

PROTOCOL FOR LICENCE APPLICATIONS & HEARINGS UNDER THE  
LICENSING ACT 2003 DURING THE COVID-19 PANDEMIC

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20 April 2020

(Update 3 with Annex 1 on Remote Hearings)

### Introduction

1. The COVID-19 pandemic presents challenges to our country that have not been seen during peace-time. The disruption to our society is likely to last many months. The more resilience, pro-activity and creativity we are all able to display now, the sooner we will be able to get back to normal once the pandemic has passed. But, in the words of Lord Chief Justice Burnett (on 19 March 2020), it is clear that “*this will not be business as usual*”. The Institute of Licensing is here to assist all its members in navigating the current period as effectively as possible.
2. This Protocol is designed to assist licensing authorities in complying with their obligations and duties under the Licensing Act 2003 during this emergency period. It takes into account the closure of premises (including most licensed premises), restrictions on freedom of movement and social distancing strictures set out in The Health Protection (Coronavirus, Restrictions) (England) Regulations 2020, The Health Protection (Coronavirus Restrictions) (Wales) Regulations 2020, The Coronavirus Act 2020 (in so far as it impacts on licensing proceedings), The Local Authorities and Police and Crime Panels (Coronavirus) (Flexibility of Local Authority and Police and Crime Panel Meetings) (England and Wales) Regulations 2020, and Government guidance. This Update (2) incorporates the advice to Licensing Authorities set out in a Ministerial [letter](#) from Kit Malthouse MP, Minister of State for Crime and Policing, to Chairs of Licensing Committees dated 8 April 2020.<sup>1</sup>

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<sup>1</sup> See:

[https://assets.publishing.service.gov.uk/government/uploads/system/uploads/attachment\\_data/file/878332/Coronavirus\\_COVID-19\\_-\\_letter\\_to\\_councils\\_about\\_local\\_authority\\_meetings\\_and\\_postponement\\_of\\_elections.pdf](https://assets.publishing.service.gov.uk/government/uploads/system/uploads/attachment_data/file/878332/Coronavirus_COVID-19_-_letter_to_councils_about_local_authority_meetings_and_postponement_of_elections.pdf)

3. It is recognised that during this emergency period local authorities and police, in particular, will be burdened with exceptional duties that go outside the usual realms of licensing. However, that is not a reason to bring the licensing system to a complete halt for the undoubtedly long period ahead of us until the pandemic is over. The backlog of applications and hearings that would arise if that course is taken would soon become unmanageable in the long-term and further damage the public interest.
4. There is a significant public interest in ensuring that licensing processes can continue and enable new and current applications to be processed - and hearings convened - where necessary. Many operators in the licensed sector face an existential threat to their businesses. The resulting job losses will cause considerable damage to our national and local economies and to the lives of workers in the public and private sectors. To some degree, the continuation of the licensing processes may assist in mitigating some of this damage by ensuring that the necessary licences are able to be issued, or modified, where required.
5. In particular, supermarkets, take-away food and drink restaurants, delivery services and off-licences remain open for business and provide a vital role in supplying households with their sustenance. Some will require the ability to vary their premises licences to continue trading effectively over the coming months. Others will require new premises licence applications or temporary event notices to be processed in order to start-up, when permitted.
6. Problematic premises may be subject to ongoing premises licence reviews or summary reviews which represent a “*key protection for the community*” (s.182 Guidance, paragraph 11.1). The relaxation of the new premises closure regulations may well come at short notice. A few unscrupulous operators may even decide to open in defiance of the new closure regulations. The prospect of a new summary review application may be required to deter their unlawful activities. Such review applications should be determined sooner rather than later and in compliance with statutory time-periods.
7. All these considerations require the licensing processes to be up and running wherever possible.

## Applications

8. The recent Government legislation, and current situation, do not remove the statutory duties on licensing authorities to process and determine licence applications under the Licensing Act 2003 within prescribed periods. These include applications for premises licences, club premises certificates, provisional statements, variations and minor variations, transfers, interim authority notices, Designated Premises Supervisor variations, personal licence applications and temporary event notices. However, the current situation requires some flexibility and creativity in the implementation of the processes to ensure they remain as effective and fair as possible in all the circumstances.
  
9. Licensing Authorities should promote (on their websites or through other means) the use of online applications and fee payments as the default position. Many Council staff are working from home and post is not being opened in a timely fashion, or at all. Applicants should be made aware that posted applications may not be received or considered promptly. At the same time, if possible, we recommend that Licensing Authorities should try to put in place mail-forwarding processes to ensure that licensing officers are able to process applications from the place where they are currently working. This can be done in a number of ways. A designated Council officer may be tasked with forwarding relevant mail to licensing officers either in person or via post or by email after being digitally scanned. The Royal Mail and some other postal services already offer mail-forwarding services so they can be diverted to a different address.
  
