

PARLIAMENTARY DEBATES

HOUSE OF COMMONS
OFFICIAL REPORT

First Delegated Legislation Committee

DRAFT BUSINESS AND PLANNING ACT 2020
(PAVEMENT LICENCES) (CORONAVIRUS)
(AMENDMENT) REGULATIONS 2022

Monday 11 July 2022

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The Committee consisted of the following Members:

Chair: DAME MARIA MILLER

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| † Argar, Edward (<i>Charnwood</i>) (Con) | † Morrissey, Joy (<i>Beaconsfield</i>) (Con) |
| † Bacon, Gareth (<i>Orpington</i>) (Con) | Osamor, Kate (<i>Edmonton</i>) (Lab/Co-op) |
| † Baker, Duncan (<i>North Norfolk</i>) (Con) | † Owen, Sarah (<i>Luton North</i>) (Lab) |
| † Benton, Scott (<i>Blackpool South</i>) (Con) | † Russell, Dean (<i>Watford</i>) (Con) |
| † Brereton, Jack (<i>Stoke-on-Trent South</i>) (Con) | † Saxby, Selaine (<i>North Devon</i>) (Con) |
| † Carden, Dan (<i>Liverpool, Walton</i>) (Lab) | † Smith, Cat (<i>Lancaster and Fleetwood</i>) (Lab) |
| † Creasy, Stella (<i>Walthamstow</i>) (Lab/Co-op) | Trickett, Jon (<i>Hemsworth</i>) (Lab) |
| † Fletcher, Colleen (<i>Coventry North East</i>) (Lab) | |
| † Jones, Mr Marcus (<i>Minister of State, Department for
Levelling Up, Housing and Communities</i>) | Jonathan Finlay, <i>Committee Clerk</i> |
| † McCartney, Jason (<i>Colne Valley</i>) (Con) | † attended the Committee |

First Delegated Legislation Committee

Monday 11 July 2022

[DAME MARIA MILLER *in the Chair*]

Draft Business and Planning Act 2020 (Pavement Licences) (Coronavirus) (Amendment) Regulations 2022

6 pm

The Minister of State, Department for Levelling Up, Housing and Communities (Mr Marcus Jones): I beg to move,

That the Committee has considered the draft Business and Planning Act 2020 (Pavement Licences) (Coronavirus) (Amendment) Regulations 2022.

It is a pleasure to serve under your chairship, Dame Maria.

It is a privilege to update the Committee on these important regulatory changes in my first speech as the new Housing and Planning Minister. I take the opportunity to pay tribute to my predecessor, my right hon. Friend the Member for Pudsey (Stuart Andrew), now Minister of State at the Ministry of Justice. I commend his commitment and enthusiasm, and the dedication that he showed to this position throughout his time in post. I wish him well in his new role.

The Minister on the Front Bench may be new today, but Members will know that the regulations that we are considering are not. They were laid before the House in draft form last month, under section 23(6) of the Business and Planning Act 2020. The draft regulations will extend the temporary pavement licence provisions for a further 12 months, to 30 September 2023. They will come into effect the day after the regulations are made.

Hon. Members will know that the pavement licence provisions create a faster, cheaper and more streamlined approval process for businesses to put tables and chairs on the pavement outside their premises. In my constituency, and no doubt in all our constituencies, that has proved to be a game changer for many cafes, bars, restaurants and pubs. The measures have proven to be almost universally popular, and successful in supporting high street businesses to stay afloat and to keep their doors open—in particular during the height of the pandemic, when people were in effect not able to trade indoors. By making it easier for those businesses to offer al fresco dining with outside seating, the draft regulations also contribute to a vibrant, mixed-use high street, which drives up footfall, and supports local businesses and the wider local economy.

For all such reasons, it is important to extend the provisions for a further 12 months. That will give businesses certainty about the current rules while we seek to make the measure permanent through the Levelling-up and Regeneration Bill.

