

## SUNDAY TRADING AND OUTSIDE SERVICE OF FOOD AND DRINK

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On 6 June 2020, *The Times* reported plans to suspend Sunday trading laws for a year and give cafés and pubs fast-track approval to serve food and drink outside. Draft legislation is awaited. However, the likely changes are summarised below.

Government is clearly extremely keen to do whatever it can to get the economy moving and return to normal. In our earlier articles we identified the steps being taken to relax some restrictions by extending permitted development rights, allowing longer working hours as well as other matters. This announcement seems to indicate a continuation (if not an acceleration) of that same approach, in an attempt to provide greater encouragement to a return to beneficial growth in the economy. We do not yet know any great detail about what may be proposed. However, given its potential significance, it is wise to be aware of the likely route forward.

### Sunday trading

Sunday trading is currently restricted by virtue of the Sunday Trading Act 1994. Large shops may not open for the serving of retail customers, save for a continuous period of up to 6 hours between 10am and 6pm. There are also further exceptions, for example shops at petrol stations, railway stations and airports.

There is recent precedent for the suspended application of the 1994 Act in the form of the Sunday Trading (London Olympic Games and Paralympic Games) Act 2012. That act suspended Sunday trading restrictions for the duration of the London 2012 Olympics.

In both the 1994 and 2012 Acts, concern from shop workers' unions was addressed by permitting workers to opt in or out of Sunday working under provisions now contained in Part IV of the Employment Rights Act 1996.

### Outside service of food and drink

#### Licensing

The supply and consumption of alcohol is authorised by premises licences issued under the Licensing Act 2003. Licences may be varied upon application, for example to extend the licensed area to include the outside area, or to allow both on- and off-premises consumption of alcohol. However, this process can be time consuming, because:

- The application must be advertised for a minimum of 28 days pursuant to the Licensing Act 2003 (Premises licences and club premises certificates) Regulations 2005/42.
- If relevant representations are made, the authority must hold a hearing to consider them (unless there is agreement that it is unnecessary to do so).

Accordingly, the most obvious way for the legislation to 'fast-track' the process would be to remove or reduce the consultation period.

## Planning

Businesses may need planning permission if they wish to make relatively permanent use of outdoor space, such as by affixing boundary markers or leaving furniture outside permanently. This would be likely to require a change of use application.

Notably, the process of allowing food and drink establishments to convert to take-aways was 'fast-tracked' by granting deemed planning permission for that change of use subject to certain conditions (see the Town and Country Planning (General Permitted Development) (England) (Amendment) Order 2020). Therefore, this may also be the favoured method of 'fast-tracking' the use of outdoor space for cafés and pubs.

## 'Sitting out' licences

Alternatively, businesses may wish to apply for a 'sitting out' licence. Applications can be made to a local council under s.115E Highways Act 1980 for permission to use the highway (e.g. the footway outside). Such a licence may permit the placing of tables and chairs outside, and is likely to be popular in order to allow customers to consume food and drink near the premises whilst facilitating social distancing and air circulation.

This process is often time consuming, requiring a consultation period. For example, the City of London's [guidance](#) (p.11) recommends making an application at least 3 months in advance.

Therefore, legislation may seek to speed up the process by omitting such consultation subject to certain conditions.

We will provide an update once draft legislation has been published. Watch this space.

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