10. In relation to applications to vary the Designated Premises Supervisor, the Ministerial advice letter of 8 April 2020 states:

*“Those premises that remain open during the outbreak may well have key personnel who are self-isolating in line with Government guidance or unwell. It is important that matters such as varying the premises designated premises supervisor are dealt with as promptly as possible.”*

11. The Minister also made observations relevant to applications required to enable premises to better serve the community during this period by providing a delivery service. He encouraged Licensing Authorities to take a flexible approach in such cases:

*“Some licensed premises have restrictions on deliveries as a licence condition. Where this is so, I would urge licensing authorities to follow the wider advice and derogations set out by the Department for Business, Energy and Industrial Strategy. Allowing deliveries outside normal delivery times will be essential in some stores in ensuring adequate supply.*

#### Pre-application advice

12. In many cases across England and Wales Licensing Authorities have developed formal and informal pre-application advice procedures. This enables applicants to take into account the views of environmental health and police officers prior to submitting an application. This process, in turn, provides an improved chance of an application avoiding representations from the responsible authorities or other persons, thus eliminating the requirement for hearings. If practicable, and if personnel issues permit, Licensing Authorities should aim to continue to provide this service to applicants, with the assistance of remote technology where required.

#### Compromise

13. Wherever possible, parties should actively explore the possibility for compromise to enable applications to be determined without the need for a hearing. Whilst this has always been the case (as adopted by the senior courts, for example, in relation to all litigation), the need for resolution by agreement, where possible, is now more important than ever.
14. This approach accords with the observations of Hickinbottom J in Taylor v Manchester City Council [2012] EWHC 3467 [at 82]:

*Given the administrative nature of the authority’s function, it is perfectly appropriate for the authority thus to liaise with the applicant licensee and the responsible authorities/interested parties to see whether a compromise can be reached.*

### Officer delegation

15. There is no lawful power, even during this emergency period, for Licensing Authorities to delegate decision-making to Officers where relevant representations have been received in response to an application. Determinations in such cases will still have to be made by licensing committees or their sub-committees.

### Advertising of applications

16. Generally, licence applications are required to be advertised by way of a Blue Notice and an advert in a local newspaper or, if there is none, in a local newsletter, circular or similar document, circulating in the vicinity of the premises<sup>2</sup>. This remains a legal requirement.

17. Individuals may still put up Blue Notices and newspapers may still operate (in print or online) under the social distancing advice. Wherever possible these statutory duties should continue to be complied with by applicants and checked by Licensing Authorities. Applicants may be requested to send a photograph of the Blue Notice in situ to the Licensing Authority as proof of compliance.

18. However, it is recognised that, with the current restrictions of movement in place, in certain circumstances such adverts may be less likely to be seen by persons likely to be impacted by an application.

19. Importantly, the regulations do not necessarily require the advert to be published in a *hardcopy* version of a newspaper etc. Publication of the advert in an online newspaper etc., or similar electronic method of publication, may well suffice, particularly during the current period. The aim is to ensure that information about applications can be circulated and conveniently read by the wider community. The legislative aims and purposes of the regulations may also be furthered by the Licensing Authority creating an online page for Licensing Notices with an option to be kept informed by way of an e-mailed circular.

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<sup>2</sup> Reg.25, Licensing Act (Premises Licences) Regulations 2005

20. To enable continued and effective community engagement with the licensing process, it is recommended that Licensing Authorities additionally advertise the *full* details of applications on their websites or online licensing registers. The current situation may not permit individuals who wish to inspect an application to visit their local council building. Accordingly, every effort should be made to ensure that not only the application form but also any supporting documents and plans should be available on a Licensing Authority's website.
21. Further, consideration should be given to emailing the details of all new applications to local ward Councillors, Parish Councils, local residential and civic amenity groups, and organisations representing local operators and businesses.
22. Licensing Authorities have a legal duty to advertise review applications by way of a Notice prominently displayed at, on or near the site of the premises to which the application relates as well as at the offices, or the main offices of the Licensing Authority in a central and conspicuous place<sup>3</sup>. Every effort should be taken to comply with this requirement. However, if this requirement proves to be impracticable to comply with during the current period, then consideration should be given to advertising the review application using one or more of the online or electronic methods outlined above in relation to other types of applications. In our view this alternative method of advertising a review application is unlikely to be successfully challenged in the Courts, even if it amounts to a procedural irregularity, because the regulations will have been substantially complied with (for which see paragraph 26 below).
23. In line with recommendations set out in earlier versions of this Protocol, in relation to the advertising of applications, the Minister states in his letter of 8 April:

*“During the current period it may not be possible for applications to be advertised in local newspapers. The regulations provide for flexibility in such cases to advertise in a local newsletter, circular or similar document. I recommend that authorities make applicants aware of this. Authorities should also consider advertising all applications on local authority websites. With blue notices less likely to be seen, authorities should, at a minimum, inform local ward councillors and, where established, local resident groups of all*

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<sup>3</sup> Reg.38, Licensing Act (Premises Licences) Regulations 2005

*applications relating to premises in their vicinity (for example by email) so they are made aware of relevant applications and are able to make representations in response during the consultation period if they so wish.”*

#### Consultation Period & Representations

24. Licensing Authorities should indicate on their website, or through other means, that all representations in relation to a new application should, wherever possible, be submitted online or by email to reduce the risk that they may not be received or considered by the authority.
25. Care should obviously be taken to ensure that officers are in receipt of any representations received within the consultation period before agreeing to the grant of any application by delegated authority. The mail-forwarding suggestions, referred to above, should be followed. Licensing Authorities will need to consider what date they will deem a representation to have been received on if it is sent in the post but officers are unable to date-stamp the document on the actual day it arrives.

