



Francis Taylor Building

## FTB Licensing Update Webinar for Local Authorities

19 May 2020



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## FTB Licensing Update Webinar for Local Authorities

The Coronavirus lockdown provisions (business  
closures and restrictions on movement)

19 May 2020

Horatio Waller



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## Summary of Regs

- Premises selling food/drink: reg 4(1-3, 6) and Sch2, [part 1](#).
- Businesses in the leisure sector: reg 4(4-6) and Sch2, [part 2](#).
- Shops and libraries: reg 5(1-2).
- Holiday accommodation: reg 5(3-4).
- Places of worship and community centres: reg5(5-6).
- Movement restrictions: reg 6.
- Gathering restrictions: reg 7.
- Enforcement: reg 8.
- Offences and prosecutions: regs 9 and 11.
- Fixed Penalty Notices (FPNs): reg 10.

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## The changing landscape: quick recap (

- 20 March: closure of pubs, restaurants etc. ordered by PM.
- 21 March: new regulations introduced enforcing closures.
- 23 March: Govt Guidance published - "Further Businesses and premises to close". Updated on 25, 26, 27 March, 9 April, and 1 and 13 May.
- 23 March: Planning regulation changed to enable restaurants, cafés and pubs to offer delivery and hot food takeaway.
- 25 March: Coronavirus Act 2020. New powers conferred on SoS to close events, gatherings and premises.

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## The changing landscape: quick recap (

- 26 March: New regs introduced and 21 March Regs revoked. Expansion of business/premises closures, and new restrictions on movement.
- 4 April – new designation letter.
- 16 April – first review of Regs – continued.
- 22 April – Amendment to movement rules.
- 23 April – further designation letter tweaking rules on FPNs.
- 7 May – review of Regs – continued.
- 13 May – New Regs amended again.

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## New Regulations

- 21 March: *The Health Protection (Coronavirus, Business Closure) (England) Regulations 2020 (SI 2020/327); The Health Protection (Coronavirus, Business Closure) (Wales) Regulations 2020.*
- 26 March: New regs for England, Wales and Scotland
- 21 March Regs revoked, except in relation to any offences committed.



### **The Health Protection (Coronavirus, Restrictions) (England) Regulations 2020;**

The Health Protection (Coronavirus Restrictions) (Wales) Regulations 2020;

**Health Protection (Coronavirus) (Restrictions) (Scotland) Regulations 2020.**

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## Food / drink businesses: scope

1. Restaurants, including restaurants and dining rooms, hotels or members clubs.
2. Cafes, including workplace canteens, but not including
  - (a) cafes or canteens at a hospital, care home or school;
  - (b) canteens at a prison or an establishment intended for use for naval, military or air force purposes or for the purposes of the Department of the Secretary of State responsible for defence;
  - (c) services providing food or drink to the homeless.
3. Bars, including bars in hotels or members' clubs.
4. Public houses.



## Food / drink businesses: closure duty

- By reg 4(1), a person who is responsible for carrying on a business listed in Part 1 must:
  - (a) during the emergency period—
    - (i) close any premises, or part of the premises, in which food or drink are sold for consumption on those premises, and
    - (ii) cease selling food or drink for consumption on its premises; or
  - (b) if the business sells food or drink for consumption off the premises, cease selling food or drink for consumption on its premises during the relevant period.
- Intention is to allow such premises to remain open in so far as food or drink sold only for consumption off the premises.
- Person who is responsible “includes the owner, proprietor and manager of the business” (1(3)(b))



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## Food / drink businesses: take-away/delivery

- If selling food/drink for consumption off premises, can allow public access but not to consume food/drink there.
- However, Government guidance requires Public Health Guidelines to be observed, for example on maintaining 2m min. distances, and cautions against allowing customers to congregate in premises while waiting for food/drink.
- A new GPDR enables restaurants, cafés and pubs which do not currently offer delivery and hot food takeaway to do so: The Town and Country Planning (General Permitted Development) (England) (Amendment) Order 2020.
- However, premises remain subject to Licensing Act 2003 and any licence conditions in force when carrying out licensable activities, i.e need licence to sell alcohol and generally need one to sell hot food/drink between the hours of 23:00 to 5:00.
- Once food/drink no longer sold for consumption on premises, requirement is satisfied. Refurbishments/administrative work probably okay.

