

<b>REPORT TO:</b>	<b>LICENSING COMMITTEE 30 SEPTEMBER 2020</b>
<b>SUBJECT:</b>	<b>PAVEMENT LICENSING: UPDATE ON DELEGATION OF FUNCTIONS</b>
<b>LEAD OFFICER:</b>	<b>Executive Director, Place Department</b>
<b>CABINET MEMBER:</b>	<b>Cllr. Hamida Ali, Cabinet Member for Safer Croydon &amp; Communities</b>
<b>WARDS:</b>	<b>ALL</b>
<b>CORPORATE PRIORITY/POLICY CONTEXT:</b>	
This report details the actions taken to delegate pavement licensing functions and ensure that the Council is able to deliver this new service.	
<b>FINANCIAL SUMMARY:</b>	
There are no financial implications arising from the recommendations in this report.	
<b>FORWARD PLAN KEY DECISION REFERENCE NO.:</b> N/A	
<b>1. RECOMMENDATIONS</b>	
That the Licensing Committee :	
1.1 Note the delegation of functions in respect of Pavement Licensing.	

**For general release**

## **2. EXECUTIVE SUMMARY**

- 2.1 This Report provides background to the exercise of delegated authority of the Council Solicitor under Article 15.2 (d) of the Constitution to agree a change to the Council's Constitution arising as a result of legislative changes brought about by the Business and Planning Act 2020 <https://www.legislation.gov.uk/ukpga/2020/16/contents/enacted> in relation to Pavement Licensing and changes necessitated by administrative convenience to delegate authority to the Executive Director Place to do all things necessary to implement and operate the pavement licensing arrangements under the Business and Planning Act 2020.
- 2.2 Pavement Licensing under the Business and Planning Act is only in force until September 2021, whereafter the provisions will cease.

### 3. DETAIL

- 3.1 The London Borough of Croydon is the licensing authority for a broad range of legislation and licensable activities.
- 3.2 The Business and Planning Act 2020 was fast tracked through legislative scrutiny and came into force on 22 July. Prior to the final consideration by the Commons on the evening of 21 July, the functions under the Act in relation to Pavement Licensing were to be executive functions, meaning that the Leader was able to delegate these to officers to undertake. With the last minute changes, these functions were designated as non-executive functions in respect of which the Leader/Cabinet/Cabinet Members may not delegate or take decisions. As such, the Council Solicitor was asked to utilise her delegated authority to ensure that these functions were able to be undertaken by officers as detailed more fully below. As part of the exercise of this delegation, the use of this authority is being reported to the Licensing Committee for information.
- 3.3 The Government states *'Covid-19 has affected businesses across the economy. Many businesses have had to cease trading for several months, and others have had to significantly modify their operations. As the economy starts to re-open, the Government wants to do all it can to support recovery, help businesses adjust to new ways of working and create new jobs. This Bill introduces a number of urgent measures to help businesses succeed in these new and challenging conditions over the coming months, and to remove short term obstacles that could get in their way. Almost all measures are temporary, with some limited exceptions.*
- 3.4 The current provisions regarding pavement licensing cease to have effect (and no licenses may be granted which go beyond) 30 September 2021.
- 3.5 Premises will be able to apply for a pavement licence to place furniture outside, adjacent to their premises on the public highway. In this context, furniture means stalls for selling or serving food or drink, tables and chairs and articles such as umbrellas, barriers and heaters.
- 3.6 The application process is intended to be streamlined and fast track in order to enable business to recover having reopened following lockdown by legally placing tables and chairs and other furniture outside their premises to boost trade and assist with social distancing.
- 3.7 Part of the Act therefore introduces the concept of a fast track pavement licensing process which - contrary to the current street trading legislation which has consultation for a 28 day period and thereafter sufficient time for determination - requires a 7 day consultation period and a 7 day determination period. The implications for the authority if it fails to determine the matter within the 7 days is that the licence is deemed to be granted and the Council loses the ability to impose bespoke restrictions or bespoke conditions for the licence applied for. The 7 days are ordinary days rather than working days and the only days excluded from this calculation are Christmas Day, Good Friday and a Bank Holiday so that if, for example, an application were received on a Friday

night after business hours, the 7 day period would begin the next day – the Saturday – and expire on the following Friday.

- 3.8 Accordingly it was imperative not only that the Council has its processes and procedures in place soon after the commencement of these provisions but also that there is a sufficiently expedient means of allowing determinations to be made. There are 1000's of premises potentially eligible and such applications need to be processed in a very short space of time. In addition, the Act caps the fee which may be charged for such applications to £100 and recommends that such licenses be granted for a period of 1 year. This is significantly less than the Council charges in respect of most annual street trading licenses under existing legislation.
- 3.9 In determining the applications, the principal matters the Council will need to consider are set out in the Act and guidance and include the amount of available pavement to allow passers-by free, clear access and egress to/from and access along the pavement, especially wheelchair users, those with reduced mobility and the visually impaired and ensuring that there is no obstruction of statutory undertakers, utility providers or operators of an electronic communications code network in having access to any apparatus of theirs kept, installed, under, in, on or over the highway.
- 3.10 Accordingly the Council Solicitor was asked to make provision for decision making powers with regard to pavement licensing under the Act to be delegated to the Executive Director of Place in order for the Council to move swiftly to assist relevant businesses as they seek to establish trade again following lockdown, whilst at the same time complying with the social distancing requirements set out by Government and the new legislative requirements by ensuring that the Council is able to publish and determine the applications within the very short time scale allowed for this purpose. It should be noted that the Act includes a requirement that publication by the authority take place by electronic means.
- 3.11 The Council Solicitor is authorised under Article 15 of the Constitution to make amendments to the Constitution in two circumstances: to make any necessary amendments to the Constitution consequent on legislation (Article 15.2(b)) and to make any changes to the Constitution which arise as a result of legislative changes and any changes necessitated by administrative convenience (Article 15.2(d)). The amendments made were to ensure that legislative changes made are able to be actioned and local businesses supported in line with the new functions and requirements.
- 3.12 The amendment made to Paragraph 2.5 of Part 3 of the Constitution to take account of this delegation is set out below and underlined:

