EXPLANATORY MEMORANDUM TO

THE BUSINESS AND PLANNING ACT 2020 (PAVEMENT LICENCES) (CORONAVIRUS) (AMENDMENT) REGULATIONS 2023

2023 No. [XXXX]

1. Introduction

1.1 This explanatory memorandum has been prepared by the Department for Levelling Up, Housing and Communities and is laid before Parliament by Command of His 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 originally 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. This enabling power has been used twice previously in the Business and Planning Act 2020 (Pavement Licences) (Coronavirus) (Amendment) Regulations 2021 S.I. 2021/866 ("the 2021 Regulations") to extend the period during which this temporary provision applies, until 30 September 2022, and the Business and Planning Act 2020 (Pavement Licences) (Coronavirus) (Amendment) Regulations 2022 S.I. 2022/862 ("the 2022 Regulations") to extend the period until 30 September 2023. The purpose of this instrument is to use this enabling power to further extend the period during which this temporary provision applies, until 30 September 2024.

3. Matters of special interest to Parliament

Matters of special interest to the Joint Committee on Statutory Instruments

3.1 None.

4. Extent and Territorial Application

4.1 The extent of this instrument (that is, the jurisdiction(s) which the instrument forms part of the law of) is England and Wales.

4.2 The territorial application of this instrument (that is, where the instrument produces a practical effect) is England.

5. European Convention on Human Rights

5.1 The Minister of State 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 2023 are compatible with the Convention rights."

6. Legislative Context

6.1 The temporary provision for pavement licences in the 2020 Act, as amended by the 2022 Regulations, expires on 30 September 2023 (see section 10(1)). Similarly, no pavement licence granted or deemed to be granted under the 2020 Act may extend beyond 30 September 2023. 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 after a year, or if earlier on the date specified in section 4(4). In all cases, the date specified by the 2020 Act, as amended by the 2022 Regulations, is 30 September 2023.

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 2023 in each of those four provisions with 30 September 2024. 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 third use of the power in section 10(2), which the 2021 Regulations used for the first time in order to extend the period during which this temporary provision applies, until 30 September 2022, and which was subsequently used a second time for the 2022 Regulations to extend the period until 30 September 2023.

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 on or after the date this instrument comes into force (see regulation 2). *Inter alia*, this avoids the potential for 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.

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 in summer 2020, and again in 2021. 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 7 day consultation period, and then a further 7 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 2023.

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 a further 12 months, which will change the expiry date of the provisions from 30 September 2023 to 30 September 2024. 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 2023 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 Businesses need certainty to help them recover economically from the coronavirus pandemic. Evidence from trade organisations and other sources has indicated significant financial losses and wider economic pressures faced by the hospitality industry. The Beer and Pub Association reported that consumer confidence is up from 2021, with circa 70% of people feeling confident to visit pubs, bars and restaurants[1] which evidences that there is still support needed to bring this up further and ensure a strong and sustainable recovery. According to UK Hospitality, an estimated £114.8bn of expected sales were lost between March 2020 and December 2021[2] and there was a net decrease in licensed premises of 2,230 between June and September 2022[3]. We continue to believe that expanded capacity allowed by these licences will support both consumer confidence through dining in outdoor spaces, and economic recovery from the pandemic through increased capacity. We are also seeking to make permanent the measure via the Levelling Up and Regeneration Bill which is before Parliament, and this extension will ensure the continuity of service needed to continue to support the sector in its recovery from the pandemic.

[1] The British Beer and Pub Association https://beerandpub.com/2022/02/21/bbpa-comment-on-lifting-of-all-legal-covid-restrictions/
[2] UKHospitality & CGA Future Shock Issue 10 – Hospitality in 2022, page 5, https://view.publitas.com/ukh/future-shock-10/page/5
[3] UKHospitality & CGA Future Shock Report - Issue Twelve - Shaping the workforce of the future, https://www.ukhospitality.org.uk/page/FutureShock-IssueTwelve

8. European Union Withdrawal and Future Relationship

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, networks representing disabled people and hospitality sector leads were informally consulted to understand the operational implications of a further 12-month extension.

11. Guidance

11.1 The Secretary of State has published guidance to accompany these provisions which can be found online here.

12. Impact

12.1 The impact on business, charities or voluntary bodies is that the measure will continue to support the sector in the economic recovery from the coronavirus pandemic through the opportunity to gain pavement licences quicker and cheaper.

12.2 The impact on the public sector is that local authorities will continue to have a responsibility to determine applications for the set period.

12.3 A full Impact Assessment has not been prepared because the costs saving from the simpler and faster route to obtain permission are small.

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 Joseph Lowes at the Department for Levelling Up, Housing and Communities can be contacted at joseph.lowes@levellingup.gov.uk for any queries regarding the instrument.

15.2 Erin Cowburn, Deputy Director for Planning Policy at the Department for Levelling Up, Housing and Communities can confirm that this Explanatory Memorandum meets the required standard.

15.3 Dehenna Davison, Parliamentary Under Secretary of State at the Department for Levelling Up, Housing and Communities can confirm that this Explanatory Memorandum meets the required standard.