I now offer some background to the draft regulations; I hope the Committee will bear with me while I delve into the finer points of the legislation. Part VIIA of the Highways Act 1980 sets out a permanent local authority

licensing regime for the placement of furniture such as tables and chairs on the highway. However, the process set out under that legislation is for there to be a legal minimum of a 28-day consultation to determine applications. In practice, many local authorities take much longer to determine applications, and there is no statutory cap on the fee that an authority may charge.

We sought to cut through that red tape quickly, to help struggling businesses during the pandemic, and in July 2020 we introduced a temporary pavement licence provision in the Business and Planning Act, to support the hard-hit hospitality sector. The draft regulations use enabling powers under the Act that allow the Secretary of State to extend the temporary provisions, subject to parliamentary approval.

I turn to the detail of the draft regulations, whose sole purpose is to change the four references to the expiry date of the temporary pavement licensing provisions in legislation. To be specific, those dates are pushed back by 12 months, from 30 September 2022 to 30 September 2023. I want to be clear: the draft regulations will change no other part of the temporary pavement licensing provisions. The process for applying for a licence during the extended period will not change, either.

All the draft regulations mean is that businesses will continue to be able to apply for a licence under the process set out in the 2020 provisions until at least 30 September 2023. However, the regulations do not automatically extend licences that have already been granted under the current provisions, so businesses will need to apply for a new licence if they wish to have one in place during the extended period. Councils are encouraged by guidance to take a pragmatic approach to applying the relevant provisions, to make it as easy as possible for businesses to apply for a licence during the extended period.

I appreciate that some hon. Members may be interested in what the process looks like. All licence applications are subject to a seven-day public consultation period. After that, there is usually a further seven-day determination period during which the local authority is expected to either grant a licence or reject the application. If the council does not determine the application before the end of that period, the licence will automatically be deemed to be granted and the business will be able to set out its tables and chairs in accordance with the purposes stated in its application.

Licence application fees will be set locally but are capped at £100. The fees are unchanged from the current temporary provisions. All licences will be subject to a national non-obstruction condition and smoke-free seating condition, as well as other local conditions set by councils. The granting of a pavement licence covers only the placing of removable furniture on the highway. A pavement licence does not negate the need to obtain approvals under other regulatory frameworks such as alcohol licensing.

The draft regulations will enable hospitality businesses to continue to obtain a licence to place their tables and chairs outside their premises quickly and cheaply. The changes could not come at a more important time for high street businesses. Evidence from organisations such as the British Beer and Pub Association shows that the hospitality sector has struggled to return to pre-pandemic levels of trading.

I firmly believe that the draft regulations will provide essential economic support for the sector by letting businesses continue to serve food and drink outside. To support councils and businesses with the implementation regulations, we will publish an updated version of the pavement licensing guidance. We are seeking to make the measure permanent through the Levelling-up and Regeneration Bill so there will be no unnecessary gap in service, which would prove costly for businesses and local authorities.

Members on all sides of the House will have seen the positive impact of al fresco dining during this period. I want to express my gratitude for the huge efforts made by local authorities to make the licences a success. Since introducing the simplified route for businesses to obtain a licence, we have seen a massive explosion of outdoor seating. That has led to more buzzing high streets, a great deal of social capital and support for our economy. It is right that we keep the regulations, and I commend them to the Committee.

6.8 pm

Sarah Owen (Luton North) (Lab): It is a pleasure to see you in the Chair, Dame Maria. I welcome the Minister to his role, although I will miss him as a fellow Whip.

No matter what is happening here, including the non-stop roundabout of the internal woes of this Government, sooner or later our constituents will raise the issues directly on their doorsteps, high streets and pavements. That is why this statutory instrument on extending temporary pavement licensing provisions in the Business and Planning Act 2020 is important. We will not oppose this extension, but I have some questions for the new Minister, which I will come to later.

I am sure we all agree how hard the last two or three years have been for businesses, our high streets and local authorities, but this trend started well before the pandemic. In recent years, we have seen an acceleration in the number of high street chains closing their doors forever. They include Debenhams, House of Fraser, Topshop and Dorothy Perkins, where I had one of my first jobs at the age of 16—a very long time ago.

