

Licensing in the wake of the 'Coronavirus, Business Closure' regulations

An overview of the pre-existing regime in place under the 2003 Licensing Act

The 2003 Licensing Act radically changed the premises licensing regime in England and Wales making Local Authorities responsible for the issuing, enforcement and review of premises licences. Local Authorities must formulate licensing policy in their local area, balancing the competing interests of commercial entities with the social interests of residents and giving effect to the four licensing objectives set out in the act, namely:

- the prevention of crime and disorder;
- public health;
- the prevention of public nuisance; and
- the protection of children from harm.

A premises-holder undertaking licensable activity under this regime is required to have a premises licence in place as well as a designated premises supervisor ('the DPS') who is ultimately responsible for ensuring that the premises operated in accordance with the licence and licensing objectives.

Under the enforcement and review function, the Local Authority has the power and duty to review the licence of any premises where the licence-holder is deemed to be breaching the specific conditions of the licence or otherwise not adhering to any of the four licensing objectives cited above. A licence review can be initiated by the Local Authority of its own accord or at the request of a responsible authority or interested party. A 'responsible authority' can include a wide range of bodies, including the police, environmental health, fire service, or child protection authorities. An 'interested person' can be any member of the public with a relevant concern about the activity of licensed premises.

Following licensing reviews, a variety of sanctions are available to the local authority, including:

- modified licensing conditions, such as reducing the operating time of the licensable activity;
- the removal of a licensing activity, such as the right to sell alcohol;
- the removal of the DPS;
- suspending the licence for up to three months; or
- revoking the licence.

Premises licence reviews will also be triggered where premises have been instructed to close for a breach of licensing law.

The Health Protection (Coronavirus, Business Closure) (England) Regulations 2020

Under the Health Protection (Coronavirus, Business Closure) (England) Regulations 2020 ['the 2020 regulations'], regulation 2(1), all premises listed in Part 1 of the schedule are prohibited from selling food or drink on the premises from the close of business on 23 March 2020. This prohibition was initially intended to last for 3 weeks but is subject to review by the Secretary of State every 28 days and whenever otherwise necessary. The 2020 regulations are set to expire after six months from the date they came into force.

Under regulation 3(1), any person contravening regulation 2(1), commits an offence. This is punishable on summary conviction with a fine (regulation 3(3)). Both the business and any responsible officer of the business are liable to prosecution under the regulations.

Under regulation 4, a person designated by the Secretary of State may take any action necessary to enforce the closure of premises or the restriction of any prohibited activity. All police constables and any officers appointed by local authorities are authorised to undertake this action and to bring proceedings for any offence contrary to the regulations.

The licensing impact of any breach of the 2020 regulations

A conviction under the 2020 regulations is clearly a serious matter, but the long-term impact on any individual or business could undoubtedly be far worse. Any enforced closure of a licensed premises triggers a review of the premises licence with the potential for further sanctions. An enforced closure or conviction under the 2020 regulations would in all likelihood lead to a review of the premises licence and the actions of the DPS on the grounds of the public health and prevention of crime and disorder licensing objectives.

Following a licensing review, any of the sanctions cited above would be available to the Local Authority. While any sanction would need to be proportionate to and commensurate with the severity of the breach, it is likely to have a long-term commercial impact on the business. It may also have adverse effects on business owners looking to renew or change their licensing conditions or take on new premises and on the DPS if they are removed and seeking future employment elsewhere, not to mention the impact any proceedings and/or sanctions could have on public opinion.

The 2020 regulations have yet to be tested in the courts, so there is no indication as to what action Local Authorities may take if any offence is proven. However, it is important to note that even if legal proceedings are not pursued, such as where premises are simply forced to close or cease any prohibited activity, these premises and officers still expose themselves to the possibility of a licence review. It is not a prerequisite of the review process that a criminal offence has been committed, and as mentioned above, any interested party can trigger a review, including a concerned member of the public. The consequences could prove dramatic and long-lasting.

Tom Cockcroft & Stephen Garbett