#### Procedural defects

26. As far as possible, it is important that the provisions of the Licensing Act 2003 and the Licensing Act 2003 (Premises Licences and Club Premises Certificates) Regulations 2005 are complied with. If, however, the process adopted by a Licensing Authority is challenged, the Senior Courts have previously ruled that procedural defects will not *automatically* invalidate a licensing determination provided there has been substantial, but not necessarily full, compliance with the relevant procedures (see Jeyanthan [1999] EWCA Civ 1465; R(D&D Bar Services Ltd) v LB of Redbridge [2014] EWHC 344, i.e. the “Funky Mojoe” case; and R (Akin (t/a Efes Snooker Club) v Stratford Magistrates’ Court [2014] EWHC 4633). It will be a question of considering the extent and significance of the departure in each individual case and the resulting prejudice, if any. Although it will be a matter for the sub-committee, if challenged we suggest that compliance with those procedural requirements that are *practicably available* in the current crisis ought to suffice. Again, every effort should be made to ensure substantial compliance with the provisions

and to take such steps as are required to avoid significant prejudice to any party. Fairness in the decision-making process is paramount.

27. This pragmatic and fair approach to procedural defects accords with the Minister's recommendations in his letter of 8 April:

*"A considered and pragmatic approach should be taken to breaches of licence conditions **and procedural defects** caused by the COVID-19 pandemic".*

#### Temporary Event Notices

28. Temporary Event Notices ("TENS") should be processed as before. However, given the tight time-scales involved, applicants should be told that Licensing Authorities expect applicants to submit any TENS online and forward them to the relevant officers by email at the same time and confirm that they have done so. The email addresses for the relevant police and environmental health officers should be clearly publicised.

#### Adjournments

29. Adjournments of hearings beyond the prescribed statutory time limits are governed by regulations 11 to 13 of Licensing Act 2003 (Hearings) Regulations 2005 (the "Hearing Regulations"). A Licensing Authority may extend a time limit for a "*specified period*" where it considers this "*to be necessary in the public interest*". Therefore, a hearing may not simply be adjourned "until further notice". As indicated above, the public interest includes the interests of applicants, operators, residents, responsible authorities and the wider community.

30. However, as will be appreciated, this power to extend time limits does not apply to summary reviews, reviews following a closure order or an illegal working compliance order. That position will continue unless and until the Government decides to amend the relevant legislative provisions.



31. It is inappropriate to invite responsible authorities, or others, to object to applications purely to trigger an adjournment.

32. In support of this approach to adjournments, in his letter of 8 April 2020 the Minister states:

*“The regulations do allow for many hearings to be deferred during the period of social distancing. **However, my view is that hearings should proceed, wherever possible.** As you may be aware, the Coronavirus Act 2020 provides express provision for remote licensing hearings to take place. Regulations commencing those provisions were published last week”.*

### Remote Hearings

33. The default position should be that, where required, hearings should *not* be routinely adjourned.

34. Where licensing authorities are able to establish and publish clear and effective protocols concerning hearings conducted without the need for parties to be physically present, then it should be possible in many cases for the issues to be resolved at the first hearing.

35. Where, however, an adjournment does prove necessary to enable the necessary processes to be established and explained to all parties then we suggest that such adjournments should not be listed to a date too far in the future.

36. Wherever possible, Licensing Authorities should seek to convene remote hearings using video and audio technology. Such an approach would be in accordance with the Lord Chief Justice’s recent instructions to Courts and Tribunals. It should apply, with equal measure, to hearings before a Licensing Authority.

37. There is no legal bar to holding licensing hearings remotely. Licensing hearings are governed by specific provisions in the Licensing Act 2003 and the Licensing Act 2003 (Hearings) Regulations 2005. They provide a wide degree of flexibility to Licensing Authorities in determining their own hearing procedures<sup>4</sup>. Procedural irregularities in relation to hearings do not automatically

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<sup>4</sup> See s.9(3) of the Licensing Act 2003 and Hearing Regs.21

render a decision void, though care must be taken to cure any resulting prejudice in so far as possible<sup>5</sup>. The Courts are highly likely to look favourably on departures from usual procedures necessitated by the current exceptional circumstances.

38. The Coronavirus Act 2020 (s.78) provides further powers for Councils to hold remote hearings in accordance with Regulations. On 2 April 2020, the Secretary of State made The Local Authorities and Police and Crime Panels (Coronavirus) (Flexibility of Local Authority and Police and Crime Panel Meetings) (England and Wales) Regulations 2020 [“the Coronavirus Regulations”]. They came into force on 4 April 2020 and relate to local authority meetings that are held before 7 May 2021.<sup>6</sup>

39. Part 2 of the Coronavirus Regulations concerns remote attendance at local authority meetings. At present Part 2 applies only to England but not Wales<sup>7</sup>. The relevant provisions state<sup>8</sup> :

#### PART 2

##### Remote attendance

##### **Meetings of local authorities**

*4.- (1) In respect of a reference in any enactment to a meeting of a local authority, that authority may, as they may determine—*

*(a) hold such meetings and at such hour and on such days; and*

*(b) alter the frequency, move or cancel such meetings,*

*without requirement for further notice.*

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<sup>5</sup> See regs. 31 and 32 of Licensing Act 2003 (Hearings) Regulations 2005

<sup>6</sup> Reg 2(4) of Coronavirus Regulations 2020

<sup>7</sup> Reg. 2(2) of Coronavirus Regulations 2020. It is anticipated that further, similar, regulations applying to Wales will be introduced.