I turn specifically to hospitality. Big names in the restaurant business have not been immune. Jamie Oliver's restaurant chain closed its doors for good, and despite GBK finding a rescue deal, it had to cut 362 jobs and close 26 stores—a pattern of cuts similar to those in many big chain restaurants. This was not an easy time for the hospitality industry or our high streets. The Minister has talked about al fresco dining. Although we support the regulations, they are not the magic saviour of our high streets or our hospitality sector. What will make a difference is pounds in people's pockets and tackling the cost-of-living crisis for all, including businesses affected by higher energy costs and gas and electricity bills.

As I said, the stripping back of our high streets started well before the pandemic. Local authorities had £18.6 billion cut from their budgets. Post levelling-up funding in 144 areas, people are £50 million worse off. When funding has come, it has often been far too little, far too late, with no long-term view or strategy from central Government, leaving towns and cities hitting against each other for ever-dwindling resources, and

our high streets bare. Then, after a decade of Conservative cuts, we get covid. This was a perfect storm, which saw the end of many well-known names and longstanding local small businesses. We all know the ones that have disappeared from our local areas, and jobs and skills along with them. It is vital that every step is taken to offer the support needed to the hospitality sector.

As we come out of one period of uncertainty and into another, we now need to balance the objective of supporting the hospitality sector with other considerations, such as the impact of outdoor hospitality on local residents, highways and pedestrian access. On the issue of pedestrian access, one of the Royal National Institute of Blind People's many important campaigns is on A-boards. I am aware that both the Guide Dogs UK and the RNIB raised concerns about the shortened timeframe for consultation when the temporary changes on pavement licensing were introduced. I seek assurances from the Minister that both those charities and other disability charities have been thoroughly consulted on this permanent change, and that their concerns have been fully addressed.

On the impact on local residents, I of course welcome recognition of the need for councils to be able to enforce rules and take action where necessary, such as when businesses are blocking pavements. However, the regulations do not outline a specific offence of erecting tables and chairs without authorisation and would instead require councils to confiscate a business's furniture. This could be a logistical nightmare. Where should councils store such furniture? How would they be reimbursed for removal costs? Would the Minister consider allowing other means, such as councils using fixed-penalty notice charges instead? I would be grateful if he could offer some concrete solutions to these potential knock-on impacts.

Another potential issue for local authorities is any ongoing and associated costs. I know and welcome the fact that burdens funding was given to councils for year one of this temporary regime, and for year two. Will the Minister confirm that this funding will continue? Does he accept that, in order for enforcement to be effective, local authorities have to be adequately funded for that purpose?

As I said earlier, we need to give the hospitality sector as much support and opportunity to grow as possible. The Opposition will not oppose the regulations, but I would be grateful if the Minister please addressed the points of concern that I have raised.

6.13 pm

Cat Smith (Lancaster and Fleetwood) (Lab): It is a pleasure to serve with you in the Chair, Mrs Miller.

I welcome the Minister to his new position, and I warn him that he might be hearing an awful lot from me when it comes to bids for the high streets in Fleetwood and Lancaster. Our high streets have suffered immensely in the last couple of years, and hospitality in particular has suffered, with lockdowns restricting businesses' ability to open. Many have been very innovative and looked at different ways of trading. One of the things that I have been pleased to see is the burst of al fresco dining, especially in the Lancaster part of my constituency, where Dalton Square, which was a big thoroughfare for traffic, suddenly became pedestrianised, with tables and chairs put out.

[Cat Smith]

That was all very pleasant, but I do want to raise a few issues with the Minister on behalf of my constituents. I have two particular constituents in mind. The first uses a guide dog, because he is blind. He has raised with me the particular issues with street furniture on Lancaster high streets. He is working with the Royal National Institute of Blind People and Guide Dogs. I appreciate that this is literally day one in the job for the Minister, but what consultation has he managed to have and will he commit to working with these charities to ensure that, when legislation is proposed, it is inclusive of all members of our community?

