

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 Tiers Regulations (England) and guidance provide the new rules in place from 2 December. This note addresses 2 key concerns that have been identified.

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 and 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 Tiers 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 do not 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-19 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. What are the requirements for businesses to check household status/bubble status?

A1. In Tier 1 any social gatherings of more than 6 people will be against the law (subject to exemptions). Businesses must not accept a table booking for a group of more than 6 individuals or admit a group of more than 6 people, unless there is a qualifying exemption. Businesses must take reasonable steps to prevent separate groups from mingling with each other within indoor and outdoor settings.

In areas under Tier 2, restrictions from Tier 1 apply. In addition, further restrictions mean that individuals can only meet in indoor settings with other members of their own household or support bubble. Businesses must only accept indoor bookings for individuals from one household or support bubble and must take reasonable steps to prevent individuals from separate households or bubbles from mingling with each other in indoor settings.

Businesses should make customers aware that in Tier 2, only, one household/bubble may be served indoors. As a reminder, a support bubble is a support network which links to households. You can form a support bubble with another household of any size (note the Rule of 6 therefore does not apply) if:

- you live by yourself – even if carers visit you to provide support;
- you are the only adult in your household who does not need continuous care as a result of disability;
- your household includes a child who is under the age of one or is under that age on the 2nd December 2020;
- your household includes a child with a disability who requires continuous care and is under the age of 5, or is under that age on 2nd December 2020;
- you are 16 or 17 living with others of the same age and without any adults;
- you are a single adult living with one or more children who are under the age of 18 or were under that age on 12th June 2020.

As such, households and support bubbles will take on many different shapes and forms, with many examples of individuals living together as a single household for the purposes of Covid-19. The Covid-19 Secure guidance for pubs, restaurants and takeaways states *“Business should not intentionally facilitate gatherings between a greater number of people than is permitted; and should take steps to ensure customer compliance with the limits on gatherings in their Tier. Steps could include:*

1. *informing customers of guidance through signage or notices at the point of booking or on arrival;*
2. *ensuring staff are familiar with the guidance, and if any local restrictions are in place;*

3. *asking customers for verbal confirmation of the number of people in their party at the point of arrival.”*

Many people, such as friends, choose to live in mixed households and so a household is not always going to be a family. As stated in the UK Hospitality FAQ's, measures to check the household status could include asking customers on arrival, making it clear as part of a booking etc. It is worth noting that support bubbles may not be able to prove their status with any form of documentation.

Unlike age verification policies where we have established acceptable identification procedures it is not as straightforward for individuals to be able to prove that they are from the same household or in a support bubble. In England, there is no regulation or government guidance that specifically requires premises to check physical identification or other documentation to establish household status. Having said that, premises are used to having policies and making judgments on customers, for example, drugs policies, clothing policies and dealing with intoxication which likewise is not an exact science.

The regulations put the onus on both the individuals and the operator to take reasonable steps to establish that those inside the premises are permitted by the regulations. It would seem prudent therefore, as a minimum, for premises to review and ensure that their messaging to customers verbally on arrival, via website and social media is accurate and clear, that there is appropriate training, challenging of customers if the venue deems necessary and thereafter record keeping. In simple terms this is about creating a policy. It would be best practice to have any such policy as part of the operational risk assessment. In terms of those enforcing this issue, a reasonable, proportionate and pragmatic approach is suggested to establish what steps the premises are taking and to then review the circumstances as, of course, it will be a question of fact and degree.

Q2.. Is entertainment permitted?

A. In Tier 1 and Tier 2 the early closure of 11pm applies to casinos, cinemas, theatres, concert halls, museums, bowling alleys, amusement arcades, fun fairs, theme parks, adventure parks and activities, and bingo halls.

However, cinemas, theatres (which may include cabaret) and concert halls (which can include grass roots music venues) can stay open beyond 11pm to conclude performances that start before 10pm. Naturally, the operation must be within the terms of an authorisation under the Licensing Act 2003 (LA03).

There is no definition of cinemas, theatres and concert halls in the All Tiers Regulations. It is, of course, a requirement for the premises to have any necessary authorisation under the LA03 for the relevant regulated entertainment.

If the relevant authorisation for entertainment exists under the LA03 and the premises in question offers substantial food and does not wish to be open beyond 11pm, they can offer entertainment for as long as their authorisation allows.

Some licensed premises have repurposed the whole (or part) of the premises into an entertainment venue providing facilities like those available in a theatre, cinema or concert hall. The intention being that such a venue (or the relevant part) will be exempt from only being able to serve alcohol with a substantial meal, provided it is limited only to customers with tickets who intend to consume alcohol drinks in the repurposed part of the venue where the performance/screening is taking place.

It is good practice if an operator intends to utilise the offer of seated, ticketed entertainment beyond 10pm that they engage with the Licensing Authority and Police, to clearly explain their business operating model. For example, a traditional nightclub premises may decide to show a series of film nights, provide live music or other entertainment and repurposes during this time.

Likewise, a pub may wish to repurpose to have live acts. In these circumstances, repurposing is permissible in terms of the entertainment offering. However, if the operator intends to rely on repurposing to avoid the need to serve food and/or trade beyond 11pm, that will be possible provided that the premises are not used as a pub or bar but for a different purpose, such as a cinema, theatre or concert hall. Each case will turn on its own facts, as it is not possible to give a definitive response without knowing the individual circumstances.

If it is the situation that premises are operating as a cinema, theatre or concert hall, then food does not need to be served but admission to the entertainment will need to be ticketed only.

Alcohol must be ordered between the start time on the authorisation and 10pm.

Public attendance at outdoor and indoor events (performances and shows) is permitted and is limited, according to guidance, to whichever is the lower of 50% capacity or either 4,000 people outdoors or 1,000 people indoors in Tier 1 and in Tier 2 the outdoors limit is 2,000. It is our view that if capacity is not stated in a premises licence, it would be the figure contained in the fire risk assessment for the venue. The capacity is also going to be limited by the seating and spacing requirements under the regulations.

To conclude, we have seen much debate regarding the repurposing of premises so that they can operate within the cinema, theatre and concert hall category and thereby be subject to different rules. A key point is that the mischief that is to be prevented is a venue attempting to

repurpose to avoid the requirement to serve food in a situation that is contrary to the purpose of the regulations, namely the reduction of the public health risks posed by Covid-19.

The regulations and guidance permit repurposing, however, they do not permit a pub to have a band playing in the corner and throughout the whole business have alcohol consumption only and no food available. A pub could repurpose a separate part of the premises for a ticket only theatre or concert event provided in accordance with the relevant guidance and use the exemption. However, the exemption would not apply to the rest of the premises.

As with many things within the regulations and guidance it is a question of fact and degree. The presence of a bar may or may not be a pertinent factor. For example, well known premises such as Ronnie Scott's, Hackney Empire and the Camden Roundhouse, are all established grassroots music venues/concert halls that have bars within the performance space. The Performing Arts guidance has provided a lot more detail in terms of repurposing and both operators and compliance officers are encouraged to liaise with the Local Authority on a case-by-case basis. There is no clear answer or definition and therefore partnership working is as key as ever.

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

Dated 17th December 2020