

# NEXSTART

## **Compliance with the Health Protection (Coronavirus Restrictions) (England) Regulations 2020 (as amended) and the Health Protection (Coronavirus Restrictions) (Wales) Regulations 2020 (as amended)**

**This information and following questions and answers 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

The relaxation of lockdown restrictions has given rise to questions being raised by authorities and operators concerning the interpretation and implementation of the requirements imposed upon businesses as they gradually reopen.

In producing this note, we have endeavoured to assist all those involved in the process to provide a safe transition out of the period of hibernation that we have all recently experienced.

### What is the status of the guidance produced by the government?

The guidance is a document designed to help businesses understand how to work safely and keep customers safe during the pandemic, ensuring as many people as possible comply with social distancing guidelines.

It is focused on “high level” principles that businesses can interpret to suit their own style of operation. The guidance is kept under review and updated as necessary, the third version of the guidance for restaurants, pubs, bars and takeaway services was updated on 23<sup>rd</sup> June.<sup>1</sup>

The non-statutory guidance does not constitute the law, it should be considered alongside local public health and safety requirements and legislation in Northern Ireland, Scotland and Wales.

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<sup>1</sup> <https://www.gov.uk/guidance/working-safely-during-coronavirus-covid-19/restaurants-offering-takeaway-or-delivery>

Where Government guidelines or advice suggest that the public should or should not act in specific ways, failure to comply with such guidelines or advice is not an offence unless it is specifically covered by the regulations.

#### What is the relationship between the guidance and risk assessments?

The guidance contains information to assist businesses to open safely while minimising the risk of spreading COVID-19. It provides practical considerations of how this can be achieved.

Each business will need to consider the guidance and identify the specific actions it needs to take, depending on the nature of the business, including the size and type of business, how it is organised, operated, managed and regulated.

To help businesses to determine which actions to take, they must carry out an appropriate COVID-19 risk assessment, just as they would for other health and safety related hazards. They will also need to monitor those actions to make sure they continue to protect customers and workers.

#### Who is responsible for enforcing the requirement for a risk assessment?

Failure to complete a risk assessment which takes account of COVID-19 or completing a risk assessment but failing to put in place sufficient measures to manage the risk of COVID-19, could constitute a breach of health and safety law. The enforcing authority in respect of these matters is the Health and Safety Executive or the local authority.

#### What action can be taken for non-compliance with the risk assessment requirements?

The actions available to the enforcing authority (Health and Safety Executive or the local authority) include the provision of specific advice to businesses to support them to achieve the required standard or issuing enforcement notices. Serious breaches and failure to comply with enforcement notices can constitute a criminal offence, with a fine and imprisonment on conviction.

#### Who is responsible for enforcing the regulations?

The government guidance on the closure of businesses and premises envisages that local authorities, through their environmental health and trading standards officers will monitor compliance with the regulations, with police support provided if appropriate.

#### What enforcement action can be taken for non-compliance with the regulations?

The government has said that when local authorities enforce the regulations, it is important that businesses are clear on what to do and are dealt with fairly and in a proportionate way.

The approach of the police to enforcement of the regulations in England and Wales will be in accordance with the "four E's" principle:

- Engage,
- Explain,
- Encourage, and
- Enforce.

Enforcement should be a last resort, businesses and venues that breach the regulations may be subject to prohibition notices, and a person who is 18 or over, carrying on a business in contravention of the regulations may be issued with a fixed penalty.

With the support of the police, prohibition notices can be used to require compliance with the Regulations including requiring that an activity cease. It is also an offence, without reasonable excuse, to fail to comply with a prohibition notice.

If prohibition notices are not complied with, or fixed penalty notice not paid, a prosecution may be instigated, with magistrates able to impose potentially unlimited fines.

#### Is it possible to review a premises licence or club premises certificate?

Failure to observe the guidance is a public health issue and is not an offence. On its own, it would not appear to engage the public safety objective or any of the other licensing objectives. A review would not therefore be available in the circumstances.

A review may be available if a business is conducted in a way which is detrimental to one or more of the licensing objectives. There would need to be clear and unequivocal evidence that a venue was being operated in a way which would justify such action.

#### Will the new pavement licence authorise the sale of alcohol? (Assuming that the Business and Planning Bill becomes law)

The grant of a pavement licence only permits the placing of furniture on the highway. Other legislation still applies, such as the Licensing Act 2003 which deals with the need for an alcohol licence and it will also be necessary to comply with registration requirements for food businesses.

If the applicant for a pavement licence also has a licence to serve alcohol on the premises, temporary amendments to the Licensing Act 2003 will allow them to sell alcohol for consumption off the premises without the need to apply for a variation of their alcohol licence.

A note on the provisions relating to pavement licences contained in the Business and Planning Bill has been prepared by NEXSTART.<sup>2</sup>

#### Is it necessary to display a COVID-19 compliance notice?

It is not a legal requirement for a business to display a notice stating that a venue is safe and compliant with the government's COVID-19 guidance.

The guidance expects that businesses will wish to demonstrate that they have properly assessed the COVID-19 risks and taken appropriate action to mitigate them. The guidance anticipates that the way in which businesses will do so is by displaying a notice in a prominent place within each venue and on any website.

#### Is there any requirement to reduce operating hours?

The regulations do not restrict the hours when licensable activities may be provided or when venues may be open.

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<sup>2</sup> <https://www.instituteoflicensing.org/media/0zthhgjh/nexstart-pavement-licence-guide-v1.pdf>

The guidance emphasises the benefit of partnership working and encourages communication with neighbouring businesses and local authorities to consider any issues arising from the operation of licensed premises and the most appropriate way of dealing with them.

Staggered opening hours are mentioned in the guidance but only as an example of a possible measure which may be appropriate, if justified by the circumstances and all parties agree.

Is it possible to provide televised sport, gaming machines and pool tables?

It is possible to provide these activities in a way that is lawful and safe. It will be dependent upon the outcome of the individual COVID-19 risk assessment.

The BBPA, BII and UKHospitality have combined to produce a set of frequently asked questions on the COVID-19 secure workplace guidance for pubs, including sections on televised sporting events, gaming machines and pool tables.<sup>3</sup>

**Please note that this document does not constitute legal advice but is the group's considered opinion of the matters contained within. It will be kept under review and updated, as necessary.**

V.1 July 2020.

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<sup>3</sup> <https://www.ukhospitality.org.uk/page/FAQs>