*2.5. Licensing Committee (Membership 12. A further 12 Members shall form a pool of reserve Members for the Committee).*

*1. All licensing, registration and related functions as set out in Schedule 1 of the Local Authorities (Functions and Responsibilities) (England) Regulations 2000*

*as amended and the Licensing Act 2003 (Note: Applications and other matters under the Licensing Act 2003 shall be determined in accordance with the schedule of delegations at Annex 2 to the Protocol on Licensing Hearings. Responsibility for hearing and determining applications where a hearing is required under the provisions of the Licensing Act 2003 shall be delegated to the Licensing Sub- Committee). Authority is delegated to the Executive Director Place to do all things necessary to implement and operate the pavement licensing arrangements under the Business and Planning Act 2020 including but not limited to the determination of standard conditions which apply, determining applications, setting the fee within the statutory limit, revocation of licenses and authorising officers to enforce and exercise these functions.*

- 3.13 This update to the Constitution will remain in force until 30 September 2021 unless amended earlier by Full Council.

#### **4 CONSULTATION**

- 4.1 Discussions were undertaken with colleagues in Planning, Highways, Regeneration, Economic Development, Growth Zone, Neighbourhood Operations and Legal and also with Croydon Police and TfL. Consultation also took place with the Chair and the Vice Chairs of Licensing Committee who have requested that Ward Councillors be notified of applications in their ward.

#### **5 FINANCIAL CONSIDERATIONS**

- 5.1 The decision to delegate these new functions does not give rise to any additional financial considerations.
- 5.2 Approved by: Felicia Wright, Head of Finance, Place.

#### **6. LEGAL CONSIDERATIONS**

- 6.1 The Head of Corporate Law and Litigation comments on behalf of the Director of Law and Governance that following the amendment agreed by the Commons, pavement licensing are matters which the Executive is precluded from considering under the Local Authorities (Functions and Responsibilities) (England) Regulations 2000, as amended.
- 6.2 The Council Solicitor is authorised under Article 15 of the Constitution to make amendments to the Constitution in two circumstances: to make any necessary amendments to the Constitution consequent on legislation (Article 15.2(b)) and to make any changes to the Constitution which arise as a result of legislative changes and any changes necessitated by administrative convenience (Article 15.2(d)). The proposed amendments will be to ensure that legislative changes made are able to be actioned and local businesses supported in line with the new functions and requirements
- 6.3 Approved by: Sandra Herbert, Head of Litigation and Corporate Law on behalf of the Director of Law and Governance and Deputy Monitoring Officer.

## **7. HUMAN RESOURCES IMPACT**

- 7.1 There are no human resources impacts arising from this report.
- 7.2 Approved by: Jennifer Sankar, Head of HR Place for and on behalf of Sue Moorman, Director of HR.

## **8. EQUALITIES CONSIDERATIONS**

- 8.1 In exercising the delegated functions, officers will need to have regard to equalities and inclusion considerations. There are no direct equalities impacts on groups that share protected characteristics arising as a result of this decision to delegate functions.
- 8.2 The principal matters the Council will need to consider are set out in the Act and guidance and include the amount of available pavement to allow passers-by free, clear access and egress to/from and access along the pavement, especially wheelchair users, those with reduced mobility and the visually impaired
- 8.3 Equality Analysis will be undertaken where necessary to ascertain and mitigate any impact on groups that share protected characteristics
- 8.4 Approved by: Yvonne Okiyo, Equalities Manager.

## **9. ENVIRONMENTAL IMPACT**

- 9.1 There is no environmental impact arising from this report.

## **10. CRIME AND DISORDER REDUCTION IMPACT**

- 10.1 There are no such impacts arising from this report.

## **11. REASONS FOR RECOMMENDATIONS**

- 11.1 The recommendation is for Members to note the changes. The delegations are in place to enable the Council to be responsive and provide assistance to the business community as envisaged by the government in introducing these provisions.

## **12. OPTIONS CONSIDERED AND REJECTED**

- 12.1 The alternative option would be continue to have the functions sit with the Licensing Committee and this would require not only frequent convening of Licensing Committee meetings at very short notice with the additional cost and administrative burden, but if the meetings are not convened sufficiently expediently or applications not determined within 7 days, then the Council would run the risk of deemed consent being applicable to any application not determined in time. This would not support the requirements to ensure safety of the public whilst still supporting businesses to begin the process of economic

recovery and would not support the council's reputation in this regard. Given the potential volume of applications and the very short time scale for determining these matters (7 days), it was not considered advisable for this route to be followed.

### **13. DATA PROTECTION IMPLICATIONS**

13.1 WILL THE SUBJECT OF THE REPORT INVOLVE THE PROCESSING OF 'PERSONAL DATA'?

NO

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**REPORT AUTHOR / CONTACT OFFICER:** Michael Goddard, Interim Head of Public Protection and Licensing

**BACKGROUND DOCUMENTS:** None