

This information has been developed by a cross sector group looking to reduce risk for licensed premises operating during the current pandemic and so ensure the safety of the public, premises staff and officers and provide clarity for all involved. This note deals with England only and relates to the effect of certain Coronavirus regulations and Guidance.

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Introduction

Following the recent Regulations regarding face coverings, the rule of six, the need for table service and the 10pm curfew, we have considered some of the many queries that have started to arise in relation to compliance in the light of Covid 19.

We all recognise that the hospitality sector currently looks very different and is trading in a changed licensing landscape. Premises are required to operate in a completely different way than pre-lockdown and have to continue to be carefully thinking about how to effectively manage new challenges and risks they face which can change many times in a matter of days with almost immediate implementation. Likewise, for Police and Local Authorities the challenges faced to guide and ultimately enforce is complex as we are come to terms with what the Regulations mean and the interplay with Covid Secure Guidance which may be inconsistent with the Regulations.

For the current Guidance for restaurants, pubs, bars and takeaways- [click here](#)

This link takes you to all the regulations – [click here](#)

This link has some helpful FAQ's – [click here](#)

A starting point

We have set out below some FAQ's on some initial compliance issues arising as a result of the new Regulations. Please note these Q&A's are based on Tier 1 – Medium Alert. As a first principle, the reader should note the ongoing requirement of premises to comply with conditions and the promotion of the licensing objectives.

Premises are advised to talk to their local Licensing Authority, Police and other relevant Responsible Authorities at the earliest opportunity if they are uncertain regarding compliance with any conditions or they wish to seek a temporary and/or informal relaxation of conditions.

Local authorities and the Police have already demonstrated the partnership and practical approach to be taken in relation to the concerns identified.

As we identified in our advisory note on compliance, it is likely that that ongoing enforcement activity

will continue to look quite different during and after the Covid 19 pandemic.

Questions

1. Are customers of premises permitted to stand outside and consume alcohol?

Schedule 1, paragraph 14(1)¹ A person responsible for carrying on a restricted business or providing a restricted service which serves alcohol for consumption on the premises may only sell if the food or drink is ordered by and served to a customer who is seated on the premises; and the person takes all reasonable steps to ensure that the customer remains seated whilst consuming the food or drink on the premises.

Schedule 1, paragraph 14(3) provides that certain “adjacent” outside space is to be treated as part of the premises.

The principle that businesses selling food or drink must ensure that customers only consume while seated is confirmed in the Guidance. As such, it would appear to be contrary to Regulations and Guidance for customers to stand outside premises and consume alcohol that has been purchased from that premises. This is due to the requirement for table service and seating.

Smoking areas that provide seating may be used for the consumption of alcohol by seated patrons otherwise customers should not be taking alcohol into these areas. There are grey areas, as off sales are of course permitted and customers could legitimately take an unconsumed drink to a location slightly further away and stand – whether this is a direct contravention or not will turn on the facts - however it is clear that it is not the intention that customers stand outside alcohol-licensed premises to consume alcohol. Practicable measures to deal with due diligence could include customer signage. Other points to note would be that areas covered by tables and chairs consent should be rendered unusable from 10pm.

2. Can off sales be sold in open containers?

The Regulations and Guidance do not restrict the ability for alcohol to be sold by way of off sales in open containers. This, for example, would be common practice for drinks that are to be served to customers to be taken into outside areas if those areas not within the area authorised for licensable activities.

3. Is the use of Gaming machines permitted?

There is no restriction in the Guidance or Regulations on the use of Gaming machines. However, all other aspects of the Covid Regulations and Guidance would apply. This would

¹ [The Health Protection \(Coronavirus, Local COVID-19 Alert Level\) \(Medium\) \(England\) Regulations 2020 SI 2020/1103](#),

mean those customers within premises where alcohol is available would need to be seated and wearing a mask.

4. Is the use of pool/snooker tables/other games permitted?

There is no restriction in the Guidance or Regulations on the use of pool tables etc. However, all other aspects of the Covid Regulations and Guidance would apply. This would mean that customers within premises where alcohol is available could stand to take a shot in a game of pool or throw a dart in a game of darts (with a mask on) and if they want to drink they would need to be seated and then no mask is needed.

5. Does a premises have to offer table service if they have a premises licence that permits the sale of alcohol, but they do not intend to use it (e.g. a garden centre café or retail store café)?

Under these circumstances table service is not required but food and drink should be consumed at a table. This would also apply to licensed premises such as pubs or hotels that, for example, might be offering breakfast, but either they do not intend to commence alcohol sales until later or their licence may not permit alcohol sales to commence until later. Under those circumstances, and during those times, table service is not required by the Regulations. However, care still needs to be given to the Covid-safe Regulations and also customer management, and practically this would mean making sure that there is clear guidance available to customers coming in at different times, advising them of the rules that are in place at the time of their visit.

6. Can staff training, maintenance or cleaning take place after 10 pm and before 5 am, and what about staff drinks?

All of the above activities are permitted. However, it may be prudent for premises to display notices if staff training or maintenance is taking place after hours. In relation to the provision of staff drinks, this may cause mixed messages for Enforcement Officers and therefore practically this may not be advisable.

7. Where does payment have to take place? Does it have to be while seated?

The Guidance was updated on the 6th October and now states:

From 24 September, in venues which sell alcohol, food and drink must be ordered from, and served to customers who are seated, in both indoor and outdoor settings. This means that a business that sells alcohol must introduce systems to take orders from seated customers, instead of at a bar or counter. Payment should also be taken at the table wherever possible, but may be taken at a bar or counter if safety measures are in place.

Please note that this document does not constitute legal advice but is the group's considered opinion of the matters contained within.

Dated 16th October 2020