

Executive Committee

Agenda
Item:

A.13

Meeting Date: 17 August 2020
Portfolio: Finance, Governance and Resources
Key Decision: No
Policy and Budget Framework: Yes
Public / Private: Public

Title: **Business and Planning Act 2020 and Constitutional Amendment relating to delegation of emerging legislative powers**
Report of: Corporate Director of Governance and Regulatory Services
Report Number: GD.38/20

Purpose / Summary:

As part of the Government's plans to reopen the hospitality and retail sector in the wake of Covid-19, it encouraged businesses to make greater use of outside space. The Business and Planning Act 2020, which came into force on 20th July 2020, has introduced a streamlined application process to allow restaurants, cafes, pubs and bars to place removable furniture such as tables and chairs on the paved highway adjacent to their premises. The measures support businesses to operate safely and generate income whilst maintaining social distancing measures. This report sets out a proposed scheme of delegation for the decision making powers contained within the Act.

The Business and Planning Act 2020 was introduced at short notice and without giving the Council the opportunity to put in place an appropriate scheme of delegation for exercise of the decision making powers. This has highlighted the need for interim measures to be in place to enable powers introduced by other new legislation to be exercised until such time as a report can be taken to the appropriate committee. This report sets out a proposed delegation to the Town Clerk and Chief Executive following consultation with the Chair of the relevant Committee which would otherwise make the decision.

Recommendations:

It is recommended that Executive recommends to Council that:

- (i) Responsibility is delegated to Development Control Committee for all matters in relation to pavement licences under the Planning and Business Act 2020 which are not otherwise delegated to Officers;

- (ii) Authority is further delegated to the Corporate Director of Economic Development to determine applications for pavement licences, to include setting the duration of the licence and attaching such conditions as is considered reasonably necessary; and to take any necessary action in relation to the enforcement and revocation of the licence;
- (iii) An internal review process is established where a licence has been refused or revoked or granted subject to conditions with which the applicant disagrees, using the Council's established Appeals process, giving the applicant the chance to make written and/ or oral representations to one of the Council's Appeals Panels;
- (iv) Further delegate the following decision-making power to the Town Clerk and Chief Executive:

"Power to take any decision on behalf of the Council, not otherwise delegated, which can lawfully be delegated to officers, subject to the decision taker, before taking the decision, having taken appropriate steps to consult the Chair of the committee which would, save for this delegated power, have taken the decision. The decision must be recorded in an Officer Decision Notice".

It is further recommended that Executive sets the fee for applications for pavement licences made under the Business and Planning Act 2020 at £100 (subject to Council approving the regime)

Tracking

Executive:	
Scrutiny:	
Council:	

1. BACKGROUND

1.1 Pavement Licences

1.2 The Business and Planning Act 2020 ("the Act") came into force on 29th June 2020. The Act contains measures intended by the Government to assist businesses and communities to reopen and recover from economic impacts of the coronavirus pandemic. These measures include a streamlined procedure for granting pavement licences.

1.3 A pavement licence is a licence which allows a business to place removable furniture (for example, tables and chairs, heaters) on certain highways (for example, pavements) adjacent to their premises for use by the business to sell and serve food or drink, and for their customers to consume it.

1.4 District authorities are responsible for receiving and processing licence applications. The streamlined procedure in the Act replaces the Council's current processes for dealing with such applications.

1.5 Application Process

1.6 An application for a licence must be made electronically and include a fee set by the Council.

1.7 The streamlined process provides for a seven-day consultation period starting the day after an application is received. During the consultation period, the business must display a notice outside the premises, and the Council must publish the application and invite representations on it.

1.8 The Council must make a decision on the application within seven days after the end of the consultation period. If it fails to do so, the application is deemed to be granted as made.

1.9 Determination Criteria for Applications

1.10 The Council must take into account any representations which it has received during the consultation period when deciding whether to grant an application. It must also consult the highway authority and such other persons as it considers appropriate. The Council must refuse the application if granting it would prevent access to the highway for highway users, as described in the Act.

1.11 An application which is granted or deemed to have been granted will be subject to four categories of condition. These are **mandatory conditions** (whose wording is set out in the act, designed to preserve access for highway users); **bespoke conditions** (tailored by the Council to the particular application but not applicable if the licence is deemed to have been granted); **standard conditions** (those published by the Council, unless inconsistent with any bespoke condition; and **national conditions** (published by the Secretary of State, unless inconsistent with a bespoke condition or standard condition).

1.12 Appeal Rights

1.13 There is no statutory right of appeal against decisions to refuse a licence or place conditions on one. The Council may, if it wishes, introduce an internal review procedure.

2. PROPOSALS

2.1 Proposed Scheme of Delegation

2.2 As the Act is entirely new legislation there is no existing scheme of delegation, so the functions therein need to be appropriately delegated to allow applications to be made, determined and enforced effectively and efficiently.

2.3 Accordingly, Members are asked to add all matters relating to the Act to the terms of reference for the Development Control Committee with onward delegation to Officers as detailed in the recommendations.

2.4 The timescales prescribed under the Act for applications to be processed make it impossible for a committee to determine the applications. Members are therefore asked to further delegate the determination of applications under the Act to the Corporate Director of Economic Development and for this delegation to include setting the duration of the licence and attach such conditions as they consider reasonably necessary and to take any necessary action in relation to the enforcement and revocation of the licence.

2.5 It is recommended that an internal review procedure is put in place, so that any applicant whose licence application is refused or revoked, or is granted subject to conditions with which they disagree, has the chance to make written and/ or oral representations against that decision, and that the Council's established appeals process is used for this.

