EXPLANATORY MEMORANDUM TO

THE BUSINESS AND PLANNING ACT 2020 (PAVEMENT LICENCES) (CORONAVIRUS) (AMENDMENT) REGULATIONS 2021

2021 No. [XXXX]

1. Introduction

1.1 This explanatory memorandum has been prepared by the Ministry of Housing, Communities and Local Government and is laid before Parliament by Command of Her Majesty.

2. Purpose of the instrument

2.1 In response to the coronavirus pandemic, sections 1-10 of the Business and Planning Act 2020 ("the 2020 Act") made temporary provision for a quicker and cheaper process to allow businesses selling food or drink to obtain authorisation from the local authority for the placement of furniture such as tables and chairs on the highway adjacent to their premises (a "pavement licence"). This temporary provision was to expire on 30 September 2021 (with no pavement licence able to extend beyond that date). The 2020 Act included an enabling power whereby the pavement licence provisions can be extended through the Business and Planning Act if the Secretary of State considers it reasonable to do so to mitigate an effect of coronavirus. The purpose of this instrument is to use this enabling power to extend the period during which this temporary provision applies, until 30 September 2022.

3. Matters of special interest to Parliament

Matters of special interest to the Joint Committee on Statutory Instruments

3.1 None.

Matters relevant to Standing Orders Nos. 83P and 83T of the Standing Orders of the House of Commons relating to Public Business (English Votes for English Laws)

3.2 This entire instrument applies to England only, because pavement licences may only be granted by an English local authority in respect of use or proposed use of premises in England (see sections 1(1) and 9(1) of the 2020 Act).

3.3 The instrument does not have any minor or consequential effects outside England.

3.4 In the view of the Ministry, for the purposes of Standing Order No. 83P of the Standing Orders of the House of Commons relating to Public Business, the subject-matter of this entire instrument would be within the devolved legislative competence of the Northern Ireland Assembly if equivalent provision in relation to Northern Ireland were included in an Act of the Northern Ireland Assembly as a transferred matter; and the Scottish Parliament if equivalent provision in relation to Scotland were included in an Act of the Scottish Parliament; and the Welsh Parliament if equivalent provision in relation to Wales were included in an Act of the Welsh Parliament.

3.5 The Ministry has reached this view because the primary purposes of this instrument relate to planning and highways, which are within the devolved legislative

competence of each of the three devolved legislatures. The primary purposes of the subject matter of the instrument are not within Schedule 5 to the Scotland Act 1998 and are not otherwise outside the legislative competence of the Scottish Parliament (see section 29 of that Act); the primary purposes of the subject matter of the instrument are not within Schedule 2 or 3 to the Northern Ireland Act 1998 and are not otherwise outside the legislative competence of the Northern Ireland Assembly (see section 6 of that Act); the primary purposes of the subject matter of the instrument are not within Schedule 7A to the Government of Wales Act 2006 (the planning which is a primary purpose of the subject matter of this instrument is not planning in relation to any of the matters listed at paragraph 184(a)-(c) of Schedule 7A to that Act) and are not otherwise outside the legislative competence of the Welsh Parliament (see section 108A of that Act).

4. Extent and Territorial Application

4.1 The territorial extent of this instrument is England and Wales.

4.2 The territorial application of this instrument is set out in Section 3 under "Matters relevant to Standing Orders Nos. 83P and 83T of the Standing Orders of the House of Commons relating to Public Business (English Votes for English Laws)".

5. European Convention on Human Rights

5.1 The Minister of State for Housing has made the following statement regarding Human Rights:

"In my view the provisions of the Business and Planning Act 2020 (Pavement Licences) (Coronavirus) (Amendment) Regulations 2021 are compatible with the Convention rights."

6. Legislative Context

6.1 The temporary provision for pavement licences in the 2020 Act expires on 30 September 2021 (see section 10(1)). Similarly, no pavement licence granted or deemed to be granted under the 2020 Act may extend beyond 30 September 2021. This is achieved by providing that (a) where a local authority grants a pavement licence, it may specify an expiry date, which may not be later than the date specified in section 4(2)(b); (b) if a pavement licence granted by a local authority does not specify an expiry date, the licence expires on the date specified in section 4(1)(b); and (c) if a pavement licence is deemed to be granted under section 3(9) (where the local authority has failed to determine an application), that pavement licence expires after a year, or if earlier on the date specified in section 4(4). In all cases, the date specified by the 2020 Act is 30 September 2021.

6.2 Section 10(2) of the 2020 Act provides that the Secretary of State may by regulations substitute the dates in sections 4(1)(b), (2)(b), (4) and 10(1) with a later date, if they consider it reasonable to do so to mitigate an effect of coronavirus.

6.3 This instrument substitutes the date 30 September 2021 in each of those four provisions with 30 September 2022. The Secretary of State considers that it is reasonable to do so to mitigate one or more effects of coronavirus, as explained further in section 7 below.

