

PARLIAMENTARY DEBATES

HOUSE OF COMMONS
OFFICIAL REPORT

Fourth Delegated Legislation Committee

DRAFT BUSINESS AND PLANNING ACT 2020
(PAVEMENT LICENCES) (CORONAVIRUS)
(AMENDMENT) REGULATIONS 2023

Monday 3 July 2023

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Friday 7 July 2023

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The Committee consisted of the following Members:

Chair: STEWART HOSIE

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| † Cairns, Alun (<i>Vale of Glamorgan</i>) (Con) | † Rimmer, Ms Marie (<i>St Helens South and Whiston</i>) (Lab) |
| † Clarke, Theo (<i>Stafford</i>) (Con) | † Seely, Bob (<i>Isle of Wight</i>) (Con) |
| † Davison, Dehenna (<i>Parliamentary Under-Secretary of State for Levelling Up, Housing and Communities</i>) | Sheerman, Mr Barry (<i>Huddersfield</i>) (Lab/Co-op) |
| † Fletcher, Colleen (<i>Coventry North East</i>) (Lab) | † Smith, Nick (<i>Blaenau Gwent</i>) (Lab) |
| † Jones, Fay (<i>Brecon and Radnorshire</i>) (Con) | † Throup, Maggie (<i>Erewash</i>) (Con) |
| † Metcalfe, Stephen (<i>South Basildon and East Thurrock</i>) (Con) | † Vara, Shailesh (<i>North West Cambridgeshire</i>) (Con) |
| † Mortimer, Jill (<i>Hartlepool</i>) (Con) | Wallis, Dr Jamie (<i>Bridgend</i>) (Con) |
| Osamor, Kate (<i>Edmonton</i>) (Lab/Co-op) | Huw Yardley, <i>Committee Clerk</i> |
| Osborne, Kate (<i>Jarrow</i>) (Lab) | |
| † Owen, Sarah (<i>Luton North</i>) (Lab) | † attended the Committee |

Fourth Delegated Legislation Committee

Monday 3 July 2023

[STEWART HOSIE *in the Chair*]

Draft Business and Planning Act 2020 (Pavement Licences) (Coronavirus) (Amendment) Regulations 2023

6 pm

The Parliamentary Under-Secretary of State for Levelling Up, Housing and Communities (Dehenna Davison): I beg to move,

That the Committee has considered the draft Business and Planning Act 2020 (Pavement Licences) (Coronavirus) (Amendment) Regulations 2023.

It is a pleasure to serve under your chairmanship, Mr Hosie, for what I think is the first time since I took on this role. The draft regulations were laid before the House on Wednesday 7 June 2023, under section 23(6) of the Business and Planning Act 2020, for approval by resolution of each House. If approved and made, they will extend the temporary pavement licence provisions for a further 12 months, to 30 September 2024. They will come into effect on the day after they are made.

The temporary pavement licence provisions created a faster, cheaper and more streamlined consenting regime for the placement of removable furniture, including tables and chairs, on pavements outside premises such as cafés, bars, restaurants and pubs—great local institutions, I think we can all agree. Such businesses have found it easier to offer al fresco dining with outside seating—and with the weather we have been having of late, I think we all appreciate that. The decline of high streets is a well-worn tale that negatively impacts local economies. Therefore, I am sure that hon. Members will welcome this extra support for businesses, especially as we seek ways to transform town centres into vibrant places to live, work and visit.

Now is not the time to switch off our support to the hospitality sector, which was one of the hardest hit by covid-19. The end of the pandemic was not the end of the impact of the pandemic, with inflationary pressures persisting to this day. It is therefore crucial that we extend these provisions for 12 months to give businesses certainty and to avoid unnecessary confusion while we seek to make the provisions permanent through the Levelling-up and Regeneration Bill.

I will briefly remind hon. Members of what led to us this important debate. 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. The process involves a legal minimum of 28 days for consultation, which is problematic because many local authorities take much longer to determine applications. There is also no statutory cap on the fee that a local authority may charge.

