

## Licensing Without Hiccups

UK – January 2022



### New TENs Limits Take Effect for 2022 and 2023

The [Alcohol Licensing \(Coronavirus\) \(Regulatory Easements\) \(Amendment\) Regulations 2021](#) came into force in September last year and increased the maximum number of days where licensable activities can be provided under a temporary event notice (TEN) in a year for a particular premises, from 21 to 26, from 1 January 2022. The number of events per year per premises has also increased from 15 to 20.

These “extensions” apply for the duration of 2022 and 2023, but unless further legislation is introduced, will revert to the previous limits on 1 January 2024. There is no change to other provisions on TENs; including the requirement for there to be 24 hours between the end of one TEN and the start of the next. TENs can only be used for up to 499 persons (including staff); and 10 clear working days’ notice is required (or five clear working days’ notice for a “late TEN”, for which there are limits per applicant).



### Proposed Extension of Hours for Platinum Jubilee June 2022

This year does, of course, bring an extra Bank Holiday for the Queen’s Platinum Jubilee on Friday 3 June 2022 (and the usual Spring Bank Holiday moves from Monday 30 May to Thursday 2 June 2022). Operators should consider whether some of the “extra” allowance for TENs could be used to authorise additional hours and/or activities for celebrations during the Bank Holiday period. However, the government is currently [consulting](#) on an extension to hours for the Platinum Jubilee, which may make TENs unnecessary. The proposal is to allow on-licensed premises to open until 1 a.m. for the sale of alcohol and/or the provision of regulated entertainment on Thursday 2, Friday 3 and Saturday 4 June. This extension would not affect premises licensed only for off-sales; and opening beyond 1 a.m. would still require a TEN. The consultation closes on 26 January. Responses to the consultation can be submitted [here](#).



### Regulatory Sandbox for Proof of Age Technology

The government has [renewed its call](#) for proposals to establish experiments and testing for digital proof of age systems, to allow for the trial of technologies that can fulfil the requirement for age verification in the retail sale of alcohol. The Home Office and OPSS regulatory sandbox is intended to provide an opportunity for industry and retail to test innovative approaches to age verification, such as digital ID and other products with age assurance attributes, in the specific context of the sale of alcohol under the Licensing Act 2003. The guidance makes clear that a sandbox cannot be used for relaxation of conditions imposed on specific premises by a local licensing authority following a licence review hearing. However, conditions imposed in other circumstances (for example following negotiations with responsible authorities during an application period requiring only the acceptance of certain forms of ID) could potentially be disapplied during a trial. We expect a continuing and growing focus on digital technologies for proof of age, particularly given the growth in online and other remote sales during the last few years.



### Use of External Areas – Changes After September 2022

Pavement licences allow furniture such as tables, chairs and umbrellas, to be placed on the public highway, such as pavements, or areas of roadway, which have restricted vehicle access. The government issued [guidance](#) on a streamlined process for pavement licences in response to the COVID-19 pandemic, introduced under the Business Planning and Licensing Act 2020.

However, operators making use of pavement licences granted under the simplified procedure should remember that, although they can make use of such licences during the coming summer, as it currently stands, those licences will not be allowed to continue beyond 30 September 2022. It is, of course, possible that the government could amend this by the introduction of further legislation, for example if they consider that the knock-on effects of the COVID-19 pandemic are continuing, but we are unlikely to have any announcement on that until much closer to the time, if at all. Therefore, any operator who wants to make continued use of furniture on a highway over winter months should consider whether they will be able to apply to their local authority under the lengthier procedure provided for in the Highways Act 1980, requiring 28 days' notice, with applications often taking around six weeks (but sometimes longer).

The grant of a pavement licence, whether under the Business Planning and Licensing Act 2020, or under the Highways Act 1980, does not affect any requirement to obtain planning permission, or to ensure that an area is covered by a premises licence, if sales of alcohol will actually take place in that area (for example, if there is a temporary bar). Temporary dispense points could also require approval for "street trading".