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## Businesses in the leisure industry: scope

- 23 categories of business, generally within the leisure sector.
- 21 March Regs had 11 categories
- i.e.
  - 5. *Cinemas.*
  - 6. *Theatres.*
  - 7. *Nightclubs.*
  - 8. *Bingo halls.*
  - 9. *Concert halls.*
- Etc.



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## Businesses in the leisure industry: closure duty

- “A person responsible for carrying on a business or providing a service which is listed in Part 2 of the Schedule must cease to carry on that business or to provide that service during the emergency period”: Regulation 4(4).
- Narrow exemptions in 4(5), i.e theatres can broadcast performances on the internet/radio/TV.
- Requirement here is to cease to carry on the business, not necessarily to close premises/refuse entry.
- If no longer functioning as a theatre, asking employees to do administrative work or refurbishment work probably outwith requirement.

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## Shops and libraries: scope

- Closure duties under reg 5(1) in respect of “A person responsible for carrying on a business, not listed in Part 3 of Schedule 2, of offering goods for sale or for hire in a shop, or providing library services”
- Part 3 of Sch 2 lists essential businesses i.e. food retailers, pharmacies etc.. On May 13 garden centres added.
- Does not include service business, i.e. accountant or law firm.
- Govt probably assumed these businesses would have no problem transitioning to home working and those working would be caught by movement restrictions in Reg 6.

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## Shops and libraries: closure duty

- Subject to the essential businesses, duty is during the emergency period to ...
  - (a) Cease to carry on that business or provide that service [except for deliveries, etc.]
  - (b) close any premises which are not required to carry out its business or provide its services as permitted by sub-paragraph (a);
  - (c) cease to admit any person to its premises who is not required to carry on its business or provide its service as permitted by sub-paragraph (a)".
- Duty appears to be more extensive. Refurbishments probably not possible on literal wording.
- Administrative work on premises probably permissible only if required for delivery services.

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## Holiday accommodation, places of worship and community centres

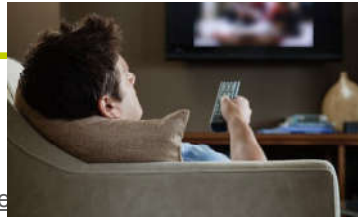
- Subject to exceptions, under reg 5(3) "a person responsible for carrying on a business consisting of the provision of holiday accommodation, whether in a hotel, hostel, bed and breakfast accommodation, holiday apartment, home, cottage or bungalow, campsite, caravan park or boarding house, must cease to carry on that business during the emergency period".
- Exceptions under reg 5(4) include for example accommodation for vulnerable persons and (following amendment) critical workers.
- Also closures forced on Places of Worship and Community Centres in reg 5(5-8).

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## Movement restrictions

- **Reg 6(1)** “During the emergency period, no person may leave [**or be outside of**] the place where they are living without reasonable excuse”
- Amendment on 22 April means it is prohibited to be outside of your home without a reasonable excuse, even if you left your home with one.
- List of reasonable excuses in Reg 6(2) – probably non-exhaustive given wording is “includes...”. **Amended several times** to add new reasonable excuses.
- (b) to take exercise either alone, with other members of their household or with one member of another household;
- **(ba) “to visit a public open space for the purposes of open-air recreation ...”**
- (f) “to [ ] work or to provide voluntary or charitable services, where it is not reasonably possible for that person to work, or to provide those services, from the place where they are living”.
- (h) “to fulfil a legal obligation, including attending court or satisfying bail conditions, or to participate in legal proceedings”.



## Gatherings restrictions

- “During the emergency period, no person may participate in a gathering in a public place of more than two people except”—
- (a) where all the persons in the gathering are members of the same household,
- (b) where the gathering is essential for work purposes,
- (c) to attend a funeral,
- (d) where reasonably necessary—
- ....
- (iv) to participate in legal proceedings or fulfil a legal obligation.