<sup>8</sup> Further, reg.6 in Part 3 of the Coronavirus Regulations 2020 (applying to England but not Wales) provides that, for the purposes of Schedule 12 of the Local Government Act 1972, any reference to being “present” at a meeting includes being present through remote attendance. Any reference to a “place” where a meeting is held includes reference to more than one place including electronic, digital or virtual locations such as internet locations, web addresses or conference call telephone numbers.

*(2) Where an appointment would otherwise be made or require to be made at an annual meeting of a local authority, such appointment continues until the next annual meeting of the authority or until such time as that authority may determine.*

*5.—(1) A reference in any enactment to a meeting of a local authority is not limited to a meeting of persons all of whom, or any of whom, are present in the same place and any reference to a “place” where a meeting is held, or to be held, includes reference to more than one place including electronic, digital or virtual locations such as internet locations, web addresses or conference call telephone numbers.*

*(2) For the purposes of any such enactment, a member of a local authority (a “member in remote attendance”) attends the meeting at any time if all of the conditions in subsection (3) are satisfied.*

*(3) Those conditions are that the member in remote attendance is able at that time—*

*(a) to hear, and where practicable see, and be so heard and, where practicable, be seen by, the other members in attendance,*

*(b) to hear, and where practicable see, and be so heard and, where practicable, be seen by, any members of the public entitled to attend the meeting in order to exercise a right to speak at the meeting, and*

*(c) to be so heard and, where practicable, be seen by any other members of the public attending the meeting.*

*(4) In this regulation any reference to a member, or a member of the public, attending a meeting includes that person attending by remote access.*

*(5) The provision made in this regulation applies notwithstanding any prohibition or other restriction contained in the standing orders or any other rules of the authority governing the meeting and any such prohibition or restriction has no effect.*

*(6) A local authority may make other standing orders and any other rules of the authority governing the meeting about remote attendance at meetings of that authority, which may include provision for—*

*(a) voting;*

*(b) member and public access to documents; and*

*(c) remote access of public and press to a local authority meeting to enable them to attend or participate in that meeting by electronic means, including by telephone conference, video conference, live webcasts, and live interactive streaming.*

40. A 'local authority meeting' includes a meeting of a local authority or a committee or sub-committee of a local authority (Reg.3). The remote attendance provisions (Regs. 4 and 5) apply in respect of a reference in any enactment to a meeting of the local authority. In our view this includes the Licensing Act 2003 and the regulations made thereunder<sup>9</sup>.
41. Whilst the Coronavirus Regulations remove any residual doubts about the legality of remote hearings, and enable Councils to make their own standing orders to facilitate their conduct, in our view, the specific licensing provisions already in existence enable remote hearings, in any event, to lawfully take place in proceedings under the Licensing Act 2003. This is now of particular relevance to licensing hearings in Wales which are not, yet, covered by the remote meetings provisions in the Coronavirus Regulations.
42. Technical and practical obstacles are there to be overcome. We are aware of several Licensing Authorities that have already successfully conducted remote licensing hearings over recent days. Other decision-making bodies, including the Supreme Court, Court of Appeal, High Court, Crown Court and Magistrates' Courts, have also rapidly adapted to the new reality through the effective use of remote technology.
43. It is recognised that it may take some days for the processes that enable remote hearings to be put in place. But hearings should not, generally, be adjourned for more than a few weeks to enable this to happen and should be adjourned to a specific date. The Court and Tribunal system has, within a few days, been able to get some 43% of its sites back to work either for in-person or remote hearings. Licensing Authorities should have a similar objective or else, in the words of the Lord Chief Justice, "*access to justice will become a mirage*".

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<sup>9</sup> See s.9 Licensing Act 2003

44. At first, Licensing Authorities may wish to prioritise the most urgent work for remote hearings. Depending on the individual circumstances, these priority matters may well include summary reviews and reviews. Other priorities may include new or variation applications involving premises that sell food and drink to the community (e.g. supermarkets, off-licences, convenience stores, take-away restaurants and delivery services).
45. There are several effective and inexpensive video-conferencing tools on the market that will enable effective remote licensing hearings. For example: Zoom, Skype for Business/Microsoft Teams, Pexip, Google Meet, Blue Jeans and Cisco Webex. These programs generally enable individuals to view and participate in a video-conference using a desktop computer, lap-top, tablet device or even smart-phone. It will be for Licensing Authorities, either individually or collectively, to decide which commercial platform is best suited to their particular requirements and to be satisfied as to the security arrangements for any such process.
46. Alternatively, in some cases, audio-only dial-in telephone conference calls may be sufficient to facilitate a remote hearing. Products available include, for example, BT Meetme or WhatsApp group audio-chats. Remote hearings may well combine participants joining through video-link and others who dial-in using their usual telephone.
47. Licensing authorities should liaise with parties over the use of remote technologies. Many leading operators and practitioners are already well-adapted to remote working and can provide facilities and knowledge that will assist the process.
48. Where health advice and the law permits, Members may choose to meet in the town hall or other council building in-person, with or without an officer present in the same room. Participants can either attend the meeting room in person (exercising suitable physical distancing) or join remotely. Alternatively, all Members, officers and parties may join remotely. Most commercial video-conference programs will permit private Members' deliberations to take place without other participants being able to hear or see those deliberations. Meetings can also be recorded, where required. Some video-conferencing applications also enable a transcript of proceedings to be automatically produced after the hearing.

