

Non-Executive Report of the: Licensing Committee	 TOWER HAMLETS
Report of: David Tolley Head of Environmental Health and Trading Standards Directorate of Place	Classification: Unrestricted
<u>Alcohol Licensing – temporary off-sales permissions</u>	

Originating Officer(s)	Tom Lewis Team Leader of Licensing and Safety
Wards affected	All wards

Summary

The Business and Planning Act 2020 came into force on Wednesday 22nd July 2020. As well as the new pavement licensing provisions, businesses that have a premises licence to sell alcohol for consumption on the premises are now permitted to have an automatic temporary permission to sell alcohol as an off sale, i.e. for consumption off the premises. Furthermore, for those premises whose licence already permits off sales as well as on sales of alcohol this Act has the effect of temporarily suspending certain conditions that might restrict their off sales.

The Act has been developed to make it easier for businesses to make use of outdoor space for dining and the sale of alcohol, helping the hospitality sector get back on its feet again through the busy summer months. In essence the Act has temporarily modified the Licensing Act 2003 to provide an automatic extension to the terms of most premises licences that only permit the sale of alcohol for consumption on the premises to allow the sale of alcohol for consumption off the premises. It also suspends /existing licence conditions where these are inconsistent with the new off-sale permission.

The new off-sales permission will permit off-sales to be made at a time when the licensed premises are open for the purposes of selling alcohol for consumption on the premises, subject to a **cut off time of 11pm** or the cut off time of the current licensed hours stated on the licence, whichever is earlier. Measures also temporarily suspend existing licence conditions in so far as they are inconsistent with the new off-sales permission.

Recommendations

The Licensing Committee is asked to:

1. Note changes in relation to the alcohol licensing regime made by this act.

1. REASONS FOR THE DECISIONS

- 1.1 To update Committee Members as to changes in the licensing regime.

2. ALTERNATIVE OPTIONS

- 2.1 This is a noting report.

3. DETAILS OF REPORT

- 3.1 This report provides members with an update on how this Act will effect the licensing regime so that they are briefed on the changes.

The temporary off sale permission will apply to all licensed premises that are permitted to sell alcohol for consumption on the premises. However premises that have had following action in the last 3 years preceding 22 July 2020 will not be eligible:

- a) a premises licence application where permission for off sales was refused;
- b) a variation of a premises licence seeking permission for off sales refused
- c) a variation seeking to exclude off sales permission granted
- d) a premises licence varied or modified by a review hearing to exclude off sales.

The Act also excludes Club Premises Certificate from this temporary permission.

The automatic temporary permission will end on 30th September 2021 unless the legislation is changed by the Secretary of State.

As mentioned as well as providing an automatic temporary permission for premises with a licence for on sales of alcohol to sell alcohol as an off sale it also suspends certain conditions, which are:

- a) Any condition that restricts the time for when off sales are permitted where different to the licensable hours for sale of alcohol.
- b) Any condition that prevents off sales being sold in open containers.
- c) Any conditions that prevents off sale for deliveries, providing that they are to buildings used for residential or work purposes.

Unfortunately, there is no requirement for licensed premises to inform the Council that they intend to use this temporary permission. However the Government Guidance does state that premises should inform Councils and we have made arrangements to record this temporary condition where we have been informed and have made it clear on our website the premises should inform the Licensing Team.

Despite not legally having to inform the Council, licensed premises do have to complete a statement that off-sales are authorised under section 172F(2) of the Business and Planning Act 2020 and must display this statement with the Licence Summary at the premises.

Failure to comply with this requirement without reasonable excuse is an offence.

3.2 Enforcement

The Act does provide the ability to review this entitlement where there is evidence that are problems with off-sales made under the new permission that are undermining one or more of the licensing objectives responsible authorities can apply for a summary off-sales review.

The grounds must relate to changes made by the temporary conditions. So, for example, if the hours for off-sales were extended from 10 to 11pm by the temporary condition, grounds for the off-sales review would have to relate only to problems occurring in that additional hour.

The process for reviewing this temporary permission will be a summary review process so that it can be done quickly. However this summary review can be made by any responsible authority and can relate to the undermining of one or more of any of the licensing objectives.

4. COMMENTS OF THE CHIEF FINANCE OFFICER

4.1 There are no material financial implications emanating from this report which provides detail of a temporary amendment to the Licensing Act 2003, allowing off premise sale permission to all Licensed Premises that are permitted to sell alcohol for consumption on the premises.

