prescribes, if it prescribes one;
- state that the application has been made and the date on which it was made;
- indicate that representations relating to the application may be made to that local authority during the public consultation period and when that period comes to an end; and
- contain such other information or material as that local authority may require.

The applicant is encouraged to talk to neighbouring businesses and occupiers prior to applying to the local authority, and so take any issues around noise, and nuisance into consideration as part of the proposal.

## 6.3 What information may local authorities require to be displayed on the site notice?

The local authority may require that other information is included in the notice such as:

- the statutory provisions under which the application is made;
- description of the proposed use of the furniture;
- address of the premises and name of the business;
- website for the council where the application and any accompanying material can be viewed during the consultation period;
- address (which might be an email address) to which representations should be sent during the consultation period; and
- the end date of the consultation (5 working days starting the day after the application is submitted to the authority).

A template site notice local authorities may wish to adapt is contained in Annex B.

## 6.4 Who must local authorities consult?

The local authority must consult the highways authority, if they are not the highways authority; this is usually the county council in a two-tier area, or Transport for London in London. The authority must also consult such other persons as the local authority considers appropriate.

## 6.5 How can members of the public make representations about the application?

Members of the public and, can contact the council to make representations. Local authorities must take into account representations received from members of the public during the public consultation period which is the period of 5 working days starting the day after the application is submitted (excluding public holidays).

## 6.6 How must local authorities publicise the application and seek representations from local communities and other stakeholders?

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The local authority is required to publish the application and any information or material which the applicant has submitted with it to meet the requirements of the authority, in such a manner as it considers appropriate, for example, on their website or via an online portal.

The local authority is also required to publicise the fact that representations may be made during the public consultation period and when that period comes to an end. Local authorities might consider using digital methods of publicity, such as automatic notices, which members of the public can opt in to receive. In deciding what steps to take authorities should consider the needs of those who may find it more difficult to access online publications

## 7. Enforcement

### 7.1 In what circumstances can the local authority enforce or revoke a licence?

If a condition imposed on a licence (either by the local authority) or nationally is breached the local authority will be able to issue a notice requiring the breach to be remedied and the authority can take action to cover any costs. The authority may revoke a licence in the following circumstances:

1. For breach of condition, (whether or not a remediation notice has been issued) or
2. Where:
  - There are risks to public health or safety – for example by encouraging users to breach government guidance on social distancing by placing tables and chairs too close together;
  - the highway is being obstructed (other than by anything permitted by the licence);
  - there is anti-social behaviour or public nuisance – for example, the use is increasing the amount of noise generated late at night and litter is not being cleaned up;
  - it comes to light that the applicant provided false or misleading statements in their application – for example they are operating a stall selling hot food and had applied for tables and chairs on which drinks could be consumed; or
  - the applicant did not comply with the requirement to affix the notice to notify the public for the relevant period.
3. The local authority may also revoke the licence where all or any part of the area of the relevant highway to which the licence relates has become unsuitable for any purpose for which the licence was granted or deemed to be granted. For example, the licensed area (or road adjacent) is no longer to be pedestrianised. It is good practice for local authorities to give reasons where these powers are used.

## 8. Annex A: National condition

The Secretary of State publishes this condition in exercise of his powers under [clause 5(6)] of the Business and Planning Act 2020

### 8.1 Condition relating to clear routes of access:

It is a condition that clear routes of access along the highway must be maintained, taking into account the needs of disabled people, and the recommended minimum footway widths and distances required for access by mobility impaired and visually impaired people as set out in Section 3.1 of Inclusive Mobility (<https://www.gov.uk/government/publications/inclusive-mobility>).

Guidance on the effect of this condition

1. To the extent that conditions imposed or deemed to be imposed on a pavement licence do not require the licence holder to require clear routes of access to be maintained, taking into account the needs of disabled people and the recommended minimum footway widths and distances required for access by

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mobility impaired and visually impaired people as set out in Section 3.1 of Inclusive Mobility (<https://www.gov.uk/government/publications/inclusive-mobility>), the licence is granted subject to those requirements.

2. To the extent that a licence is granted subject to a condition which imposes requirements to maintain clear routes of access that are inconsistent with the requirements set out in this condition this condition is not imposed on the licence.

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