Therefore, with effect from 22 July 2020, temporary pavement licence provisions were introduced under the Business and Planning Act 2020 to support the hospitality

sector in response to the covid pandemic. The draft regulations use enabling powers in the Business and Planning Act 2020, which allow the Secretary of State to extend the temporary provisions, subject to parliamentary approval, if they consider it reasonable to do so to mitigate the effect of coronavirus.

I will turn briefly to the details of the draft regulations. Their sole purpose is to change the four references to the expiry date of the temporary pavement licence provisions in the legislation from 30 September 2023 to 30 September 2024. They do not change any other part of the temporary pavement licence provisions, so the process for applying for a licence during the extended period will not change.

Subject to the regulations being approved and made, businesses will be able to apply for a licence under the process set out in the pavement licence provisions in the Business and Planning Act 2020 for the extended period until 30 September 2024. The regulations do not automatically extend licences that have already been granted under the current provisions. Therefore, businesses will need to apply for a new licence if they wish to have one in place during the extended period.

Local authorities are encouraged by guidance to take a pragmatic approach in applying the relevant provisions, so that it is as convenient as possible for businesses to apply for a licence during the extended period. As the process for applying for a licence will remain unchanged, I will only briefly outline those steps. Licence applications are subject to a seven-day public consultation period starting the day after the application is made. A further seven-day determination period then follows, during which a local authority is expected to either grant a licence or reject the application.

If a local authority does not determine the application before the end of the determination period, the licence will automatically be deemed to have been granted in the form in which the application was made. A business can then place the proposed removable furniture, such as tables and chairs, within the area set out in the application for the proposed purposes.

Licence application fees will be set locally but capped at a maximum of £100. Those fees are unchanged from the licence application fees under the current temporary provisions in the Business and Planning Act 2020.

Shailesh Vara (North West Cambridgeshire) (Con): I welcome the provisions put forward by the Minister. On fees, I urge her to ensure that local authorities do not get excited and start to see this as another way of earning revenue. I hope that, if there is pressure from local authorities to increase the fee from £100, the Minister and her officials will clamp down hard. Many of these businesses are still recovering from the pandemic, and the last thing they want is increased fees.

Dehenna Davison: I am grateful to my right hon. Friend. In developing the provisions, we have engaged extensively with the Local Government Association and a range of local authorities, and we have paid attention to the costs and resourcing for the applications. The rationale behind the extension of the temporary arrangement is to try to make it cheaper and easier for businesses to operate outside—that is our top priority in extending the provisions.

All licences will be subject to a national no-obstruction condition and a smoke-free seating condition, as well as any local conditions set by local authorities. It is important to note that the grant of a pavement licence covers only the placing of removable furniture on the highway. It does not negate the need to obtain approvals under other regulatory frameworks, such as alcohol licensing.

Once a licence is granted or deemed to be granted, the applicant will also benefit from deemed planning permission to use the highway land for anything done pursuant to the licence while the licence is valid. That could include using furniture to sell or serve food or drink supplied from a premises.

The draft regulations will enable food and drink hospitality businesses to continue to obtain a licence to place furniture on the highway outside their premises quickly and cheaply. I firmly believe that the regulations will provide essential economic support for many food and drink businesses. If the regulations are passed, we will publish an updated version of the pavement licence guidance for local authorities and businesses so that they are aware of the continued support on offer.

I must stress—it has to get serious sometimes—that if the draft regulations are not introduced, there is a real risk that the steps that food and drink hospitality businesses have taken to recover from the economic impact of the pandemic will be undermined. We are seeking to make this measure permanent through the Levelling-up and Regeneration Bill, and a failure to extend it would result in an unnecessary gap in service and a return to the process under the Highways Act 1980, which would be confusing and costly for businesses and local authorities alike.