### Temporary Off-sales Permissions – Changes After September 2022

30 September 2022 also marks the end of the temporary off-sales permissions granted by the Business Planning and Licensing Act 2020. That legislation permitted sales of alcohol for consumption off the premises for most premises where the premises licence only allowed the sale of alcohol for consumption on the premises. The purpose of the change was to make it easier for licensed premises to sell alcohol to customers for consumption off the premises in England and Wales, to allow businesses to trade and maintain social distancing, where closures and/or social distancing restrictions were in force and, thereafter, where demand was lower due to fears of transmission of COVID-19. However, the government [guidance](#) on the temporary permission made clear from the outset that this change would only apply until 30 September 2022.

It is, of course, possible to apply to vary premises licences that only permit sales of alcohol for consumption on the premises, to also allow off sales. Therefore, operators who have relied on the temporary permission and wish to continue with delivery or click and collect services or similar should consider submitting a variation application to their licensing authority by the summer (such a variation would have a 28-day notice period and if there are representations made, a hearing should be listed approximately four weeks after the end of that period).



## Out of Home Calorie Labelling Regulations Come Into Force 6 April 2022

The [Calorie Labelling \(Out of Home Sector\) \(England\) Regulations 2021](#) (the OOH Regulations), which come into force on 6 April 2022, include new obligations for calorie labelling for “non-prepacked” food and drinks in England. The OOH Regulations require calorie information to be given per portion, in kilocalories (kcal), followed by the letters “kcal”. The size of the portion to which the calorie information relates must also be stated. In addition, a statement of daily calorie needs that reads, “adults need around 2,000 kcal a day” must also be given. Depending on the nature of the business, the information may be required in a menu, on a menu board, on a ticket next to a display of food and/or electronically.

The OOH Regulations apply to food and drink that is not prepacked, which is offered for sale in a form that is suitable for immediate consumption. In practice, this can mean either that the food is offered for sale at a bar, café, restaurant or other premises selling food for consumption on the premises, or the food or drink is offered for sale by a retailer or other business for consumption off the premises, where it does not require any preparation by the consumer before it is eaten. We anticipate that the OOH Regulations will, therefore, apply to most licensed premises, although there are some exemptions from the requirements under the legislation, including an exemption for the provision of calorie information for alcoholic drinks over 1.2% ABV.

The government has published [Calorie labelling in the Out of Home Sector: Implementation Guidance](#) (the Guidance) to assist with interpretation. However, in practice, there are likely to be complexities with the accurate provision of “per portion” information in certain circumstances (and it is, of course, still the case that information provided must be clear and must not mislead the consumer). Therefore, businesses that will be affected by the changes should start preparation early.



## Manchester Arena Inquiry: First Aid Provision

The Manchester Arena Inquiry is an ongoing independent public inquiry to investigate the deaths of the victims of the 2017 Manchester Arena attack. This month, the Local Government Association and the Institute of Licensing gave [evidence](#) to the Inquiry on the lack of regulation around the provision of first aid at large events (although conditions on premises licences can include minimum requirements). The Home Office has also given [evidence](#) that the licensing regime may not be the most appropriate way to address lack of regulation around first aid provision, because many events and public spaces are not licensed, and because the provisions of the Licensing Act 2003 are not intended to deal with responses to a terrorist-type attack (being designed for the promotion of the licensing objectives in respect of the licensable activities being provided). It is possible that the Chairman of the Inquiry might recommend changes to the licensing regime to address “gaps” identified by the Inquiry in the regulation of first aid provision, but given that there is a lack of agreement on how best to ensure such regulation, this is not yet clear.