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## Enforcement

- Regs enforced by constables, police community support officers, a person designated by the SoS, or in relation only to the rules on premises/business closures by a person designated by a LA (reg 8(12-13)).
- So LAs may only enforce rules set out in Regs 4-5 on business/premises closures.
- General power to take “such action as is necessary” to enforce requirements in Regs 4, 5 or 7 (reg 8(1)). Nb enforcement of movement restrictions in reg 6 provided for separately.
- No power of entry provided, but may be able to rely on other powers, i.e. s20 of the Health and Safety at Work Act 1974 or s179 of the LA 2003.
- Premises/businesses that remain open when should close can be served with a “prohibition notice” (8(2)). Nb. Prohibition notice not defined.
- Provision under reg 10 for LAs to issue Fixed Penalty Notices. Amount of fines escalates for repeat offending. May be issued by district/county/London borough councils (see 23 April designation).

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## Enforcement of movement/gathering rules

- Powers to enforce regs 6-7 movement/gathering restrictions include directing them including their children to go home or removing them to their home, and reasonable force may be used when removing person to their home (reg 8(3-7)).
- Power to disperse gatherings in breach of reg 7, to direct any person and their child to return home or remove them to their home (8(9)).
- Can use reasonable force to remove a person to the place they are living if in breach of requirements under regs 6 re. movement or 7 re. gatherings (8(4 and 10, 10(A-C))).
- Must be “necessary and proportionate means” (8(8)).

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## Offences Reg 9

- Offence to breach requirements under regs 4-8. Subject to reasonable excuse defence but not for reg 6 movement restrictions (9(1)).
- Offence to obstruct person carrying out function under regs an offence without reasonable excuse (9(2)).
- Offence without reasonable excuse to breach direction or to fail to comply with a reasonable instruction or prohibition notice (9(3)).
- Officers of companies can be held responsible for corporate breaches (9(5)).
- Proceedings are summary and the penalty is an (unlimited) fine.
- Proceedings can be initiated by Crown Prosecution Service or by any person designated by the SoS (reg 11).
- SoS designation 21 March designates LAs as able to bring proceedings for an offence and this designation was carried forward by the 26 March Regs by reg 2(3). Re-affirmed in 4 April designation.

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## Designation

- LAs may designate officers to enforce regs 4-5 including issuing prohibition notices and FPNs.
- The appropriate person/body to grant designation will depend upon the LA's governance arrangements / constitution.
- Designation must be to "a person for the purposes of [Regulation 8 of the Regs]" (Reg 8(12)(a)(iii)).
- This would appear to require a (documented) designation that authorises named persons to enforce specified aspects of the Regs.
- Govt guidance refers to Env H and Trading Standards officers but no restriction on officers to whom can designate in Regs.
- Licensing officers and other LA officers could be designated.

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## Summary

- Local authority officers can be given authority to enforce the premises / business closure provisions, and to issue prohibition notices, or FPNs.
- Local authorities can prosecute the premises / business closure provisions.
- Need designation in place naming specific officers and specifying the aspects of the Regs that they are authorised to enforce.



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## Duration

- Regulations expire in September (at the end of 6 months after they come into force (reg 12)).
- Restrictions/requirements in the Regs apply from when Regs came into force until they are terminated by a direction given under regulation 3.
- Requirement on SoS to review the need for restrictions/requirements every 21 days (reg 3(2)).
- Can terminate one or multiple restrictions/requirements in one direction and/or terminate only in respect of specified businesses or descriptions of businesses (reg 3(4)).



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## Exit Strategy – key points

- On 11 May – Govt publishes Our Plan to Rebuild: The UK Government’s COVID-19 recovery strategy.
- It set out that non-essential retail businesses may be reopened as part of the second phase no earlier than 1 June, where and when it is safe to do so, and if those businesses can meet new working safely during coronavirus guidelines.
- Other businesses including Pubs / restaurants may be opened as part of the third phase no earlier than 4 July.
- Businesses will be expected to carry out a COVID-19 risk assessment and meet new COVID-19 guidelines, which relate to their specific activities.
- Government has established five ministerially-led ‘taskforces’ to coordinate re-opening the various parts of the economy.

