

Coronavirus Covid-19 Outbreak and Licensed Premises (England & Wales)

Guidance Note

Version 8: 12th June 2020

As a result of the Government's announcement of the closure of non-essential businesses we have put together what we hope is a helpful note for those in the hospitality sector.

The regulations dealing with closures came into force on 26th March 2020, and have been reviewed and extended every three weeks. The last review was on 7th June 2020.

The Government has also issued, on 11th May, a document entitled "**Our Plan to Rebuild; The UK Government's COVID-19 Recovery Strategy**" the full document can be accessed [here](#).

A full list of the business closures and exceptions, together with details of financial and business support can be found [here](#) (last updated 1st May 2020).

Government guidance on social distancing in the workplace – advice for employers is set out [here](#): and there are some relevant comments for running pick up or delivery services.

Additionally, see [here](#) for further Government guidance on staying alert and safe (social distancing).

To assist with re-opening please see Poppleston Allen's pre-opening check list [here](#).

Breach of Regulations

Businesses which operate in breach of the Regulations will be subject to prohibition notices and fixed penalty fines and unlimited fines. Any 'person responsible for carrying on a business' can be prosecuted, and this includes both limited companies and their directors, managers or other officers. For licensed premises, it could also lead to applications to review the licence. Please be careful to ensure compliance with Regulation 4 (3) if you are offering off sales in open containers. This requires business to not offer seating adjacent to the premises – what that means is unclear so we advise you seek advice if you are unsure how it might apply to you.

Please see useful information on the provision of off-sales [here](#).

There will inevitably be a large number of documents in circulation but we set out 2 recent ones on physical distance search guidance: see [here](#) and NaCTSO advice on protecting customers queues: see [here](#)

Planning

Planning regulation has been changed to enable restaurants, cafés and pubs, which do not currently offer delivery and hot food takeaway to do so. The legislation can be accessed [here](#).

Note - people must not consume food or drinks on site at restaurants, cafés or pubs whilst waiting for takeaway food.

Note -those premises offering takeaway or delivery services must not include alcoholic beverages in this list if their premises licence does not already permit.

Gambling Act 2005 Licensed Premises

The Regulations specifically include gambling premises within the list of businesses that are subject to restrictions or closure. Bingo halls, casinos, betting shops and amusement arcades are all included in the list of premises which must be closed.

Annual Fees

Operators must consider that under the Licensing Act 2003 failure to pay an annual fee may result in suspension of the premises licence. If this occurs then whilst the Licensing Authority will reinstate a licence once payment has been received, there could be a delay before authorities confirm that licences may be operated again, particularly if there is surge in payments. Operators will want to effectively manage payment of annual fees to ensure that they are able to legally trade with minimal ongoing disruption once the current trading restrictions are removed.

Premises Licences issued under the Gambling Act 2005 are subject to revocation for non-payment of annual fees so it remains critical that fees are paid if operators would like to immediately commence trading once restrictions are lifted. Should a licence be revoked for non-payment the only option to recommence trading would be following the grant of a new premises licence, which would require a further consultation period and associated application costs.

Some premises licensed under the Licensing Act 2003 may also benefit from a Licensed Premises Gaming Machine Permit (LPGMP), which is subject to the Gambling Act 2005. If LPGMP annual fees are not paid, the Act requires Licensing Authorities to cancel the permit unless non-payment is due to an administrative error. Operators may wish to approach the relevant Authority to determine how non-payment may be enforced, but there will be a risk of cancellation if fees are not paid. In these circumstances, should operators wish to operate gaming machines in the future, a new application would be required along with the associated costs.

Advice to local authority on fees

Premises licence and Gaming annual fees remain payable – however **Kit Malthouse MP**, Minister of State for Crime and Policing has written to Local Authority Licensing Committee Chairs across England and Wales recognising the difficulties faced by regulators and businesses and urging a collaborative and pragmatic approach to minimise damage to both businesses and the licensing objectives.

On the question of premises licence fees, the letter points out that local authorities have discretion when considering non-payment or late payment of annual fees, and that while section 55A of the Licensing Act 2003 requires suspension of licences, licensing authorities can delay any suspensions where businesses are experiencing difficulties as a direct result of COVID-19.

The letter can be seen [here](#)

Additionally the Local Government Association has issued helpful advice on the issue of fees and approaches to managing licensing during Covid-19. The guidance can be seen [here](#).

Renewals of pavement licences

Renewals of pavement licences (also known as Tables and Chairs Licences), A board licences, special treatment licences and marriage licences are still required despite the current circumstances. A number of Licensing Authorities are considering the practical implications of this and we suggest it would be beneficial to approach the Licensing Authority directly to discuss any renewals for non-trading premises as we are aware that many authorities are modifying their renewal process to assist operators.

In respect of renewals, if they are not dealt with (unless the Authority has adopted a temporary amendment to its renewals process) the permission will lapse. A fresh application, with no guarantee of grant on the same terms, will then need to be made. This could take months to process.

