

Approaches to managing licensing and related issues during the COVID-19 pandemic

Advice for licensing authorities

Note: this is correct as of 9 April 2020



Purpose

This note provides a summary of issues councils' licensing teams and others have raised with the Local Government Association (LGA) and outlines how these could be managed based on a set of key principles and examples of what councils have already advised us they are doing in response. This information covers different areas of licensing including the Licensing Act (LA 2003), taxis, gambling, animal establishments and scrap metal.

While this note is intended to promote consistent approaches by licensing authorities, each council will of course need to assure itself of the approach it takes, balancing the desire to support local businesses, the objectives of relevant legislation and the council's capacity.

This note however is not, nor is it intended to provide, legal advice. Legal advice should be obtained from your council's head of legal and monitoring officer, who are responsible for ensuring your council complies with the law and best practice in decision-making.

Background

Given the unprecedented nature of the current situation, councils are receiving a large number of requests from licensees, both for advice about how they should be operating their businesses in a safe and legal way, and for support at a time where normal operations have been disrupted and the viability of some businesses has been brought into question.

The LGA has sought clarity from the Government on the approach that councils should be taking on various issues both to provide a level of assurance and to support consistency across the country. While Government has not provided detailed responses to many of the issues arising, the broad steer is to encourage councils to take a pragmatic approach where there is discretion to do so. This approach was endorsed in Kit Malthouse's recent letter¹ to chairs of licensing committees and is one that the LGA has supported. The intention of this note is to provide a practical resource for councils, reflecting practices and approaches that are already being used by councils.

When considering how to approach issues in a practical way, the following principles may be useful:

- Ensuring that there is open and honest engagement with local businesses (in some cases it may be preferable to engage directly rather than through third parties) about the challenges facing both licensed businesses and councils during the COVID-19 response.
- Being as flexible as possible while remaining mindful of the requirements and objectives of relevant legislation.
- Where possible, prioritising requests, applications or hearings that are business critical in terms of the COVID-19 response and potentially deferring those which may not need an urgent response if there are valid reasons why they cannot feasibly go ahead. Each case should be considered on its own merits in discussion with applicants and notes taken outlining the justification for why a decision was reached.
- Planning now for how licensing can quickly scale up work that for legitimate reasons has not been able to be progressed due to COVID-19 issues, eg preparing for additional hearings as a contingency measure.

Whilst all councils will want to support local businesses as much as possible, not least to preserve employment and the local economy, there may nevertheless be challenges to meeting some requests, including: the need to establish new processes under the Emergency Coronavirus Act Remote Meeting Regulations; the legal parameters of different pieces of legislation, (particularly whether councils themselves have the power to set fees locally), and the fact that councils themselves are seeing a significant drop in income and increase in costs as a result of the COVID-19 response. It is also worth bearing in mind that the Government has implemented a range of measures to provide financial support to businesses, but that these are generic schemes that do not relate to specific fees and charges payable by businesses depending on the sector they operate in. During discussions with businesses and licensees, it may be helpful to set out some of the challenges that you are facing to ensure a shared understanding of the different challenges facing both the licensed trade and councils themselves.

¹ <https://www.local.gov.uk/sites/default/files/documents/Alcohol%20Licensing.pdf>

Next steps

The LGA will continue to seek guidance and clarity from relevant departments on the wide range of queries and issues being raised by our members and by the licensed trade, so please continue to raise with us new issues arising and any concerns. We will update this note as necessary.

Licence fees

Councils have been receiving requests from a range of businesses which can no longer operate, asking for dispensations on licence fees. These can be broadly split into requests for deferred payment of annual fees or discounts on future fees and request for refunds of fees already paid.

The LGA has raised this with the Home Office and Gambling Commission. Our understanding is that government will not be directing councils to refund licence fees so this will be a local decision.

A necessary first step should be to engage with the businesses to confirm that the request is linked to coronavirus.