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## Guidance and other useful information

- Guidance on the closure of businesses and premises is set out in Government guidance: “Further businesses and premises to close”. Published 23 March updated on 25, 26, 27 March, 9 April, and 1 and 13 May.  
<https://www.gov.uk/government/publications/further-businesses-and-premises-to-close/further-businesses-and-premises-to-close-guidance>
- Separate guidance for accommodation providers was published online on 24 March - <https://www.gov.uk/guidance/covid-19-advice-for-accommodation-providers>
- Guidance on working safely <https://www.gov.uk/guidance/working-safely-during-coronavirus-covid-19>
- IOL - Template prohibition notices  
<https://www.instituteoflicensing.org/news/covid-19-licensing-issues-restrictions-on-movement-and-business-closures-updated/>

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## Licensing Update: Local Authorities

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PATERSON'S LICENSING ACTS

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JOURNAL OF LICENSING

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## Fees, Late Night Levy & Assets of Community Value: Emergency Period Policies and Beyond

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## Annual Licensing Fee

LA2003, s 55(2): Regulations may also require the holder of a premises licence to pay the relevant authority an annual fee.

Licensing Act 2003 (Fees) Regulations 2005 (SI 2005/79)

Licensing Act 2003 (Fees) (Amendment) Regulations 2005 (SI 2005/357)

LA2003, s 55(4): Any fee which is owed to a licensing authority under subsection (2) may be recovered as a debt due to the local authority

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## Annual Licensing Fee / Suspension

LA2003, s55A(1): A licensing authority **must** suspend a premises licence if the holder of the licence has failed to pay the authority an annual fee that has become due under s 55(2)

LA2003, s55A(3): If a licensing authority suspends a premises licence under subsection (1), the authority must give the holder of the licence a notice to that effect, specifying the day the suspension takes effect.

LA2003, s55A(7) A suspension of a premises licence under subsection (1) – (a) takes effect on the day specified in the notice under subsection (3).

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## Ministerial Letter Kit Malthouse MP 8<sup>th</sup> April, 2020

*“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.”*

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## S 182 Guidance

S 182 [15.4]: If a licensing authority suspends a licence or certificate, it must notify the holder in writing and specify the date on which the suspension takes effect; this date must be at least two working days after the authority gives the notice. **It should be noted that this is the minimum period only, and licensing authorities should consider applying longer periods.** The authority may wish to inform the police and other reasonable authorities that the licence or certificate has been suspended.

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## IoL & LGA

- Institute of Licensing, *Protocol for Licence Applications & Hearings under the Licensing Act 2003 During the Covid-19 Pandemic*, (28<sup>th</sup> April, 2020, Update 4)
- Local Government Association, *Approaches to managing licensing and related issues during the Covid-19 pandemic*, (updated 17<sup>th</sup> April, 2020)



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## Highways Act 1980 Tables & Chairs

- HA1980, s 115F ... including conditions requiring the payment to the council of such reasonable charges as they may determine.
- Local Government Association, *Approaches to managing licensing and related issues during the Covid-19 pandemic*, (updated 17<sup>th</sup> April, 2020).



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## Late Night Levy

PRSA 2011, s 127(1): Where a late night levy requirement applies ... the holder of a late night authorisation to which the requirement applies **must** pay a levy to the authority in respect of that authorization for each levy year.



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## Late Night Levy / Suspension

PRSA 2011, s 129(5): Any payment of a late night levy which is owed to a licensing authority under this Chapter may be recovered as a debt due to the authority.

PRSA 2011, s 129 (6): The following provisions of the Licensing Act 2003 apply for the purpose of this Chapter – (a) section 55A (suspension of premises licence for failure to pay annual fee); (b) section 92A (suspension of CPC for failure to pay annual fee), but as if a reference to an annual fee, or to the annual fee owed under s 55(2) of 92(2), were a reference to a late night levy, or to the amount of a late night levy owed under this Chapter.



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## S 182 Guidance

S 182 [1.5]: However, the legislation also supports a number of **other key aims and objectives and purposes**. These are vitally important and should be principal aims for everyone involved in licensing work. They include:

- Recognising the important role which pubs and other licensed premises play in our local communities by minimizing the regulatory burden on business, encouraging innovation and supporting responsible premises;



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## Assets of Community Value

Broadly, Assets of Community Value are buildings or other land nominated by a voluntary or community body with a local connection and listed by the relevant local authority because their use is considered to further the social wellbeing or social interests of the local community.