2.6 Executive is therefore asked to recommend to Council that it formally delegates the functions as set out in Table 1 below and that this be incorporated into the Constitution.

Table 1:

Statutory Power	Function	Delegation
ss 1–10 Business and Planning Act 2020	All matters in relation to pavement licences under the Planning and Business Act 2020 which are not otherwise delegated to Officers	Development Control Committee
ss 3, 4, 5 and 6 Business and Planning Act 2020	Determination of applications for pavement licences, to include setting the duration of the licence and attaching such conditions as are considered reasonably	Corporate Director of Economic Development

	necessary; and to take any necessary action in relation to the enforcement and revocation of the licence	
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2.7 Fee Setting

2.8 Subject to the Council approving the regime outlined above, Executive is asked to set the fees to be charged for applications.

2.9 Fees for pavement licences have previously varied from £xxx to £yyy (excluding legal fees) depending on the size of the licenced area. The Act, however, prescribes a maximum fee of £100.

2.10 It is therefore recommended that a fee of £100 is set for all applications for pavement licences, both new and renewals, under the Act.

2.11 Use of Emergency Powers and Delegations

2.12 As this report has set out, the Business and Planning Act 2020 was introduced at short notice which has not allowed for time to put the appropriate delegations in place.

2.13 It is likely that further measures may be brought in at short notice, which may provide additional powers for District Councils, so it is recommended that an additional delegation is made to ensure that any new powers can be exercised in the interim until a full report can be brought before Members of the relevant Committees.

2.14 The Executive is therefore asked to recommend that Council approves the following delegation to the Town Clerk and Chief Executive:

“power to take any decision on behalf of the Council which can lawfully be delegated to officers, subject to the decision taker, before taking the decision, having taken appropriate steps to consult the Chair of the relevant Committee which would, save for this delegated power, have taken the decision. The decision must be recorded in an Officer Decision Notice”.

2.15 The said delegation will be recorded in Part 2(a) of the Constitution, Responsibility for Local Choice Functions.

3. RISKS

3.1 The requirements of the legislation place restrictions around the options available to the Council and the recommendations in the report enable the most efficient and effective way of dealing with the new requirements in a timely manner.

3.2 Unless a formal delegation of these powers is made, each application will need to be determined by full Council. The timescales prescribed in the Act will not be met and applications will be deemed to be granted

4. CONSULTATION

4.1 The recommendations in this report have been brought about by a change in legislation and, as such, no formal consultation has been carried out.

5. CONCLUSION AND REASONS FOR RECOMMENDATIONS

5.1 It is recommended that Executive recommends to Council that:

- (i) Responsibility is delegated to Development Control Committee for all matters in relation to pavement licences under the Planning and Business Act 2020 which are not otherwise delegated to Officers;
- (ii) Authority is further delegated to the Corporate Director of Economic Development to determine applications for pavement licences, to include setting the duration of the licence and attaching such conditions as are considered reasonably necessary; and, in consultation with the Corporate Director of Governance and Regulatory Services, to take any necessary action in relation to the enforcement and revocation of the licence;
- (iii) An internal review process is established where a licence has been refused or revoked or granted subject to conditions with which the applicant disagrees, using the Council's established Appeals process, giving the applicant the chance to make written and/ or oral representations to one of the Council's Appeals Panels;
- (iv) Further delegate the following decision-making power to the Chief Executive:

“Power to take any decision on behalf of the Council, not otherwise delegated, which can lawfully be delegated to officers, subject to the decision taker, before taking the decision, having taken appropriate steps to consult the Chair of the committee which would, save for this delegated power, have taken the decision. The decision must be recorded in an Officer Decision Notice”.

5.2 It is further recommended that Executive sets the fee for applications for pavement licences made under the Business and Planning Act 2020 at £100 (subject to Council approving the regime).

5.3 The reason for making the above recommendations is that it is considered that these enable the most efficient and effective way of dealing with the new requirements in a timely manner.

6. CONTRIBUTION TO THE CARLISLE PLAN PRIORITIES

6.1 These measures are designed to support business growth to increase economic prospects, by enabling licensed premises to open safely, supporting the local economy. Enabling customers to feel safe while visiting restaurants, cafes, pubs and bars will help improve the quality of our local environment.

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Appendices None
attached to report:

Note: in compliance with section 100d of the Local Government Act 1972 the report has been prepared in part from the following papers:

- **Business and Planning Act 2020**
- **Business and Planning Act Pavement Licences Guidance**

CORPORATE IMPLICATIONS:

LEGAL – this report has been prepared by the Legal Services Manager and, therefore, legal implications are included within the body of the report. The Local Authorities (Functions and Responsibilities) (England) Regulations 2000 as amended prescribe that functions under the Business and Planning Act 2020 are not to be the responsibility of the Executive. As such, the recommendation is that Executive recommends to Council that the scheme of delegation explained within the report is formally approved. The fee, however, is a new fee which must be set by Executive.

PROPERTY SERVICES - none

FINANCE – in accordance with D31 Financial Procedure Rules, the Executive is responsible for the setting of all fees and charges which are set out in this report. Otherwise, there are no financial implications flowing from the proposals.

EQUALITY – this report has no direct equality implications, however, upon receipt of applications, consideration will need to be given to equality issues, for example so that the visually impaired are not impacted by the siting of tables and chairs on the pavement.

INFORMATION GOVERNANCE – none