Licence fees	
Refunds/discounts	<ul style="list-style-type: none">• Councils should only issue refunds if they have the legal and financial ability to do so. It is not clear that there are legislative provisions enabling councils to provide refunds to licensees that wish to retain their licences and councils may not feel they are in a financial position to do so, particularly given costs will already have been incurred in relation to different licences.• On deferred payments or discounts, councils have more flexibility over this issue where licence fees are set locally.• Where fees are set centrally, for example under the Licensing Act 2003 (LA 2003), councils have little flexibility and there is no clear mechanism to provide refunds or part refunds. Councils will still need to cover the costs of issuing and administering licences and the work this involves, and the LGA would expect to discuss with the Home Office how costs could be covered in the event that future licence fees under the LA 2003 were to be discounted.• Where fees are set locally councils have more discretion, for example in relation to animal licensing fees or taxi licensing. When fees are reviewed councils may find they have a surplus on income because there has been reduced enforcement for example. If this was the case fees could be adjusted downwards for future years.• However, there may be additional areas of work carried out during the COVID-19 outbreak, for example providing advice and guidance to licensees. It will be important for councils to capture this so that it can inform fee setting.

<p>Non-payment of annual fees/deferred payments</p>	<ul style="list-style-type: none"> • Councils should consider how to respond to non-payment or late payment of an annual premises licence fee. Whilst legislation requires licences to be suspended (LA 2003) or revoked in the case of the Gambling Act 2005 (GA 2005), it is possible to delay when that suspension takes effect. The Home Office has encouraged councils to consider this approach, councils may want to consider whether to adopt a similar approach for gambling premises too. • Some councils have suggested they will not be actively chasing annual fees that have not been paid. A related approach that has been used is to offer LA 2003 licence holders the option to defer their annual licence fee payment for six months. Although fee due dates will remain unchanged and original invoices issued, no reminders will be sent. • Outstanding fees could be sought at the point at which licensed businesses become operational again.
<p>Split payments</p>	<ul style="list-style-type: none"> • Where licences come up for renewal during the COVID-19 outbreak, deferring payment of fees could be considered to support businesses. • Other ways practical help has been offered to businesses (but not fees under LA 2003/GA 2005) is to have a temporary arrangement to permit any new/renewal applications to opt for a 12-month direct debit scheme to spread the cost over a longer period.

Licensing procedures, administrative issues and hearings

Dealing with 'every day' licensing issues will have practical challenges with most staff working remotely, and it will be important to manage expectations of applicants in terms of timescales for dealing with requests. Councils should already have mechanisms to take online applications and payment. Whilst physically issuing licences may be a challenge, councils can send licences by email.

In some cases, new applicants may be open to re-submitting an application at a later stage, or waiting longer than usual for a response, if they do not intend to begin trading until the current restrictions have eased. Again, being able to offer some reassurance as to how the council may be able to respond to newer applications once some normality has returned may assist in discussions with businesses.

The Institute of Licensing has published a protocol² designed to assist licensing authorities in complying with their obligations and duties under the Licensing Act 2003, specifically during this emergency period. It covers applications involving alcohol, entertainment and late night refreshment and is designed to inform and assist licensing authorities and operators in

² <https://www.instituteoflicensing.org/news/iol-protocol-for-licence-applications-hearings-under-the-licensing-act-2003-during-the-covid-19-pandemic/>

managing, and using, the licensing system effectively and fairly during these extraordinary times.

Further information, advice and guidance about remote meetings can be found on the LGAs 'Remote council meetings hub'³ which is a central repository of information from partners across the sector.

Licensing procedures/administration issues	
Dealing with applications for new/renewals of licences	<ul style="list-style-type: none"> • Under the LA 2003 and GA 2005, applications that are submitted in full will need to be considered. However, this does not stop councils from having a conversation with applicants about the best way forward given the extraordinary circumstances. • For taxis and private hire vehicles (PHVs), it is unlikely that new applicants will be able to complete the required pre-application checks/tests so it may be sensible to discourage applicants from submitting them at this time. As there is no mechanism for not accepting applications, any application that is submitted which does not meet the pre-application criteria would need to be rejected; those that do meet the criteria may still be processed. • For taxi/PHV renewals there are various options to consider: <ul style="list-style-type: none"> ○ As MOTs have been extended for six months, councils may want to consider whether a time limited extension can be considered for other vehicle requirements and renewals offered on the basis that these are completed once normal business resumes (recognising that there may be a backlog of MOTs to get through at that point). Where renewals of vehicle licences are due, some councils are requesting an application form but advising that they will not process this until a fee can be paid and all relevant documents are in place. ○ Consideration could also be given to voluntary suspension of licences, for example vehicle licences so proprietors who are not planning to use vehicles for work can reduce costs such as insurance whilst not working. ○ Where caps on hackney licences are in place, thought may need to be given to how this could work for example holding a licence/plate for three months and then inviting them to re-apply.