I am sure that many of us have enjoyed al fresco dining at pubs, cafés and restaurants and can see the positive impact that it has had on customers and the vibrance of our brilliant high streets. Since introducing a simplified route to obtain a temporary pavement licence, we have heard many examples of local businesses being able to increase their outdoor capacity quickly and at low cost. I am sure that we can all think of examples in our own constituencies.

Nick Smith (Blaenau Gwent) (Lab): Draft regulation 2 states:

“These Regulations extend to England and Wales.”

But the explanatory memorandum states:

“The territorial application of this instrument...is England.”

Will the practical introduction of the statutory instrument in Wales be left to the Welsh Government, or will the measure now be stopped in Wales?

Dehenna Davison: For fear of misleading the Committee, I will follow up on that point in writing immediately following this sitting, so that I can set it out firmly and clearly and based on the regulations more widely. I apologise for not having an answer immediately to hand.

I want to express my gratitude to local authorities for the huge effort they have made in this matter. Their hard work has enabled businesses to thrive, while building vibrant high streets, and it has led to the success of these measures.

The draft regulations will allow al fresco dining and drinking to remain a reality for businesses and provide much-needed continuity and certainty for another year while we seek to make these measures permanent through the Levelling-up and Regeneration Bill. I commend the draft regulations to the Committee.

6.9 pm

Sarah Owen (Luton North) (Lab): It is a pleasure to see you in the Chair, Mr Hosie. For me, it feels a little like groundhog day. This time last year I spoke on legislation to extend pavement licensing from 2022 to 2023, although in front of a different Minister—some might argue a lesser Minister. I hope for answers and some progress today.

We are yet again working on the basis of extending this legislation for just another year. We support this statutory instrument, but I lament the fact that the Government continue to think in the short term. They tinker around the edges of policy to make it stretch further, rather than put the work into long-term strategies to support high street businesses.

We all know from our local communities that businesses have not fully recovered from the pandemic; they have not had a chance. The Government’s mismanagement of the economy has sent fuel and food prices soaring, inflated interest rates and made mortgages, including for business properties, increasingly unaffordable. We do not plan to oppose the regulations, but there are improvements that the Minister could make, and I would be grateful to have her response on some of them.

There continue to be widespread job vacancies in hospitality—an industry that has traditionally relied on overseas workers and is now struggling to fill gaps. If media reports over the weekend are to be believed, Conservative Members are pressing for even stricter limitations on visas for foreign workers. Will the Minister please share with us whether any assessment has been done of the impact of those plans on the hospitality sector? How many more vacancies does she think it can sustain before closures become inevitable?

Small and medium-sized enterprises are still struggling with an outdated and punitive business rates system, while online giants grow fatter by avoiding paying their fair share of taxes. The lack of Government action on bringing in a digital sales tax is pushing more bricks-and-mortar businesses into bankruptcy as they struggle to compete. We will continue to fight that battle in our debates over the Non-Domestic Rating Bill, which is being examined thoroughly in the other place.

Enabling hospitality venues to operate outdoors for longer will certainly help boost custom, particularly in the summer months—although perhaps not this morning. Sector representatives, including UKHospitality, have emphasised the economic benefits to non-urban areas, which have previously not facilitated outdoor dining and are eager for this to be a permanent change in how hospitality businesses can operate. Will the Minister please tell us how much the extension to pavement licensing will offset the damage caused by covid and the Government’s economic mismanagement? Has any assessment been made of that at all? Ultimately, what is the point of these piecemeal bits of legislation, such as extending pavement licensing year after year, if there

[Sarah Owen]

are fewer businesses and workers on the high street because the wholesale changes that are needed have not been made? However, that is what we have in front of us.

In previous years, charities advocating for people with sight loss have berated the Government for pushing through this well-meaning legislation without adequately consulting them. There are obvious dangers for people with sight loss, and often corresponding hearing loss, when the pavements they are familiar with become occupied and hazards arise. A-boards are a familiar problem that disabled groups are sick of having to raise again and again. I note that, once again, there is no impact assessment for the regulations.

