

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

The All Tier Regulations (England) and Guidance provide the new rules in place from 2 December. This note addresses a number of preliminary concerns.

The hospitality sector now looks very different and is trading in a changed regulatory landscape. Premises are required to operate in completely different ways to pre-lockdown and now operate in a challenging changing environment that requires careful planning and on-going risk assessment.

The situation remains complex for Police and Local Authorities faced with the challenge to guide and ultimately enforce the new Regulations.

Regulators and operators need to come to terms with the impact of the new All Tier Regulations and the impact of Government Guidance and the existing legal responsibilities on face masks, collection of contact details and the obligations on businesses to consider the restrictions on household mixing. We advise working together and using common sense to ensure that we all don't find ourselves at the end of another spike and stricter measures.

UK Hospitality website has some helpful FAQ's:

<https://www.ukhospitality.org.uk>

See also link to LGA guidance note here:

<https://www.local.gov.uk/health-protection-coronavirus-restrictions-all-tiers-regulations-2020-enforcement-advice-local>

A starting point

We have set out below some FAQ's on some initial compliance issues arising as a result of the new regulations. However, as a first principle, the reader should note the ongoing requirement of premises to comply with conditions and the promotion of the licensing objectives and additionally the need to comply with any relevant Covid Secure Guidance.

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 how their premises intends to operate over the coming weeks given the onset of the festive period.

Questions

Q1. Where a premises such as a pub, bar or restaurant in Tier 1 and 2 has both an on and off sales licence or has off sales by virtue of the Business & Planning Act, then what is the situation between 10pm and 11pm in terms of off sales and then after 11 pm?

A. Final orders for food and drinks are at 10pm with premises having to close at 11pm. Between 10pm and 11pm customers would be entitled to order additional drinks for the purposes of genuine off sales; however, it would not be appropriate for those drinks to be consumed within the curtilage of the premises between 10pm and 11pm or in any adjacent areas and the same would apply after 11pm. The operator therefore may wish to ensure policies and procedures are in place, so as to ensure that these rules are adhered to. Beyond 11 pm when the premises have to be closed off sales can continue via on-line click and collect or drive thru in the usual manner and subject to a terminal hour as stated on the premises licence.

One pragmatic solution to avoid the mischief that these restrictions are intended to avoid is to offer off sales in sealed containers only. The aim of the one hour gap is to permit more gradual dispersal.

Q2. Is an outside igloo dome in a garden considered indoors or outdoors?

A. As under previous Regulations what is “indoors” is defined by reference to the smoke free legislation – a place is indoors if it is “enclosed or substantially enclosed” for the purposes of the Smoke Free (Premises and Enforcement) Regulations 2006. Essentially, and this is a summary, any place with a roof (including a retractable roof) and 50% or more solid walls (counting doors and windows as solid wall), is indoors. Therefore, an igloo dome which is more than 50% enclosed would be considered as an indoor space.

Q3. What is the situation regarding business meetings in Tier 1 and Tier 2?

A. Business meetings are permitted. It is prudent for the premises to have policies and procedures in place to be able to assess that relevant bookings are for business purposes to ensure compliance (as also advised in the UKH FAQs). And it is worth noting that with the new relaxations regarding business events it is clearly stated that meals for the purpose of

socialising with work colleagues are not allowed. Food and drink are however allowed to be served as part of genuine business meetings or training events.

Q4. Businesses that do not ordinarily serve food may enter into a contracting arrangement in order that they are able to do so and remain open. However, allowing customers to bring food into the premises that had been purchased elsewhere in order to consume alcohol remains prohibited – what does this mean in practice?

A. This is designed to allow premises such as pubs and bars with no kitchen facilities to partner with outside food businesses, in order to open and serve food for consumption with alcohol on site.

In practice what this means is that a wet led pub with no kitchen can enter into an agreement with a local pizzeria, for food to be ordered via the pub and supplied and served by the pub to its seated customers who may consume an alcoholic drink with the consumption of the pizza.

Another example would be a street food van can enter into an arrangement/contract with a bar to provide food to the pub customers. The pub operator is to make arrangements for the ordering and service of the food.

A customer may not bring his/her own food to the pub and asked to be served an alcohol drink to accompany that food.

Again, we would advise venues to have a clear policy in place setting out external food catering arrangements.

Q5. Is there any Government guidance on the definition of a main meal, e.g. plate of chips, pot noodle or scotch egg? Can customers have drinks pre and post eating?

A. This is dealt with in UKH's FAQs which are linked at the beginning of the document. In simple terms there are no definitions of a table meal, nor are there specific requirements to the time before or after consumption of food that drinks may be consumed. It is going to be a question of fact and degree in each scenario and it is recommended that premises have a clear policy for staff to follow, including alcohol being served with a main table meal and for that policy to be readily available to be explained to Enforcement Officers.

We would suggest that if there was any interpretation as to what constitutes a table meal this should be made by the premises operator who is best placed to understand the habits and needs and expectations of their customers in terms of a meal.

There is nothing in the legislation or government guidance that specifies any requirements or expectations as to the point at which alcohol can be served or at which point the service of

alcohol should stop.

Our view is that premises should consider what would be deemed reasonable in all the circumstances.

In terms of drinks to accompany food this is a question of fact and degree – it is common practice to have drink before and after a meal, and the Government guidance talks of premises operating as if they were restaurants in terms of food and drink service so this should be taken into account. It cannot be expected for there to be a one size fits all rule – it's about the practical compliance with the intentions of the Regulations. We would encourage dialogue between enforcers and operators before reaching a firm conclusion. It is not an appropriate response to require activities to cease without full consideration of all the facts.

Again, we would strongly recommend that premises have a clear policy for staff to follow, which again can be explained to Enforcement Officials should they attend and want to understand the practices 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 8th December 2020