4.2 No additional income will be received for this temporary change to the license, it will form a part of the annual license fee. Any additional enforcement resulting from off premise sales will be absorbed within existing budgetary provisions.

5. LEGAL COMMENTS

- 5.1 This Business & Planning Act 2020 (“the Act”) was introduced to provide urgent measures to assist businesses, because of the Covid-19 pandemic. This became law on the 22nd July 2020 and almost all the measures introduced are temporary in nature.
- 5.2 Part 1 of the Act, provides measures designed to support businesses selling food, and drink such as cafes, pubs and restaurants by introducing a temporary fast-track process for those businesses to obtain permission from the local council for the placement of furniture, such as tables and chairs on the pavement outside their premises.
- 5.3 Section 11 of the Act also temporarily modifies the Licensing Act 2003 by inserting new sections S172F to 172L to authorise off-sales to licensed premises, which previously were not available under the Licensing Act 2003, in a streamlined way.
- 5.4 S172F(2) of the Act allows for premises licenses to allow for off-sales for a limited period. Therefore, eligible holders of an on- sales licence are given an automatic grant of the off-sale permission temporarily. This means they can sell off-sales without a formal application to the Licensing Team.
- 5.5 The permissions and any conditions attached to licensed premises related to off sales are temporary and will lapse on 30th September 2021 unless extended by the Government. These are referenced above in 3.1 of this report.
- 5.6 S172F(8) of the Act provides the exception to the automatic entitlement. Therefore, if in the last three years from 22nd July 2020 a licensed premises had an application for off-sales refused either as a new or variation application or a premises had previously applied to exclude off-sales from their premises licence, they would not be entitled to the automatic entitlement. Accordingly, these licensed premises will not be allowed to sell off-sales automatically.
- 5.7 S172(G)of the Act provides for off-sale reviews to take place on grounds which are relevant to the licensing objectives as set out in s4(2) of the Licensing Act.
- 5.8 As a result, an off -sale review can take place if there are problems relating to crime and disorder, public nuisance, public safety or the protection of children associated with the new permissions or its associated conditions.
- 5.9 S172(I) of the Act relates to off- sales review of premises licence following a review application. If this takes place formal review hearing is required and the licence holder can make representations before the committee.

5.10 In carrying out its functions, the Council must comply with the public sector equality duty set out in section 149 Equality Act 2010, namely it must have due regard to the need to eliminate unlawful conduct under the Equality Act 2010, the need to advance equality of opportunity and to foster good relations between persons who share a protected characteristics. Therefore, in exercising its duties in the administration of the automatic entitlements, care must be taken by the council to comply with the above. Equally, if there are reviews of licence conditions, the Council must ensure equality, fairness and good practice.

6. ONE TOWER HAMLETS CONSIDERATIONS

6.1 These late night inspections will ensure:

- That Tower Hamlets remains a safe and cohesive Community and a great place to live by dealing accordingly with offending premises and ensuring compliance.
- It ensures it's a fair and prosperous community by ensuring unlicensed premises are dealt with accordingly and that licensed premises prosper within their permissions granted.

7. BEST VALUE (BV) IMPLICATIONS

7.1 This work will ensure that licence fees that are due to the Council under the Licensing Act 2003 are received. Those businesses that do not submit their licensing fees will have their licences suspended.

8. SUSTAINABLE ACTION FOR A GREENER ENVIRONMENT

8.1 There are no adverse impacts identified.

9. RISK MANAGEMENT IMPLICATIONS

9.1 The Council will be at risk of legal challenge if its decision making process on formal action is not transparent and evidentially based in relation to non-compliance of licence conditions.

9.2 The impact of business operating without a licence has a potential impact on the local community.

10. CRIME AND DISORDER REDUCTION IMPLICATIONS

10.1 The enforcement of licence conditions and prosecution of offending businesses both licensed and unlicensed. The assists with the reduction of anti-social behaviour and controls the inappropriate use of

alcohol sales and consumption, in addition to identifying localised disturbances around late night refreshment premises.

Linked Reports, Appendices and Background Documents

Linked Report

- Full Council Report 20th September 2017:
Determination of Late Night Levy (Adoption of the Levy).
<http://democracy.towerhamlets.gov.uk/ieListDocuments.aspx?CId=309&MID=7668#AI77863>

Appendices

None.

Local Government Act, 1972 Section 100D (As amended)

List of “Background Papers” used in the preparation of this report

List any background documents not already in the public domain including officer contact information.

- NONE.

Officer contact details for documents:

- N/A