49. Agenda Documents should all be accessible online or digitally in a format and pagination common to all participants. The Coronavirus Regulations (Reg.15) confirm that it is sufficient for Agenda Papers to be published only on the website of the Council.
50. Before a remote hearing, parties should be encouraged to submit by email written submissions, at least 24 hours before the hearing is due to start, summarising the points they wish to make at a hearing and the outstanding issues. Although voluntary, these written submissions (of whatever length is considered appropriate) are likely to assist in the conduct of the remote hearing and the decision-making process.
51. A significant number of licensing hearings are not attended by the general public. It is nonetheless important to preserve the ‘public’ element of even remote hearings, so far as is practicable. This can be done by advertising online a web-link to view (but not participate in) remote licensing hearings. Alternatively, a simple telephone call into a meeting would enable the public to listen in to meetings. Whilst there may be some members of the public who are unfamiliar with using remote technology, most are still able to use a telephone. As far as possible Licensing Authorities are encouraged to provide protocols or instructions for use in such circumstances. Prior to the current crisis there were many individuals who were unable to travel to Council buildings to view a licensing hearing in person. That inability to cater for everyone did not prevent licensing hearings from taking place in the past. Nor should it prevent the use of remote hearings in the current period.
52. The Coronavirus Regulations (Regulations 13 to 17) serve to confirm that a meeting is “open to the public” if it can be accessed through remote means including (but not limited to) video conferencing, live webcast, and live interactive streaming.
53. As a last resort, Licensing Authorities are reminded of their existing powers to exclude the public from all or part of a hearing “*where it considers that the public interest in so doing outweighs the public interest in the hearing ... taking place in public*”<sup>10</sup>. We suggest, however, that it would

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<sup>10</sup> Reg.14(2) of the Hearing Regulations

be inappropriate to use such power routinely simply because insufficient efforts have been made to enable remote access to occur.

54. Where a remote hearing is held, parties should be advised to log-in 15-20 minutes before the start of a hearing. A telephone number of an officer should be provided to parties in case of technical difficulties. These can generally be resolved by a short conversation before the hearing starts.
55. Participants in a remote hearing are advised to consider potential noise interruptions before a remote hearing starts. For example, by silencing phones and closing the door of the room they are in. Virtual video backgrounds can easily be used to avoid distractions and preserve the privacy of participants if they are calling in from their homes.
56. Parties should be reminded that, even where an application has attracted representations, applications can be determined without the need for a hearing where *all parties consent* to dispense with a hearing by virtue of regulation 9 of the Hearing Regulations. In these cases written representations may be submitted and considered before a determination is made.
57. We would emphasise that during the current closure period many licensed operators are already preparing for their post-pandemic future. This may include proposed changes to their business models and refurbishments. Others are actively considering investing in new businesses. These businesses may provide much-needed new jobs for those who are out of work and investment that will regenerate areas. Some of these projects may well require licence applications to be determined to enable them to come to fruition. These features should form an important part of the public interest considerations to be taken into account before any hearing is adjourned beyond the usual period in which they should be determined (usually 20 working days from the last date for representations). The sooner these applications can be determined, the better.
58. **Annex 1** to this Protocol provides further guidance to Licensing Authorities and participants on the mechanics and procedures of holding a remote licensing hearing.

## Appeals

59. The listing of Licensing Appeals to the magistrates' court will be subject to decisions by Her Majesty's Courts & Tribunal Service and individual courts. The Ministry of Justice and HM Courts & Tribunal Service are keeping a (constantly updated) list of Courts that are open for business here:

<https://www.gov.uk/guidance/hmcts-daily-operational-summary-on-courts-and-tribunals-during-coronavirus-covid-19-outbreak>

60. As is to be expected, the Courts are prioritising urgent cases (including closure orders) over the coming days. Councils are advised to liaise with their local magistrates' court for information on the listing of licensing appeals.

## Fees & Late Night Levy

61. During this period many licence holders will be generating no, or only a greatly reduced, income. Some Licensing Authorities will wish to consider the further economic impact on these operators that may result from the enforcement of the mandatory requirement to suspend a premises licence if a licence holder fails to pay their annual premises licence fee or, where applicable, late night levy (imposed by s.55A(1) of the Licensing Act 2003).

62. In his Ministerial letter of 8 April, Kit Malthouse MP advised:

*“Local authorities have discretion when considering non-payment or late payment of an annual premises licence fee or a late-night levy charge. While section 55A of the Licensing Act 2003 requires that the licence be suspended, it is possible to delay when that suspension takes effect. Where businesses are experiencing difficulties, I would expect them to make their licensing authority aware. The authority should consider delaying any suspension of the licence where the delay in payment or non-payment is related to COVID-19.”*



63. Since the legislation imposes a statutory duty on a local authority, it would be preferable for new legislative provisions to be introduced providing Licensing Authorities with a clear discretion not to have to suspend licences due to non-payment of fees or the levy, or to waive these fees altogether in appropriate cases. However, the Institute believes that the current legal position already permits Licensing Authorities to delay the start date of the mandatory suspension of a premises licence for non-payment of fees by virtue of s.55A(3) of the Licensing Act 2003 which provides:

*“If a licensing authority suspends a premises licence ... the authority must give the holder of the licence a notice to that effect, specifying the day the suspension takes effect.”*

64. The date on that notice, indicating when the suspension takes effect, may be set at some distant point in the future. This will permit those fees to be paid once the emergency period is over and operators have begun to recover from the financial impact of the closure provisions. No enforcement action needs to be taken in the meantime.

