

## EXECUTIVE 20<sup>TH</sup> APRIL 2021

### AMENDMENT OF PUBLIC SPACE PROTECTION ORDER NO. 1 OF 2019 – ALCOHOL CONTROL

**EXECUTIVE MEMBER:** Councillor Andy Pratt, Portfolio Holder for Environment, Place and Inclusive Communities.  
**LEAD OFFICER:** Pat Graham, Chief Executive.  
**REPORT AUTHOR:** Clinton Boyce, Solicitor.

#### **SUMMARY:**

This report proposes a minor amendment to the Council’s Public Space Protection Order No. 1 of 2019 – Alcohol Control (‘the Order’) regulating the consumption of alcohol to enable ‘pavement licences’ under the Business and Planning Act 2020 to be granted in areas the subject of the Order.

#### **RECOMMENDATION:**

That the Public Space Protection Order No. 1 of 2019 – Alcohol Control be amended to include as an exemption from the controls created by that Order those areas which are granted a pavement licence in accordance with the Business and Planning Act 2020 so that paragraph 3(b) of the Order reads: “Exemptions shall apply in cases where, for the avoidance of doubt, the consumption of alcohol is on premises or public space licensed under the Licensing Act 2003 or under part 1 of the Business and Planning Act 2020 and for the hours so licensed”.

## **1. INTRODUCTION**

- 1.1 Emerging from lockdown pubs, cafes and others in the hospitality industry can sell alcohol outside their premises. This is likely to be on pavements. Members will recall the Business and Planning Act 2020 (‘the Act’) being introduced to create a simplified and quicker procedure for businesses to obtain an authorisation to ‘put removable furniture on part of a relevant highway adjacent to the premises for either or both of’ selling and consuming food outside the premises. The previous report to the Executive which provides more information is available via this link - <https://copeland.moderngov.co.uk/documents/s9734/Business%20and%20Planning%20Bill%20-final.pdf> .

- 1.2 There was low take up of the new licensing scheme last year due to continuing Covid-19 restrictions. However momentum is gaining now for licences to be granted and to be granted quickly.
- 1.3 A problem has arisen in the grant of pavement licences. The Act specifically commented that deemed planning permission is granted and that the activity will also not be street trading. Whilst dis-applying planning and street trading legislation it did not dis-apply other restrictions. A restriction is the Order. This continues to apply and prohibits the consumption of alcohol in areas controlled by the Order. Oddly, if the County Council granted a licence under the Highways Act 1980 to place furniture on the highway such a licence would override the Order. Persons who wish to place furniture on the highway could therefore apply to the County Council under the 1980 Act. However that Council has intimated that it will not grant licences under the 1980 Act where there is a public space protection order in place. Also the process under the 1980 Act is longer.

## **2. SOLUTION**

- 2.1 Public space protection orders are an executive function; pavement licences under the 2020 Act are not. The easiest solution to the problem is to amend the Order which is attached as an Appendix to this report. The proposed amendment is to amend paragraph 3(b) of the Order so that it reads: *“Exemptions shall apply in cases where for the avoidance of doubt the consumption of alcohol is on premises or public space licensed under the Licensing Act 2003 or under part 1 of the Business and Planning Act 2020 and for the hours so licensed”*.
- 2.2 The Order is made under the Anti-social, Behaviour and Policing Act 2014. This allows an order to be varied by increasing or reducing the restricted area or by altering or removing a prohibition or requirement included in the order, or adding a new one. There are consultation procedures to go through if the areas are extended or the prohibitions/requirements made more extensive. In this case the Order is being made less extensive by the area the subject of the Order being reduced by the areas the subject of a pavement licence. The only requirement for such variation is to publish the order as varied on the Council’s website and to display a notice adjacent to the public place to which the order relates explaining the variation and its effect.
- 2.3 The police have been consulted on the proposed amendment and do not object. In respect of pavement licences and protecting the amenity a licence can only be granted on a public highway if the Council is satisfied that traffic will not be obstructed or prevented from gaining access to premises; and that statutory undertakers or operators of electronic communications will not be prevented from accessing their equipment. The Council may also impose such conditions as it considers reasonable. The Secretary of State may also publish additional

conditions and if these come later, licences already granted will be deemed subject to them.

### **3. RECOMMENDATION**

That the Order be varied in accordance with paragraph 2.1 above.

### **4. FINANCIAL, LEGAL AND OTHER COMMENTS**

- 4.1 Monitoring Officer/Legal comments are: The Solicitor is report author and any legal issues arising have been dealt with in the report.
- 4.2 The Section 151 Officer's comments are: No financial implications arise from this report.
- 4.3 EIA Comments: No issues arise from this amendment. In respect of pavement licences the legislator provided a full public sector equality duty assessment and family test on the Act which concludes that "several measures ... will affect people with protected characteristics. However, the negative effects have been mitigated against so that those people do not suffer from the measures. Additionally, there are several areas where people with protected characteristics will benefit from the measures in this [Act]. The equality aspects of protected characteristics in this [Act] have been considered and acted upon".
- 4.4 Policy Framework: Not applicable.
- 4.5 Other Consultee Comments, if any: None.

### **5. HOW WILL THE PROPOSALS BE PROJECT MANAGED AND HOW ARE THE RISKS GOING TO BE MANAGED?**

In respect of pavement licences any risks arising will be managed by the Public Protection Manager.

### **6. WHAT MEASURABLE OUTCOMES OR OUTPUTS WILL ARISE FROM THIS REPORT?**

Processing of statutory applications within statutory timeframes.

**List of Appendices** - Existing Public Space Protection Order No. 1 of 2019 – Alcohol Control

**List of Background Documents:** None.