

TIME FOR TENS

Do you have outdoor space that could be used for socialising during coronavirus restrictions? Robert Botkai of Winckworth Sherwood says temporary event notices (TENs) might be an option for petrol retailers



I have had a lot of calls from clients over the last few weeks questioning how it is that some pubs are continuing to sell alcohol during the COVID-19 period.

Under the COVID-19 emergency period regulations, restaurants, pubs, wine bars or other food and drink establishments must remain closed.

Food delivery and takeaway were allowed to remain operational and on March 25 off licences were added to the list of essential businesses allowed to stay open.

Most pubs benefit from licences that authorise the sale of alcohol for consumption on and off the premises. All licences are subject to conditions and many pub licences include a stipulation that alcohol may only be sold for consumption off the premises if sold in sealed containers.

So, in the last few weeks, some of the more entrepreneurial publicans have been looking at their licences to see what they can do. There has been a huge demand for food stores and takeaway food. As a consequence, we have seen some general stores and delicatessens open in pubs selling groceries but also beers, wines and spirits for takeaway.

It remains illegal (at the time of writing) to gather outside in groups of more than six. But if the customers of the pub or grocery store wish to gather outside drinking it is the punters and not the publican committing the offence. Publicans encouraging such activity could see their licences reviewed and possibly revoked. We have already seen such action taken by the authorities.

So, no special licence is needed by the pubs. The majority will be acting lawfully even if their customers are not.

In contrast, petrol station premises licences will authorise the sale of alcohol for consumption off the premises only. The licence includes a layout plan and this will define the shop as the licensed area. So what opportunities are there for petrol retailers? I would certainly warn against allowing your customers to gather drinking outside your premises. This would put your licence at risk.

However, it is clear that the outdoor space will be key this summer and perhaps for longer. Those with spare land may wish to consider a temporary licence also known as the temporary event notice (TEN).

The TEN authorises the carrying out of a licensable activity on unlicensed premises. It replaced the old system of occasional licences.

A licensable activity includes:

- selling alcohol;
- providing entertainment, such as music, dancing or indoor sporting events; and
- serving hot food or drink between 11pm and 5am.

We serve TENS on a regular basis to extend hours for our client's premises during seasonal times and to allow for temporary stores, for example in a car park.

The event must:

- have fewer than 500 people at all times – including staff running the event;
- last no more than 168 hours (seven days).

You need a TEN for each event you hold on the same premises. A TEN will cost you £21 and you should apply to the council, the police and environmental health at least 10 clear working days before your event, although there is a quicker late TEN procedure requiring only five working days' notice.

You can get up to five TENS a year. A single premise can have up to 15 TENS in one year so long as the total length of the event is not more than 21 days. If you already have a personal licence to sell alcohol, you can be given up to 50 TENS a year.

The council cannot refuse a notice unless the police or environmental health officer object. They must do this within three working days of receiving it. They can only object if they think your event could:



- lead to crime and disorder
- cause a public nuisance
- be a threat to public safety
- put children at risk of harm

If there's an objection, your council's licensing committee will hold a hearing no later than 24 hours before the event (unless all parties agree that a hearing is not needed) in which the committee will approve, add conditions or reject the notice.

If the police or environmental health objects to a late TEN, the notice will not be valid and you cannot hold the event.

In my experience objections to properly submitted TENS are rare. This is partly due to the very short timeframe for the authorities to object. But also because of the temporary nature of the events officers will agree to monitor the activity and if complaints are received they may oppose subsequent TENS.

The process can be helpful in building a case for a new or extended licence. If you are expecting neighbours or officers to oppose an application, you could try operating under TENS for a period of time. If the sale of alcohol pursuant to the TENS does not attract complaints from neighbours and the officers cannot produce evidence of crime and disorder or public nuisance then you have useful evidence to put to a Licensing Committee.

Beware the double-edged nature of licensing though. If the activities under the TENS attract the wrong attention you could hinder your prospects.

Do contact me if you have ideas for use of your outdoor space.

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