6.4 This instrument is the first use of the power in section 10(2), although S.I. 2020/1529 previously used a similar power in respect of other temporary provision made by the 2020 Act.

6.5 The extension of the dates in sections 4(1)(b), 4(2)(b) and 4(4) only applies to a pavement licence for which application is made after the date this instrument comes into force (see regulation 2). *Inter alia*, this avoids the potential for the amendments to sections 4(1)(b) and (4) having or purporting to have the effect of extending any pavement licence already granted or deemed granted prior to the coming into force of these Regulations – though a holder of such a pavement licence may be able to apply for a further pavement licence.

6.6 The Ministry of Housing, Communities and Local Government understands that the Home Office has prepared an instrument for laying, at or around the same time as this instrument is laid, in exercise of powers under s.11(14) of the 2020 Act. Similarly to this instrument, the Home Office instrument will extend the duration of temporary provision made by the 2020 Act to 30 September 2022 (in that case, amendments to the Licensing Act 2003 regime which include providing automatic extensions to premises licences that only permit on-sales of alcohol to allow off-sales). The two instruments are legally free-standing and not interdependent. Nonetheless this is mentioned in this explanatory memorandum as, in practice, it is envisaged that businesses may seek to take advantage of both extensions.

7. Policy background

What is being done and why?

7.1 The ability to obtain a licence to place furniture such as tables and chairs on the highway is a permanent measure set out in Part 7A of the Highways Act 1980. The process set out in the Highways Act involves a minimum consultation period of 28 days and does not specify an amount of time for local authorities to reach a decision on applications; on average this approval time was 42 days (based on a sample of local authorities researched). There is no statutory cap on fees when making an application for a licence under the Highways Act.

7.2 With effect from 22 July 2020, the Government introduced temporary pavement licence provisions in the Business and Planning Act 2020 in order to support the hospitality sector to reopen safely, and to support them through the economic recovery when the coronavirus lockdown restrictions were eased last summer. The temporary provisions enable a business operating from premises whose use includes use as a public house, wine bar or other drinking establishment, or other use for the sale of food or drink for consumption on or off the premises, to place removable furniture such as stalls, tables and chairs on the highway outside their premises.

7.3 The temporary pavement licence provisions were introduced in the Business and Planning Act 2020 to create a temporary faster, cheaper, and more streamlined consent regime in England for the placement of removable furniture including tables and chairs on the pavement outside premises such as cafes, bars, restaurants and pubs. Under the temporary provisions the process for applying for a licence is capped at £100. Applications have a 5-working day consultation period, and then a further 5-working day determination period during which the local authority is expected to either grant a licence or reject the application. A licence is automatically deemed granted if the authority does not make a decision on the application before the end of

the determination period. These provisions were introduced as a temporary measure in response to coronavirus, and are due to expire on 30 September 2021.

7.4 The Business and Planning Act 2020 included an enabling power whereby the pavement licence provisions can be extended through the Business and Planning Act if the Secretary of State considers it reasonable to do so to mitigate an effect of coronavirus. Government is using this enabling power to extend the temporary pavement licence provisions for 12 months, which will change the expiry date of the provisions from 30 September 2021 to 30 September 2022. The legislation does not automatically extend licences because existing licences were granted on the basis that they would be in place for a specific period until 30 September 2021 or before, therefore any period beyond this will change the grounds on which the licence that was granted. As a result, businesses will need to apply for a new licence if they wish to have one in place during the extended period so that the application can be determined based on the grounds that is being applied for.

7.5 We don't know whether there will be a need for social distancing during the period October 2021- September 2022 (or the need may be reduced). The roadmap out of lockdown sets out that the government hopes to be in a position to remove all legal limits on social contact, as part of step 4 which will be no earlier than the 21 June. A final decision will only be made once the government is sure that it is safe to do so based on four tests:

- the vaccine deployment programme continues successfully
- evidence shows vaccines are sufficiently effective in reducing hospitalisations and deaths in those vaccinated
- infection rates do not risk a surge in hospitalisations which would put unsustainable pressure on the NHS
- our assessment of the risks is not fundamentally changed by new Variants of Concern

Along with this the Government will be completing a social distancing review ahead of step 4.

7.6 As a result, there is considerable uncertainty about whether any future restrictions may be needed and how consumer demand may respond to any changes in practice. However, businesses need certainty to help them recover economically. This extension is considered appropriate as it will provide businesses with certainty and support to help them to plan for the extended period.