65. The Institute understands that some Licensing Authorities may wish to terminate the late night levy to give immediate financial relief to businesses. There is no power to terminate the late night levy until the end of the levy period (i.e. when the levy year has expired). Therefore we recommend that, where appropriate, Licensing Authorities take the same approach to the collection of the late night levy as to annual premises licence fees.

66. At the end of the levy period the decision to terminate the levy will usually be taken by the full Council Meeting. However Licensing Authorities will need to carefully consider the Scheme of Delegation within their own Constitution to establish whether this power can be delegated to an officer.

## Enforcement

67. In the same Ministerial letter of 8 April, the Minister recommended that Licensing Authorities should take a considered and pragmatic approach to breaches of licence conditions and procedural defects caused by the pandemic:

*“Retailers may be operating under licences with conditions that may prove difficult to comply with in the current period due to absenteeism. These include, but are not limited to, conditions that mandate the minimum number of staff or door supervisors on site, training requirements or attending external meetings (such as Shopwatch). 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.”*

68. Before instigating a prosecution for breach of a licence condition caused by difficulties related to the pandemic, Licensing Authorities should consider whether it would be in the public interest to do so bearing in mind the exceptional national of the current emergency.

## Local Government Association (LGA) advice

69. On 9 April 2020 the LGA published further helpful advice to Licensing Authorities “*Approaches to managing licensing and related issues during the COVID-19 pandemic*” (updated on 17 April). This advice considers issues relating to a wide spectrum of local authority licensing, including alcohol, entertainment and late night refreshment under the Licensing Act 2003, as well as taxis, gambling, animal establishments and scrap metal licensing. The document can be found [here](#).<sup>11</sup>

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<sup>11</sup> Updated 17 April 2020: <https://www.local.gov.uk/approaches-managing-licensing-and-related-issues-during-covid-19-pandemic>

## Protocol revisions

70. This Protocol is intended to be a living document and will be amended as and when required, particularly in light of any further relevant regulations issued under the Coronavirus Act 2020 (in so far as they may impact on licensing proceedings) or further guidance and advice issued by the Government. The Institute of Licensing welcomes comments and suggestions from its members and others as to how this Protocol can be improved.

71. The Institute fully supports the content and spirit of the Minister's conclusion in his letter of 8 April 2020:

*"These are extremely challenging times. With the right spirit of collaboration, communication and pragmatism, I believe that we can get through them with minimum damage to businesses and to the licensing objectives."*

72. The Institute will continue to work with all its members and partners in achieving that goal.

The Institute of Licensing  
20 April 2020

(Update 3)

## ANNEX 1

### MECHANICS & PROCEDURES OF REMOTE VIDEO-HEARINGS

(v.20.4.20)

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1. During the COVID-19 pandemic emergency period it will be necessary for licensing hearings to be dealt with remotely, ideally through the use of various video-conferencing platforms (Zoom, Skype for Business, Microsoft Teams, Google Meet etc).
2. This Annex is designed to assist licensing authorities and participants in remote video-hearings regardless of the platform used.<sup>12</sup>

#### Preparation for the Remote Hearing

3. Licensing Authorities should, at the earliest opportunity (such as when notifying attendees and the public of the date of the Hearing), indicate the video-conferencing platform that is being used. Licensing Authorities have a discretion as to which of the various platforms to use for their video-hearings. This will enable the attendees to ensure they have downloaded, and are familiar with, the appropriate platform. Clear instructions should be provided to participants on how to join the remote hearing.
4. Agenda documents should be made available online in a common format (e.g. PDF) and common pagination to permit ease of reference during the remote hearing. The Agenda documents should be downloaded onto participants' computers or devices if possible.

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<sup>12</sup> With thanks to the Inns of Court College of Advocacy for some of the ideas in this Annex. See: Principles for Remote Advocacy: <https://www.icca.ac.uk/wp-content/uploads/2020/04/Principles-for-Remote-Advocacy.pdf>

5. Participants can use desktop computers, laptops, tablet devices or even smartphones to join a video-hearing. If two screens are available (e.g. two computer monitors, or a monitor and laptop/tablet device) that can assist. One screen can then be used for the video-hearing itself, whilst the other screen can be used for viewing the Agenda documents.
6. Parties should ensure that they are in a private, quiet space where they will not be disturbed. Other occupants of the household should be reminded not to interrupt the participant during the hearing. The door to the room in which the participant is based should be closed and, if possible, locked.
7. Other noise sources should be silenced including telephones, mobile phones, tablet devices, Amazon Echo & Google Home devices, door bells, dishwashers etc.
8. Participants should organise their workspace carefully in advance. Clear it of anything that is not related to the hearing.
9. Attendees should, if possible, ensure that they have a plain wall as a background. If this is not possible then parties have the choice (in many video-conferencing platforms) to use a neutral “virtual background”. This can assist in securing the privacy of participants if they are joining the hearing from their homes. Alternatively, a plain sheet can be used as a backdrop. Be aware that background “objects” (e.g. family photos, pets or children) can be distracting.
10. Ensure that you are well lit by natural or artificial light. Avoid sitting with your back to a window or other light source. This can result in only your silhouette appearing on screen.
11. Parties should attend the hearing alone, unless they are sat together with another attendee. The room should be one that has a good Wi-Fi/internet connection and has good lighting.
12. Participants should dress in a similar manner to the way they would dress if attending a traditional hearing.