We also reported on a proposed new Protect Duty in an earlier [edition](#) of Licensing Without Hiccups, which has also been considered as part of the Inquiry. It is not yet clear whether the introduction of such a duty to protect persons from terrorism will impact directly on the licensing process (although it is very likely any such duty will impact on the operators of various types of licensed premises, including large-scale venues). Although the government has now [published](#) the findings of the consultation on the duty, there are no clear recommendations or proposals to change existing legislation at this stage, although the government says that it “continues to engage with a range of stakeholders” and will introduce legislation to Parliament “at the earliest opportunity”.



### Consultation on Outdoor Weddings and Civil Partnership Ceremonies

In December, a [consultation](#) was launched into making temporary permissions for outdoor weddings and civil partnership ceremonies permanent. Operators of hotels and other venues with approval to hold such ceremonies should consider whether they have outdoor space that could be added onto their approvals, if the consultation results in a change in the current law. The consultation closes on 24 January 2022. The online survey to provide views on the proposed change is available on the [Ministry of Justice website](#).

### Right to Work Checks – Proposed New System from 6 April 2022

Applicants for personal licences (and, if they are held by an individual or partnership, premises licences) must demonstrate that they have the right to work in the UK and are not subject to a condition preventing them from doing work relating to the carrying on of a licensable activity. This is usually done by providing copies of documents that demonstrate a right to work in the UK, or by providing a “share code” to enable the licensing authority to carry out a check using the Home Office online right to work checking service.

This process may become easier in future, as the Home Office and Disclosure and Barring Service (DBS) are working with DCMS to develop proposals to establish a UK Digital Identity and Attributes Trust Framework, which will set out the rules and standards for organisations to follow to carry out digital identity checks. The Home Office will enable employers and landlords to use certified Identification Document Validation Technology (IDVT) service providers to carry out digital identity checks on their behalf for many who are not in scope to use the Home Office online services, including British and Irish citizens. The relevant changes to legislation will take effect from 6 April 2022. There is further information available online in the [government policy paper](#) published on 27 December.

### The End of Remote Licensing Hearings?

Since the COVID-19 pandemic took hold in the UK, many licensing authorities have conducted hearings of Licensing Sub-Committees to determine contested applications for the grant or variation of premises licences, or review of those premises licences, remotely. Applicants, responsible authorities and other parties who have made representations to an application are typically invited to attend via Zoom, or Microsoft Teams, or another online platform.

We reported in a previous [edition](#) of Licensing Without Hiccups that a claim had been made in the High Court to allow the continuation of remote hearings beyond 6 May 2021, but this was rejected. In questions, a Minister has also recently [confirmed](#) that such a change would require permanent legislation. Therefore, it is perhaps unlikely that remote hearings will continue throughout this year and beyond.



### No Change to Airside Licensing

We reported in 2019 that the government had issued an evidence call requesting views on whether introducing alcohol licensing laws airside at airports in England and Wales could help tackle the problem of drunk and disruptive passengers (currently only “landside” operations before passport control require a premises licence, or temporary event notice, under the provisions of the Licensing Act 2003). The call for evidence closed on 1 February 2019. The government has now [announced](#) that there is not sufficient new evidence that makes a compelling case for extending all of the provisions of the Licensing Act 2003 to airside premises. It recognised that the premises that serve alcohol airside operate in a highly secure environment, which functions in a very different way to high streets and nighttime economies across England and Wales.



### Call for Evidence on Spiking

The Home Affairs Committee is [calling for evidence](#) on the incidence of “spiking” at licensed venues and elsewhere. A public survey is open until 31 January, to allow those who have experienced or witnessed spiking the opportunity to explain what happened and what support was provided following the incident, including what happened if the incident was reported. They can also share why they might have chosen not to report an incident.

The call for evidence follows a number of reports of spiking by injection in October 2021, leading to numerous police forces and licensing authorities issuing guidance to licensees on the potential for increased searching, checking CCTV is operational, periodic checks of toilet areas for unwell customers, promotion of #Spikeaware with display of relevant materials, spotting the signs of spiking and information to capture if spiking or suspected spiking is reported to staff.

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