³ <https://www.local.gov.uk/our-support/guidance-and-resources/remote-council-meetings>

	<ul style="list-style-type: none"> • Councils do not have the power to extend existing taxi/PHV licences, for example to reflect the fact that taxis and PHVs have been significantly hampered in operating. However, when a licensee’s existing licence ends, council are able to issue temporary, short term licences, for example for a period to reflect the length of the lockdown period. • For licences issued under the Animal Welfare (Licensing of Activities Involving Animals) (England) Regulations 2018, councils may wish to extend licences for three months to reduce the need for inspection and the risks involved whilst the outbreak continues. Defra have advised that Regulation 9 allows councils to vary licences with the consent in writing (including email) of the licence holder or where the licence holder makes an application. Councils may wish to consider using this as a mechanism for extending licences for three months where this is deemed necessary, on a case by case basis. • For renewal applications for other licence types, councils have offered licensees the choice to defer renewal for six months. Where all renewal requirements are met, these may still be considered as renewals even though there will have been a gap between the two licences. Others have asked for a small retainer fee to retain a licence plate, with the full renewal fee to be paid at a later date.
Variations	<ul style="list-style-type: none"> • Councils have had requests from businesses for changes to operating hours or activities during the COVID-19 outbreak via minor variations. • Each application should be considered on a case by case basis, applying the usual minor variation considerations in each case. • As a result of the business closure regulations, premises permitted to remain open are focusing on off-sales/takeaways and in some cases undertaking deliveries. • For businesses that do not already have off sales on their licences, there is some debate as to whether this can be added through a minor variation or not. One view is that the legislation and section 182 guidance may require this to be treated as a full variation; however, many authorities have considered it appropriate in the circumstances to permit the addition to the licence via a time-limited minor variation.

	<ul style="list-style-type: none"> • With businesses permitted to convert to hot food takeaways through a time limited permitted development right in the planning system many councils have taken the view that for businesses with an off sales license, the issue of deliveries is therefore outside the scope of the licensing regime unless deliveries are specifically prohibited in an existing licence. However, some are developing guidance for businesses to consider in managing deliveries, for example on issues such as under-age sales. • Councils may also receive requests from small local authority-licenced society lotteries to change the draw date. This is possible as long as the society notifies players about the change. Small society lotteries can also switch from non-remote to remote ticket sales without needing extra permissions.
Policy renewal cycles	<ul style="list-style-type: none"> • Under LA 2003, licensing authorities are required to prepare and consult on a statement of licensing policy (SLP), setting out their strategic approach to local licensing, every five years. A number of councils' policies are due to be reviewed this year to ensure they comply with the five-year cycle. • Councils may want to consider with members whether it would be pragmatic to delay their consultations given the current challenges in effectively engaging with the local trade and residents. The LGA has flagged to the Home Office that this should be acceptable, assuming work is progressed once some level of normality has returned.
Statistical returns	<ul style="list-style-type: none"> • The Gambling Commission has postponed the requirement for councils to submit annual returns and will review the need for these later in the year. • Home Office have cancelled this year's alcohol and late-night refreshment collection. The next collection will be in 2021. • The Department for Transport and will be going ahead with annual statistical returns but have advised that where it is not possible to fulfil these requests within the timescales that they have set there will be flexibility on receiving an extension to the deadline. This should be raised with them directly.

Dealing with non-compliance

Enforcement activity may look quite different during the COVID-19 emergency response. Businesses may be operating under licences with conditions that are difficult to comply with and many have proactively contacted councils to make them aware that they may be breaching conditions. While councils will, as ever, need to look at each case on its own merits and weigh up the impact of potential breaches on the licensing objectives, there is a need for flexibility when there may be good reasons why businesses cannot meet their conditions.