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## S 182 Guidance

S 182 Guidance [14.63]: It is recommended that statements of licensing policy should provide clear indications of how the licensing authority will secure the proper integration of its licensing policy with local crime prevention, planning, transport, tourism, equality schemes, cultural strategies and any other plans introduced for the management of town centers and the night-time economy. Many of these strategies are not directly related to the promotion of the licensing objectives, but, indirectly, impact upon them. Co-ordination and integration of such policies, strategies and initiatives are therefore important.

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## Coronavirus Act 2020

### Section 82:

- A moratorium on re-entry / forfeiture for non-payment of business tenancy rent.
- Rent: any sum a tenant is liable to pay under a relevant business tenancy.
- Emergency period: 26<sup>th</sup> March, 2020 – 30<sup>th</sup> June, 2020 (subject to extension).

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## IoL Protocol

Para 64: 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.



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## NEXSTART

NEXSTART: National Exit Strategy Advice and Response Team  
UK Hospitality \* Institute of Licensing \* National Police Chiefs Council \*  
Institute of Acoustics \* Night Time Industries Association \* Local  
Government Association \* Association of Conservative Clubs \* Committee  
of Registered Clubs Associations (CORCA) \* British Institute of  
Innkeeping \* British Beer and Pub Association \* CAMRA (Campaign for  
Real Ale) \* Music Venue Trust \* UK Music \* Association of Independent  
Festivals \* National Outdoor Events Association \* Greater London Authority  
\* BEIS Expert Licensing Group \* Culture Central West Midlands \* Best Bar  
None \* The Production Services Association \* Society of Independent  
Brewers (SIBA) \* National Association of Licensing Enforcement Officers  
(NALEO) \* Association of Leading Visitors' Attractions \*The Tourism  
Alliance



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## Local Authority Interim Annual Fee Protocol

Define the emergency period (subject to extension) vis-à-vis annual licensing fees.

Issue notice of suspension to take effect six weeks after the end of the emergency period.

In the event of extension to the emergency period reserve position to issue fresh notice.

Reminder that monies remain due as civil debt.

### **Review EXIT Policy**

Consider a review of policy to incorporate EXIT planning (relaxation of conditions, CCTV, search, deliveries, outdoor space, cumulative impact etc.)

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## **“OVERCOMING LICENSING CHALLENGES: INSTITUTE OF LICENSING PROTOCOL”**

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## Spring 2020

Food & drink industry

### Thousands of UK pubs will go under without bailout, industry warns

ftb follows Michael Love saying pubs will be among last businesses to exit lockdown

- Coronavirus - latest updates
- See all our coronavirus coverage



▲ A boarded up pub in the City district of London Photograph: Bloomberg/Bloomberg via Getty Images

Travel & leisure

### Can the UK's night-time economy survive the coronavirus pandemic?

With crowds the new enemy, it's feared thousands of venues have closed their doors for good

- See all our coronavirus coverage



▲ Fabric nightclub in London in 2016. Such venues are often to imagine amid - or even after - the coronavirus pandemic. Photograph: iMany Stock Photo

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## Spring 2020



The Globe Theatre says it "contributes so much to the UK's cultural life"