13. Similarly, no food should be eaten during a remote hearing. A glass of water or coffee/tea should suffice for refreshment.
14. Parties should remain seated during the hearing.
15. Parties should check that their microphone, camera and sound settings are working. This should preferably be done as early as possible. This will allow any technical issues to be raised and dealt with without the need to delay the hearing. A computer or other device's in-built camera, microphone and speaker will usually suffice.
16. Avoid setting your device to the highest volume, since this is likely to cause feedback when you are speaking.
17. Licensing Authorities should produce, and participants read, a procedure note for video-hearings. This should set out the procedure that will be followed, the technical mechanics of the specific platform chosen, and the rules/etiquette of the meeting.
18. Parties that will require the ability to communicate confidentially throughout the hearing should set up a procedure for doing so independently of the video platform. We do not recommend that any platform's 'Chat' functions are used but instead communication through a third-party messaging application (e.g. WhatsApp, SMS text message etc.) be used. This is less disruptive and runs no risk of private messages being accidentally broadcast to the rest of the hearing's participants.
19. Licensing Authorities should decide before the hearing how they will protect the hearing from disruptive participants. A balance must be struck between a hearing being public and the smooth running of the hearing. It is for Licensing Authorities to strike that balance but it is open to them to password protect a hearing, 'lock' the hearing once it has begun, screening those joining a hearing etc. Muting members of the public who are not participants should be the default position.

20. Licensing Authorities should identify who should be the 'Host' of the video meeting. This is an administrative job but an important one. The Host will have the technical conduct of the meeting and should regulate that the proper technical etiquette is being followed. It is recommended that the Host is an Officer (e.g. licensing or democratic services officer) who will not have an active role to play in proceedings.
21. If the Licensing Authority wish to record proceedings, they should determine how/if this can be done on the relevant video-conference platform and identify who will be responsible for the recording. We recommend the Host is responsible for this. Some platforms enable transcripts to be automatically produced following a remote hearing. Alternatively, minutes can be taken in the usual way.
22. In the event of a breakdown in communication, a protocol should be in place for anyone affected, including witnesses and third parties, to contact the officer convening the remote hearing by additional means to alert them to the problem, e.g. by telephone, text, or email. A mobile number of the Host can usefully be provided to participants to this end.
23. If the above procedure is followed this should minimize the need for anyone to urgently speak or interrupt proceedings. However, Licensing Authorities should set in place a procedure by which an Attendee can urgently get the Chair's attention. It is recommended that this is done via the Host. A procedure can be set up whereby the Host can be privately contacted (via 'hand raise function', privately over the chat or by email) by the party that they wish to raise a matter. The Host can then privately (over chat or What's App) bring to the Chair's attention that a party wishes to speak. The Chair can then incorporate this into the Hearing with the minimum disruption.
24. Written submissions from participants, served in good time before a remote hearing starts, can greatly assist the Members in their determination and with the efficient use of time in the hearing.

25. It is strongly recommended that Licensing Authorities hold trial-runs of the remote hearing processes with Members and officers (but not necessarily parties) prior to holding their first actual hearing.

#### During the Hearing

26. Members and participants should log in at least 15-20 minutes before the hearing starts to confirm that they are having no technical difficulties.
27. If something does go wrong (a critical participant drops offline, for instance, or some connection fails) the hearing should be paused until it is sorted out. There are some distractions, like people joining and leaving calls, that may have to be ignored. But you should not be afraid, if that happens, to go back and repeat a point or a question.
28. Should the technological problem concern the internet or Wi-Fi connection, it is helpful to have an alternative method of communication which is not reliant on either (e.g. a telephone).
29. If there is a technical failure that cannot be fixed, then the hearing may have to be adjourned. The hearing must be a fair hearing satisfying Article 6 of the ECHR.
30. Parties should mute their audio when they are not speaking. A failure to do so may disrupt the hearing. If they do not 'mute' their audio then the Host should do it for them.
31. When it is your turn to speak, remember to unmute your microphone. Speak directly into the microphone.
32. Where multiple devices are in use, all should be muted and only one unmuted when required.