Shailesh Vara: The hon. Lady said in opening that she welcomes the proposals, and she is now raising a legitimate concern relating to those who are partially sighted or not sighted at all. What would be her solution to that issue?

Sarah Owen: This hugely important issue has been raised time and again. One of the solutions is to have an equality impact assessment and to put it before Members today so we can actually take those decisions. There should also be a proper consultation. Last year, I was promised a consultation with the sight loss groups and charities, but we have not seen one. That solution is staring us in the face.

Shailesh Vara: The hon. Lady says that part of the solution is to seek an impact assessment, but what practical solution does she propose? An impact assessment would be a get-out clause to allow her to make the criticism but not provide an alternative solution—*[Interruption.]* I am simply asking. She raises a fair point, but what is her practical solution? She approves of this measure but seeks to criticise it in relation to access for those who are disabled. *[Interruption.]* This is not a laughing matter.

The Chair: Order. One at a time, through the Chair.

Sarah Owen: None of us is laughing about this, but one of us is ignoring the problem that those groups are raising. We all agree that there is a serious problem with A-boards and pavement licensing: the lack of consultation and information about the impact. The right hon. Member asked me what my solution would be, and I would want to see what impact the regulations have on people, particularly those who are disabled. Right now, we are not being given that information, so we are having to take this decision without the information in front of us. I would be able to make a much more informed decision if I had the information, but, surprisingly, for now, I am not in government.

Alun Cairns (Vale of Glamorgan) (Con): Maybe the hon. Lady could help us by telling us why the Welsh Government have not pursued an impact assessment, because Labour is in government in Wales.

Sarah Owen: I think what I will do is check whether the Welsh Government have actually done this. I will be urging them to do the same, and I ask the right hon. Member to put the same pressure on Ministers in this Government.

Can the Minister assure me that greater care was taken this year to listen to stakeholder concerns and to make improvements accordingly? I think that that is something we all want to see. We all recognise that there are serious issues—particularly for people who are blind, partially sighted or disabled—when it comes to the use of A-boards and obstructions on our pavements. We are being asked to make a decision on the draft regulations without any information on whether a detailed consultation took place last year, as was promised, and on the equality impact assessment. That is the point of equality impact assessments: so that we can take knowledgeable, understanding decisions in this place. They are not a get-out clause; they are so that we know the true impact of the legislation on which we are voting.

On the unintended negative implications of the draft regulations, we have spoken before about the growing pressure on councils to provide more services with less funding, and local government is another sector suffering from staff vacancies. Extending pavement licensing will bring a benefit to the consumers using these businesses, as well as to the business owners themselves. However, we must also consider the burdens piled on councils in the administration of reviewing pavement licensing, monitoring adherence to these policies, maintaining and cleaning the areas involved, and other responsibilities. My hon. Friend the Member for Nottingham North (Alex Norris) effectively raised this issue in Committee during deliberations on the Levelling-up and Regeneration Bill last year, when he reminded the Minister that pavements and highways are public assets and that the public should get a share of the profits garnered by businesses, which take those profits into their private domain. I note that the Minister expressed her gratitude for the work that local authorities have done, particularly during covid, to keep businesses afloat, but can she provide me with an update on whether further consideration has been given to the proposal to allow councils to have more of a share of the financial rewards gained by businesses, which would allow precious revenue to be spent on residents when resources are so scarce?

As I said, we will not oppose the licensing extension, because something is better than nothing and any gesture of support for the businesses that make our high streets, town centres and tourism hubs so vibrant is most welcome. However, the glaring truth behind the smaller debates that have been had on the draft regulations is that, ultimately, these measures are another policy solution typical of this Government: they are a short-term sticking-plaster policy that hopes to tide us over before the election of a new Government who will really tackle the financial mess. This is the sort of strategy that will define this Prime Minister's era. Businesses will not forget the trauma they went through during the pandemic, but if they were lucky enough to survive that and still exist today, they certainly will not forget the chaos since then.