7.7 The evidence from trade organisations and other sources has indicated significant financial losses and wider economic pressures faced by the hospitality industry. The British Beer and Pub Association has reported that 2000 pubs are estimated to be closed down forever and £8.2 billion in trade value wiped out from the sector in beer sales[1]. The Office of National Statistics reported on 22 April 2021 that the accommodation and food service activities industry had the highest percentage of businesses experiencing a decrease in turnover, compared with normal expectations for this time of year, at 64%[2]. Between 6 April and 18 April 2021, 10.1% of

[1] The British Beer and Pub Association. One year on. https://beerandpub.com/2021/03/15/one-year-on-2000-pubs-lost-forever-2-1-billion-pints-in-beer-sales-lost-and-8-2-billion-in-trade-wiped-out/

[2] Business insights and impact on the UK economy 22nd April: Financial performance. Available at: https://www.ons.gov.uk/businessindustryandtrade/business/businessservices/bulletins/businessinsightsandimpactontheukeconomy/22april2021

hospitality businesses reported no cash reserves. A further 6.9% of such businesses reported having less than 1 month of cash reserves, and 29.7% reported having 1 to 3 months of cash reserves. Only 20.1% reported having more than 6 months of cash reserves[3].

7.8 Initial estimates from the OpenTable restaurant industry dashboard[4] indicated that seated diner reservations at UK restaurants for Saturday 17 April 2021 were at 60% of the level seen on the equivalent Saturday in 2019.

7.9 These figures indicate a need to provide support to hospitality businesses, to assist them in recovering from losses and reduced turnover incurred as a result of coronavirus. The temporary pavement licence provisions form part of a series of measures implemented to support hospitality businesses.

7.10 On 8 March 2021, the Secretary of State for Housing, Communities and Local Government laid a Written Ministerial Statement before Parliament setting out the Government's expectations regarding the support that should continue to be offered to hospitality businesses, so that they can reopen safely. As part of a package of measures to support hospitality businesses, the WMS announced the Government's intention to extend the temporary pavement licence provisions for a further 12 months, subject to Parliamentary approval. Other measures that were referenced include new temporary permitted development rights to allow the use of land to erect temporary moveable structures such as marquees, as well as temporary permitted development rights to support food businesses to serve takeaway food when they were otherwise closed due to coronavirus restrictions.

8. European Union (Withdrawal) Act/Withdrawal of the United Kingdom from the European Union

8.1 This instrument does not relate to withdrawal from the European Union / trigger the statement requirements under the European Union (Withdrawal) Act

9. Consolidation

9.1 Not applicable.

10. Consultation outcome

10.1 No formal consultation has taken place on this measure. The Local Government Association and a number of local authorities were informally consulted to understand the operational implications that would arise from the temporary provisions remaining in place for a further 12 months. The Government has also engaged with Guide Dogs UK and Royal National Institute of Blind People.

11. Guidance

11.1 Following the introduction of the Business and Planning Act in 2020, the Secretary of State published guidance to accompany the temporary pavement license provisions. This guidance is available here.

[3] Business insights and impact on the UK economy dataset, BICS wave 28 (ONS). Available at: https://www.ons.gov.uk/economy/economicoutputandproductivity/output/datasets/businessinsightsandimpactontheukeconomy

[4] OpenTable State of the Restaurant Industry dashboard (OpenTable). Available at: https://www.opentable.com/state-of-industry

11.2 As part of the series of measures developed to support hospitality businesses, this guidance will be updated to support local authorities in continuing to implement the temporary provisions for the extended period. Any updated guidance will be published online, subject to this instrument obtaining parliamentary approval and being made.

12. Impact

12.1 The impact on business, charities or voluntary bodies is that there will be some positive impact on business, as continuing with the temporary provisions in place will allow hospitality businesses to continue to obtain pavement licences through the quicker, and cheaper route for a further 12 months.

12.2 The impact on the public sector is that local authorities with responsibility for licensing will continue to be responsible for determining applications under the temporary provisions. This will be influenced by the number of applications an authority will need to deal with.

12.3 A full Impact Assessment has not been prepared for this instrument because the costs savings from the simpler and faster route to obtain permission are small. The instrument provides for the continued operation of the temporary pavement licence provisions that have been the existing regulatory standard for the previous year.

13. Regulating small business

13.1 The legislation applies to activities that are undertaken by small businesses.

13.2 No specific action is proposed to minimise regulatory burdens on small businesses, as this instrument seeks to assist them and reduce the regulatory burden on them by making it quicker and cheaper to obtain authorisation to place furniture such as tables and chairs on the highway.

14. Monitoring & review

14.1 The impact of the instrument will be kept under review.

14.2 The regulation does not include a statutory review clause as the instrument is temporary.

15. Contact

15.1 Catherine Holton at the Ministry of Housing, Communities and Local Government can be contacted at catherine.holton@communities.gov.uk with any queries regarding the instrument.

15.2 Branwen Evans, Deputy Director for Planning Policy & Reform at the Ministry of Housing, Communities and Local Government can confirm that this Explanatory Memorandum meets the required standard.

15.3 Christopher Pincher, Minister of State at the Ministry of Housing, Communities and Local Government can confirm that this Explanatory Memorandum meets the required standard.