33. Parties should keep their video cameras on at all times if possible. They should be aware that many video-platforms will show your entered name and (if chosen) picture if the camera is turned off. Parties should check their name is correct and their picture is appropriate.
34. As far as possible, the online hearing should emulate a traditional hearing.
35. Establish a speaking protocol at the outset. This may involve participants, when introduced, acknowledging the introduction by raising their hand rather than speaking. This is preferable to a brief nod which may be imperceptible on small thumbnail videos.
36. Encourage participants to raise their hand when wishing to interject, or otherwise use a facility to do this on the software provided. Such interjections should be kept to the minimum.
37. When speaking, maintain eye contact with the camera. This will ensure you appear to be looking at your audience. The thumbnail image of the person you are speaking to may be at the bottom of the screen, when the camera on your device is above the screen. If so, this will give the appearance that you are looking down or away from your audience.
38. Ensure that you are clearly visible by maintaining a reasonable distance from the camera, to show your head and upper body. Too close and your image may blur and fill the screen, too far and you will appear distant and detached from the hearing. Some cameras zoom in and out depending on the movement of the subject. This should be avoided and can be adjusted using the camera's settings.
39. Advise everyone to be mindful that the camera records a wider area than one sees on one's own screen.
40. If you are using the camera on your laptop, typing when you are visible is liable to cause the camera (and your image) to shake. Try to use a separate keyboard or a separate camera mounted away from the laptop.

41. Remember that others are watching even if you cannot see them. In cases involving multiple participants, thumbnail video images may appear on screen, but these thumbnails often move off screen to allow participants to see the face of the person talking, or the document being shared. Observers may also be present. As such, often there are people present at the hearing who are not visible.
42. The Chair should introduce each speaking attendee (Members, Officers, Applicant) in turn. This should be done at the start of the hearing to ensure that each speaking attendee can speak and be heard.
43. The Chair should set out the procedure for the hearing. It is recommended that the agenda and order of speaking should be made expressly clear at the beginning of the meeting. The Chair should then ascertain whether anyone not on the agenda to speak would wish to speak at the hearing. This clear scheduling of speakers at the outset will allow for the smooth running of the hearing and minimize the risk of multiple speakers talking over each other.
44. Oral submissions should be structured, relevant to the issues, and not repetitive. As a participant, simplify your arguments as much as you possibly can, remembering that if you “lose the sub-committee” you are less likely to notice that you have done so than if you are attending a hearing in person. A lot of non-verbal communication is lost when working remotely. Concentrate on the substance. Brevity and precision are key. Aim to present your case in a low-key, courteous and measured way.
45. Be prepared for the fact that remotely-conducted hearings are more taxing than a conventional hearing. Licensing Authorities should ensure that reasonably regular breaks are taken during a hearing and participants should not be shy of asking for breaks, particularly in longer hearings.
46. In a remote hearing, a brief delay typically occurs between the video image of the person speaking and their voice being heard by the court/tribunal and witness. This connection

delay may lead participants to believe a person has finished speaking before they have, in fact, done so and is liable to result in participants inadvertently speaking over one another.

47. Do not interrupt. Let a speaker finish before speaking. Be especially careful not to interrupt another speaker.
48. After each party is finished speaking the video hearing should always revert back to the Chair to invite the next speaker. No one should speak without being invited to do so by the Chair. The Chair should each time expressly check with the appropriate parties (each individual member) who would be entitled to speak or ask a question if they wish to do so.
49. Each party should have independent access to the relevant documents on their computer or in hard copy. However, if the Licensing Authorities wants the ability to draw the attention of all attendees to the same document then a number of video-conferencing platforms have a 'Share-Screen' function. This will allow for a document to be visible on the screen of all parties.
50. Generally, it is recommended that only the Host has the power to share their screen and the process is controlled by requests to the Host. This ability could allow for the incorporation of any late documentation that is provided at the last minute to the hearing<sup>13</sup>. In some cases it may be appropriate to permit participants to share their screen with everyone in the hearing.
51. If you "share" your screen remotely (so that all participants can see your screen), be careful. When you share your screen, everything is visible online, including pop-up notifications, screensaver photographs etc. For safety's sake, ensure your screen is clear and that notifications are disabled. Documents can usually be "shared" just by referring to the page in the Agenda bundle.

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<sup>13</sup> Subject to reg.18 of the Licensing Act 2003 (Hearings) Regulations 2005

## Members' deliberations

52. Licensing Authorities have a discretion as to how they wish to conduct member discussions and deliberation during a video-hearing. It can be done by Members manually leaving the existing video-hearing and entering a new video hearing to come to their determination.
53. It is possible, in certain video conferencing platforms, for a 'breakout room' to be provided in the existing video-hearing. This means that a confidential second 'sub' video-hearing room can be created by the Host who can invite in the appropriate Attendees (Members, Legal Officer etc.). This will not require anyone to leave the main hearing and allows for Members to come to their decision confidentially. Once a decision is made the Members can contact the Host to be returned to the main hearing. If this is possible on the video-conferencing platform, this is recommended as the smoothest way for decision making to occur.

## Determination and appeal rights

54. Licensing Authorities may announce an outline of the decision orally at the end of the hearing and, in some cases, it will be necessary to make a determination at the conclusion of the remote hearing (e.g. at a summary review or upon consideration of a counter-notice to a temporary event notice<sup>14</sup>). But, when permissible, it is generally preferable for the decision to be indicated in writing, and sent out by email and/or via an online link after the hearing. Written reasons should be emailed out to all the parties including those that made relevant representations sent, usually, within five working days of the hearing.
55. The written notification should be accompanied by information regarding the parties' rights to appeal, including the date from which the appeal period is deemed to run (usually the date the emailed written notification is served), how an appeal can be instigated, and the contact details (including email address) of the relevant magistrates' court.

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<sup>14</sup> See reg.26 of the Licensing Act 2003 (Hearings) Regulations 2005