### Shakespeare's Globe theatre calls for urgent funds to avoid insolvency

19 Hours ago | Entertainment & Arts



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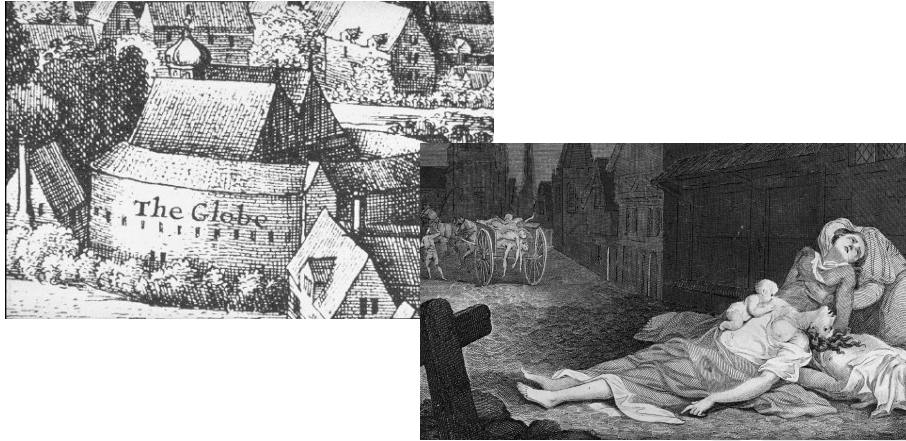
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## Summer 1606

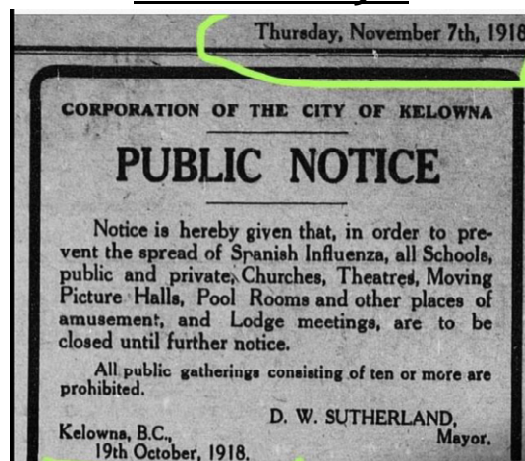


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## November 1918



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## APPROACH TO THE CRISIS



*“Quiet, calm, deliberation  
disentangles every knot”*



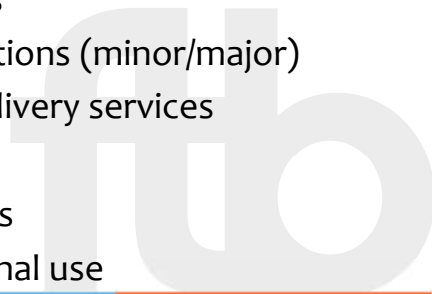
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## LICENSING OPPORTUNITIES/NEEDS

- New applications for future developments
- Variations of existing licences:
  - Longer operating hours
  - Refurbishments – variations (minor/major)
  - Food take-away and delivery services
  - New DPS
  - Relaxation of conditions
  - Tables and chairs/external use



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## LICENSING OPPORTUNITIES/NEEDS

- Shadow licences for landlords
- Transfers to new operators
- Interim Authority Notices – must apply within 28 days to save/resurrect lapsed premises licence following insolvency
- Temporary Event Notices
- Personal Licence applications

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## PUBLIC HEALTH



*Irish Times, April 2020*

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## MAIN CHALLENGES FOR LOCAL AUTHORITIES

- Pre-application consultation with officers
- Processing Applications
- Consultation period/Representations
- Compromise
- Remote Hearings/Adjournments
- Appeals
- Enforcement
- Fees, late night-levy etc (see LC)

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## INSTITUTE OF LICENSING PROTOCOL



- Latest Update 4: 28 April 2020 (with Remote Hearings Annex)

<https://www.instituteoflicensing.org/news/covid-19-licensing-issues-iol-protocol-updated-28-april-2020/>

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## INSTITUTE OF LICENSING PROTOCOL

*“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, proactivity 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.”*

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## INSTITUTE OF LICENSING PROTOCOL

*“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...”*

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## INSTITUTE OF LICENSING PROTOCOL

*“... 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.”*

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## INSTITUTE OF LICENSING PROTOCOL

*“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...”*

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## INSTITUTE OF LICENSING PROTOCOL

*“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.”*

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## INSTITUTE OF LICENSING PROTOCOL

*“All these considerations require the licensing processes to be up and running wherever possible.”*

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## INSTITUTE OF LICENSING PROTOCOL

*“This Protocol is designed to assist licensing authorities in complying with their obligations and duties under the Licensing Act 2003 during this emergency period.”*

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## PROCESSING APPLICATIONS

- Continue pre-application officer advice service
- Licence applications must still be processed & determined
- Requires “flexibility and creativity” to ensure “effective and fair”.
- Promote online applications/fee payment as default.