The cost of living crisis has meant that every pound must be stretched further. Families are struggling to put food on the table at home, and we can be certain that they are limiting their spending on eating out even

more. Measures such as this statutory instrument will provide a vital opportunity for businesses to reach customers outdoors, but until customers have more money in their pockets to enjoy what is on offer, the Government are just throwing scraps to a fragile, diminishing industry.

6.19 pm

Dehenna Davison: There was me thinking that we had agreement and that it was going to be nice, chilled session today. On the first core point about the Government's support for high streets, I need to put on the record some of the incredible support the Government put in place throughout the pandemic, and before and since. Let us talk about additional support on business rates, the furlough scheme, the future high streets fund, the towns fund, the levelling-up fund, the high street rental auctions that are coming into play soon to help with vacant units, the high streets taskforce, the roll-out of high-speed broadband—

Ms Marie Rimmer (St Helens South and Whiston) (Lab): Would the Minister speak a little slower? I am profoundly deaf, and I am struggling to hear and make out what she is saying.

The Chair: Order. I am sure that the Minister has heard what the hon. Lady said.

Ms Rimmer: I am sorry, but I am not hearing.

The Chair: That is all right, but it is entirely for the Minister to determine how she wishes to speak.

Dehenna Davison: I apologise for rambling, but I am so excited about the support that the Government have put in place for our high streets that I wanted to rattle off the list to reassure the Opposition that support for our high streets, and ensuring that they thrive into the future, are incredibly important. That is not to mention our devolution agenda, which providing more support, more funding and more local powers for local people to take control of their destinies—a Conservative approach to levelling up our high streets.

On the cost to businesses, which has been raised from the introduction of these provisions, we used the new burdens doctrine to ensure that councils would not be penalised for the monitoring, evaluation and enforcement of the measures. That is why the Government have reimbursed councils for the first year of the provisions. The sum came to just under £5 million, and that will continue as the measures are extended.

On the idea of taking a slice of business takings under these measures to pump back into local government, that seems to me exactly the opposite of what we should do when trying to support our incredible hospitality businesses. That is not something that the Government will support.

An important point was raised around accessibility, which we are taking incredibly seriously. We introduced the measures in response to a really difficult time for the hospitality industry. We received a number of representations from institutions such as the Royal National Institute of Blind People and the Guide Dogs for the Blind Association. Following the first year of the measures, we took those fully on board and introduced newer guidance. We consulted with the Disabled Persons Transport Advisory Committee, the RNIB and Guide Dogs so that the most up-to-date guidance ensured that local authorities knew their obligations, ensuring that the pavement licensing regime is fit for purpose, in terms of both supporting businesses to trade outside and people who have accessibility issues.

Sarah Owen: I thank the Minister for those points, but could we please have an assurance that when we are, inevitably, here again next year, we will have an equality impact assessment so that we can see the results of the consultation and what those charities and organisations are calling for?

Dehenna Davison: We will not be here next year, because the Levelling-up and Regeneration Bill will get Royal Assent to make the measures permanent.

Nick Smith: Paragraph 10 of the explanatory memorandum says:

“No formal consultation has taken place on this measure.”

The Minister said that there had been consultation in an earlier year with Guide Dogs and the RNIB. What did the RNIB ask the Government to do, and what have the Government done to support those organisations to help people to get around these obstacles on our pavements?

Dehenna Davison: I will certainly provide some more specific detail on that point, but the core point was ensuring that we update the guidance for local authorities, which we have done. As I said in my opening remarks, we will update the guidance further this year for the extension of the provisions.

Nick Smith: I am glad of that, but that is not what I asked, which was about what the RNIB asked for and what the Government then did.

Dehenna Davison: As I said, I will follow up on that specific point in writing. I do not want the fact that we have disagreements to take away from the fact that we agree on the extension of the measures and on supporting our hospitality industry in rolling out al fresco dining and other great things that we are all benefiting from in Britain. That is why I commend the draft regulations to the Committee.

Question put and agreed to.

6.24 pm

Committee rose.

