

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.

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Introduction

In anticipation of the hospitality industry reopening to the public in July, we have considered the queries that have already started to arise in relation to compliance with licence conditions in the light of COVID-19.

We all recognise that the hospitality sector will look very different and will be trading in a changed licensing landscape. Premises may operate in a completely different way than pre-lockdown and will be carefully thinking about how to effectively manage new challenges and risks they will face.

We have set out below some thoughts on how compliance issues arising as a result of COVID-19 could be addressed. However, as a first principle, the requirement to comply with conditions and promotion of the licensing objectives is the overriding factor.

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. This group would endorse the approach advocated by the Local Government Association in the LGA's note on managing licensing issues (April 2020) which supports the view expressed by Kit Malthouse MP, Minister of State for Crime and Policing, in his letter of 8th April to all Chairs of Licensing Committees:

"A considered and pragmatic approach should be taken to breaches of licence conditions and procedural defects caused by the COVID-19 pandemic, particularly where these breaches or defects do not have a significant adverse impact on the licensing objectives. Licence Holders must rectify any breaches as soon as reasonably practicable".

It is likely that ongoing enforcement activity will continue to look quite different during and after the COVID-19 pandemic. Many businesses will operate under licences with conditions that will become more difficult to comply with, and many have proactively contacted Councils to make them aware of their concerns and discuss solutions.

Whilst Councils will as ever need to look at each case on its own merits and weigh up the impact of potential breaches on the licensing objectives, a flexible approach could be appropriate when there may be good reasons why businesses cannot comply with their conditions. The section 182 guidance (para 1.5) highlights the *'important role of pubs and other licensed premises'* and that authorities should aim to encourage *'innovation and supporting responsible premises.'*

It may be useful when looking at conditions to determine whether or not the condition was imposed as a result of a Licensing Committee hearing or agreed following consultation with Responsible Authorities. The circumstances that led to the addition of a condition may have changed and the condition may no longer be required or considered to be relevant. This might influence the approach to be taken if relaxation is sought. These issues should be addressed by the premises as part of the pre-opening risk assessment.

As premises gradually reopen there will be challenges and uncertainties for everyone, it is likely that issues will arise and there is no one size fits all approach. Businesses will need to consider the type of operation they propose to offer, including the key risks and challenges that will be created and how they differ from those that existed previously. Partnership will be key, operators should enter into early dialogue with the Licensing Authority and Responsible Authorities to try and mitigate those risks, and seek an agreed practical solution which balances the needs of the business and the protection of the public

Security has been raised as a particularly pressing concern and reopening will inevitably need dynamic risk assessment. Not all premises will reopen at the same time and the public's response is unknown. Conditions requiring a specific number of SIA licensed door supervisors will need to be complied with unless amended formally by way of licence variation or informally by agreement.

If premises are reopening in a substantially different format it might be the case that a temporary relaxation or reduction of the security provision will be an acceptable way to promote the licensing objectives and allow premises to reopen that otherwise might not be able to operate. This would have to be agreed with the relevant stakeholders and if reopening presents any significant risk to the licensing objectives the authorities may be less willing to enter into informal agreements.

The same principle of relaxation would apply to other conditions such as polycarbonates, underage sales (ID checking), staff training, match day licence conditions (in absence of spectator attendance at matches), smoking areas and other similar conditions.

We also welcome the flexible use of minor variations, including time-limited conditions, if appropriate, and where an informal agreement is not achievable.

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