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## ADVERTISING/CONSULTATION/REPS

- Statutory advertising requirements remain (e.g. Blue Notice and classified ad)
- Online/Emailed newsletters probably permissible (“or other similar document”) – reg.25 Licensing Act 2003 (Premises Licences) Regs 2005
- Email applications to interested parties



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## ADVERTISING/CONSULTATION/REPS

- Upload full application/plans to Council website.
- Mail-forwarding processes
- What date posted representation deemed served?



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## ADVERTISING/CONSULTATION/REPS

- High Court likely to be sympathetic to defects where “substantial compliance” and no “significant prejudice”, e.g. :
  - Jeyanthan [1999] EWCA Civ 1465
  - R(D&D Bar Services Ltd) v LB of Redbridge [2014] EWHC 344, i.e. “Funky Mojoe”
  - R (Akin (t/a Efes Snooker Club) v Stratford Magistrates’ Court [2014] EWHC 4633).

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## COMPROMISES

- Compromises – to be actively explored and encouraged if objections.
- “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.”

Taylor v Manchester City Council [2012] EWHC 3467  
(at 82, per Hickinbottom J)

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## ADJOURNMENTS

- Do not routinely adjourn all hearings
- Consider impact on applicants – e.g. operators or RAs/residents applying for review.
- Summary Reviews/Closure Orders/IWCO – mandatory hearing within 28-days
- Short adjournments for “*specified period*” if “*necessary in the public interest*” (reg.11-13 Hearing Regs)

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## REMOTE HEARINGS

- **Remote licensing hearings** – default position.
- E.g. Skype for Business, MS Teams, Zoom, Google Meet, etc...
- See Annex 1 of Protocol: “*Mechanics & Procedures of Remote Video-Hearings*”
- Video-conferencing far superior to telephone dial-ins

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## REMOTE HEARINGS: LAW

- Coronavirus Act 2020 (s.78)
- English Regulations (from 22.4.20):
  - The Local Authorities and Police and Crime Panels (Coronavirus) (Flexibility of Local Authority and Police and Crime Panel Meetings) (England and Wales) Regulations 2020

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## REMOTE HEARINGS: LAW

- Welsh Regulations (from 22.4.20):
  - The Local Authorities (Coronavirus) (Meetings) (Wales) Regulations 2020
- Even greater flexibility provided by Licensing Act 2003 (Hearings) Regulations 2005 – free-standing provisions

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## APPEALS

- Licensing Appeals to the magistrates' court subject to decisions by HMCTS and local courts.
- Constantly updated list of Courts open for business: <https://www.gov.uk/guidance/hmcts-daily-operational-summary-on-courts-and-tribunalsduring-coronavirus-covid-19-outbreak>
- Unlikely licensing appeals prioritised – unless pressure applied

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## BREACHES/ENFORCEMENT

- LA's to take a considered and pragmatic approach to **breaches** of licence conditions and procedural defects caused by the pandemic.
- **Ministerial** advice letter from Kit Malthouse MP (8.4.20) to similar effect.

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## FEES & LATE-NIGHT LEVY

- Licence **fees** and **late night levy**, Kit Malthouse MP (Ministerial letter, 8.4.20):

*“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 COVID19.”*

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## SEE ALSO

- Ministerial Letter to Chairs of Licensing Committees (Kit Malthouse MP, 8.4.20):

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

- LGA Advice (revised 17.4.20):

<https://www.local.gov.uk/approaches-managing-licensing-and-related-issues-during-covid-19-pandemic>

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## SUMMARY REVIEW AND CLOSURE ORDER POWERS

**James Rankin**

*Barrister*

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## CORONA VIRUS AND THE LICENSING OBJECTIVES

- Public safety
- Public nuisance



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## Public Safety

- **Does not** include “*public health issues*” See paragraph 2.7 of the s.182 Guidance
- Does include immediate harms resulting from activities being carried on at the premises.
- Unarguable that the immediate contraction of a potentially fatal illness is an immediate harm



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## Public Nuisance

- “*public nuisance*” includes, historically, the risk of infections spreading as a result of activities carried out on land.
- In addition, causing a public nuisance is a serious criminal offence under the common law punishable with a maximum of life imprisonment (see [R v Rimmington & Goldstein](#) [2005] UKHL 63).
- Therefore both the prevention of public nuisance and crime and disorder licensing objectives are engaged.