In addition to this, the new emergency premises closure requirements brought in by the Health Protection (Coronavirus, Business Closure) (England) Regulations 2020 ('the Business Closure Regulations')⁴ gives councils powers to close certain businesses and other venues that involve social contact without essential grounds for this to take place.

Dealing with non-compliance	
Condition breaches	<ul style="list-style-type: none"> • A considered and pragmatic approach should be taken to breaches of licence conditions and procedural defects caused by the COVID-19 pandemic, particularly where these breaches or defects do not have a significant adverse impact on the licensing objectives. • Licence holders must rectify any breaches as soon as reasonably practicable.
Business closure regulations	<ul style="list-style-type: none"> • It is up to councils to appoint officers to enforce the Business Closure Regulations. • Guidance makes specific reference to environmental health (EH) and trading standards (TS) officers as having responsibility for issuing prohibition notices and - in partnership with the police - challenging unsafe behaviors where businesses do not follow these restrictions. This is based on the understanding that EH and TS will have existing relationships and expertise in dealing with these business sectors. • Guidance also refers to the fact that continued non-compliance could then lead to the loss of alcohol licenses. There may be limitations to how effective a review is as an enforcement tool in the short term given the timescales involved. However, this could be considered as part of a package of measures where a licensee refuses to comply.

⁴ <http://www.legislation.gov.uk/uksi/2020/350/contents/made>

Street trading

The LGA has been approached by the National Caterers Association (NCASS) calling for councils to take a flexible approach regarding the location of mobile caterers. Normally licensed under street trading permits (and potentially planning), NCASS is arguing for mobile caterers (many of which they believe will fall outside the scope of business support schemes) to be able to move from their usual sites to provide food provision in places where fixed site premises including cafes, pubs and canteens are now closed. NCASS offer examples of where mobile caterers have been asked to support NHS, voluntary and community sector workers and others involved in the COVID-19 response.

The LGA has encouraged NCASS members to directly engage with their councils on what permits may be required to facilitate changes of locations and is encouraging councils to take a pragmatic approach to the need for existing licensed street traders to temporarily switch locations.

Other information

Knowledge Hub

Alcohol entertainment and events licensing

<https://khub.net/group/eventsalcoholandentertainmentlicensing>

Taxis and PHVs

<https://khub.net/group/taxisandphvs>

Local government animal health and welfare

<https://khub.net/group/localgovernmentanimalhealthwelfare>

Institute of Licensing

Protocol for licence application and hearings

<https://www.instituteoflicensing.org/news/iol-protocol-for-licence-applications-hearings-under-the-licensing-act-2003-during-the-covid-19-pandemic/>

Home Office

Kit Malthouse MP, Letter to Chairs of Licensing Committees

<https://www.local.gov.uk/sites/default/files/documents/Alcohol%20Licensing.pdf>

Gambling Commission

Position in relation to refunds (the position outlined in July 2019 still stands in relation to requests for refunds during COVID-19)

<https://www.gamblingcommission.gov.uk/for-licensing-authorities/LA-Bulletin-pages/2019/July-August/Advice-and-guidance-updates.aspx>

Advice on reviewing/ setting fees on a cost recovery basis

<https://www.gamblingcommission.gov.uk/for-licensing-authorities/LA-Bulletin-pages/2019/March/Advice-and-guidance-updates.aspx>

Department for Transport

Guidance for staff in the transport sector

<https://www.gov.uk/government/publications/covid-19-guidance-for-staff-in-the-transport-sector/covid-19-guidance-for-staff-in-the-transport-sector>

Guidance on social distancing

<https://www.gov.uk/guidance/social-distancing-in-the-workplace-during-coronavirus-covid-19-sector-guidance#transport-businesses>

Association of British Insurers (ABI) motor insurance, extension of hire or reward insurance

<https://www.abi.org.uk/products-and-issues/topics-and-issues/coronavirus-hub/motor-insurance/>

Gov.uk updates

You can subscribe to the update service to receive emails when information changes on GOV.UK about COVID-19

<https://www.gov.uk/email-signup?link=/government/topical-events/coronavirus-covid-19-uk-government-response>