The second constituent I have in mind is a woman who uses a mobility scooter and recently came to one of my Fleetwood surgeries. She raised the issue of street furniture in Lord Street in Fleetwood. Again, this is not just about our constituents who are blind or partially sighted; it is also about our constituents with mobility scooters, and, I suspect, an awful lot of people pushing wide pushchairs and wheelchairs. It can become something of an obstacle course to pass through our city and town centres. What engagement has the Minister had with the broader disability charities and what consultation might he be willing to engage in?

I broadly welcome the changes. It is welcome to see the hospitality sector in many of our constituencies begin to get back on its feet. The best thing we can do to support our hospitality sector is to put more money in people's pockets. If the Minister could have conversations with his colleagues in other Departments about making the uplift in universal credit permanent rather than removing it, that would go a long way to supporting our hospitality sector.

6.16 pm

Mr Jones: I start by thanking the hon. Member for Luton North for her good wishes. It was a pleasure to work with her in her role as an Opposition Whip when I was in the Government Whips Office.

The hon. Lady made a number of points about our high streets and the challenges there. I do not, as she mentioned, see the regulations as a panacea for dealing with all the problems on the high street, but they are part of the solution. She mentioned the cost of living—clearly, we all have concerns about global inflation and the cost of living. I remind her that the Government have put in £37 billion of support and that money is going into people's pockets from this month to help with the additional cost of living.

The hon. Lady asked a number of questions and made a very good point about those who are partially sighted or without sight. We have been working with the RNIB and Guide Dogs and, with them, have worked to refine the guidance to help people as regards the hazard from furniture placed on the pavement in their way. We have refined that guidance to ensure that it works and I believe from my conversations—as the hon. Lady said, I was not party to those discussions—that we have been able to accommodate a number of suggestions that were made.

We are putting guidance in place to ensure that enforcement happens. We are clear that when people breach the conditions of a particular licence or do things that become a nuisance to the local community, the local authority has the opportunity to revoke that licence. I will take back the suggestions that the hon. Lady made.

On new burdens funding, a significant amount has been dedicated to the policy. In the first year, £4.83 million was given to local authorities and in the second year it will be £2.38 million. The funding is a little less in the second year because many people applying for licences are reapplying for the same licence; the amount of work the local authority will have to conduct will therefore be reduced significantly.

Sarah Owen: I hope I am not pre-empting the Minister, but I want to make sure that he will get to the point about year three and ongoing funding for burdens. We have agreed that enforcement is incredibly important; local authorities therefore need to be adequately funded to enforce the new rules.

Mr Jones: I am sure the hon. Member knows that the intention is to legislate for the regime through the Levelling-up and Regeneration Bill. There will be an opportunity for local authorities to put forward further charges in relation to the application fee. However, it will not be anywhere near the current situation. The average application fee before this regime was about £500, and in some cases fees were £1,000. We expect the fees to be far lower, but we also expect local authorities to be reimbursed for the work they do.

I thank the hon. Member for Lancaster and Fleetwood for her kind comments. It sounds like she will be knocking on my door to talk about her local area. I reiterate that we had extensive dialogue—although it is not required by the legislation—with organisations such as the Royal National Institute of Blind People and Guide Dogs before making the extension. We wanted to have that dialogue, because it is extremely important that we support people with disabilities. We have refined the guidance significantly, and that will be reflected in the guidance for local authorities.

On the hon. Lady's final point about the cost of living, there is a significant package under which people on the lowest incomes and on benefits can receive in the region of £1,250.

The Chair: Can we stick to the subject of pavements?

Mr Jones: That is significantly more than the amount referred to by the hon. Lady.

To follow your guidance, Dame Maria, I will leave it there. I hope hon. Members will support the statutory instrument, which in turn supports businesses, livelihoods and jobs in our town centres and on our high streets.

Question put and agreed to.

6.22 pm

Committee rose.