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## Standard Review

- As is well known this would enable any person or responsible authority to launch a “**standard**” **review** of the premises licence pursuant to s.51-53 of the Licensing Act 2003.
- The Council would be able to take any steps that promoted the licensing objectives including revocation of the premises licence or a suspension for up to 3 months.
- But timing is of the essence: 28 day consultation period, requirement for a hearing within 20 working days thereafter, and that any decision taken at a review hearing would not have effect pending the determination of any appeal to the magistrates’ court.

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## Summary Review

- SR s.53A-53D of the Licensing Act 2003, can achieve quick results
- Can only be launched by the police if a senior officer (of Superintendent rank or above) has certified that, in his opinion, the premises is “associated” with serious crime or serious disorder or both.
- “Serious crime” is defined by reference to s.81 of the Regulation of Investigatory Powers Act 2000. It includes:

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## Serious Crime

An offence for which an adult could reasonably be expected to be sentenced to imprisonment for a period of 3 years or more. (In my view an operator who knowingly ignored a government instruction during a national emergency and in so doing deliberately exposed customers and the wider community to a serious risk of Covid-19 infection could be expected to receive a deterrent sentence in excess of 3 years for the offence of causing a public nuisance).

Or,

Conduct resulting in substantial financial gain. (this condition might also be satisfied if sales are being made).

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- SR review criteria likely to be satisfied so the police, if so minded, could apply for a Summary Review of the premises licence.
- The Council may not look behind the police officer's certificate (Lalli [2015] EWHC 14).

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## Powers on summary review

- LA has the power to suspend the licence on receipt of the application as an interim step until the full review hearing is heard within 28 days of the application.
- Interim suspension could be imposed following a phone call or email exchange between members of the licensing sub-committee and has immediate effect.
- There is no legal requirement for the licence holder to be given the opportunity (let alone attend a hearing) prior to the Members making their first interim decision to suspend the licence (among other steps).

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## Full review following summary review

- At the full review hearing the Council may revoke or suspend the licence (for up to 3 months). But, in addition, the Council also has the (new) power to suspend the licence pending any appeal of that final decision made at the full review hearing.
- The Summary Review route is most likely route (in addition to the new closure powers in the Coronavirus Act 2020)

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## The Pendulum PH v WMP

- Wolverhampton remises trade in breach of lockdown regs. Police issue prohibition notice
- Summary review proceedings
- Licence suspended as I/S
- Licensee challenges summary review proceedings on grounds of irrationality-3 years??
- Full summary review 20/5/20
- <https://wolverhampton.moderngov.co.uk/ieListDocuments.aspx?CId=182&MId=11913>

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## Closure Orders

- Closure power exists under Chapter 3 of the Anti-Social Behaviour, Crime and Policing Act 2014 .
- This would enable the local authority or police to apply for a **Closure Notice** on the basis that the use of the site is likely to result in nuisance to the public.
- the serious risk of a Covid-19 outbreak is likely to be adjudged as a nuisance.
- Notice has the effect of closing the premises by prohibiting people to attend the premises for up to 48 hours (if issued by the Council's Chief Executive or a senior police officer of Superintendent rank or above, or 24 hours otherwise).

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- The effect of the Closure Notice can be extended to 3 months on application to the magistrates' court for a **Closure Order**.
- The relevant test for the Court before making an Order includes consideration of whether criminal behaviour is likely to occur (e.g. the offence of causing a public nuisance), or, whether a serious nuisance to the public is likely to occur if the Order is not made
- Process could be used to close the premises immediately

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## Civil Injunction

Given:

- serious risk to public health
- likely public nuisance
- likelihood of criminal offences being committed if the operators remained open in defiance of HMG's instruction

The High Court would readily grant an emergency injunction with a penal sanction prohibiting the premises from opening.

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## FTB Licensing Update Webinar for Local Authorities

19 May 2020



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