Insolvency

In these uncertain times, premises licence holders and those with vested interests, such as the Landlords, must consider the impact of insolvency. Any insolvency event, including CVA's, of the licence holder may cause the licence to automatically lapse.

Premises Licences issued under the Licensing Act 2003 immediately lapse following an insolvency event and there is only a 28 day window following the date of the triggering event

for the licence to be transferred to a solvent entity. After the 28 day period, any premises licence is likely to be irretrievably lost.

Premises Licences issued under the Gambling Act 2005 are subject to similar provisions as those issued under the Licensing Act 2003. Gambling premises licences do have a longer period in which they may be saved as the Act enables licence reinstatement within 6 months.

For those with a vested interest in the property, registrations of interest with the licensing authority and/or a shadow premises licences granted under the Licensing Act 2003 could present a good opportunity to protect against this. Please contact us for further information.

Hearings and applications under the Licensing Act 2003

The Institute of Licensing has published a protocol designed to assist licensing authorities and operators in complying with their obligations and duties under the Licensing Act 2003 during this emergency period. The Protocol has been developed to inform and assist licensing authorities and operators in managing and using, the licensing system effectively and fairly during these extraordinary times. The full protocol can be found [here](#).

Shadow Premises Licences

Given the value of a licence, landlords can use this period of closure to review premises where their tenant holds a Premises Licence.

The landlord faces the following threats to their licence:

1. The tenant becomes insolvent and if this happens the Premises Licence will lapse immediately, albeit it can be reactivated by certain applications within a period of 28 days;
2. Surrender – a disgruntled tenant may surrender the Premises Licence without giving notice to the landlord. Again, there are provisions for reactivation within 28 days.

A landlord can protect the licence by registering an interest with the local authority. The landlord should then be informed by the local authority of any applications made in respect of the premises, including any attempt to surrender the licence. This however relies upon local authority staff issuing the notification and if they are short staffed then this might slip through the net. Register of interest also does not give notice of insolvency.

In addition to registering an interest with the local authority, if a company holds the licence then a landlord can register an interest with Companies House against a company. They will then be notified of events including any insolvency arrangements or actions to strike off. It is important to act quickly once notified of an event as the 28 days to resurrect a licence will still run from the date of the event, not the date the event is entered upon the register. If

there is a delay therefore in a company filing CVA papers or with Companies House updating the register then the licence could be lost.

A Shadow Licence is the best and most comprehensive form of protection. The word Shadow Licence is used in practice, but has no legal definition. It is simply another licence on exactly the same terms as the first licence, normally granted to a landlord, whose sole purpose is to provide the landlord with the comfort and protection of having a licence in its own name. If the original operating licence then lapses or is surrendered, the landlord is able to use the Shadow Licence to replace it and market the premises as having the benefit of a licence of the same quality.

Time Limited Premises Licence

Takeaway of food and drink and home delivery are still permitted subject to premises licence restrictions. If there are currently restrictions on the licence then operators might want to consider applying for a time limited Premises Licence, or variation to the existing licence, to permit temporary activities.

Applications to amend Premises Licence – relax licence conditions, add licensable activities or extending hours

With the potential of some sort of reopening in the summer, now might be a good time to carefully consider the terms of your Premises Licence to see whether or not it is fit for purpose for when you reopen. The licensing process is still very much business as usual and, in fact, with the current restrictions in place, many Local Authorities and Police are readily available for pre-consultation discussions via email and telephone to help support local businesses. This could be relevant for any layout alterations, amendments to conditions regarding off-sales, extending trading hours both in the morning and in the evenings, and also the use of any outside space.

Other licences

Many premises will apply for and utilise external space for seating. Applications for Pavement Licences (also known as Tables and Chairs Licences) can take quite a few months to progress, as every authority has a different procedure. As such, investigating what opportunities and considering whether or not applications should be commenced sooner rather than later, might be prudent.

Local Authority policies and local schemes

The period of closure does present an opportunity for operators to fully engage with their local authority to understand changes that could be in motion for licensing policies and other

local schemes such as Pubwatch, Best Bar None, and BIDs (Business Improvement Districts). If you pay a Late Night Levy then it might be worth reviewing with the council what discounts are available or if they are reviewing the Levy.

Training and internal processes

As part of a health check of your business, it would be prudent to review and update staff training. Although your staff might have been furloughed, they are still permitted to engage in training. The rules around training whilst furloughed are complicated and the UKH Job Retention Scheme guidance document provides additional information – see [here](#).

Please see links below:

[Morning Advertiser: Q&A's: Take Aways; Guest Rooms; Time restricted licences](#)

[Institute of Licensing: Frequently asked questions for operators.](#)

[UK Hospitality: Coronavirus](#)

<https://www.morningadvertiser.co.uk/Article/2020/03/24/Where-can-I-find-Q-A-experts-in-on-trade>

Licensed Business Closures

<u>Food and drink</u>	Exceptions
Restaurants and public houses, wine bars or other food and drink establishments including within hotels and members' clubs, such as dining rooms.	<p>Food delivery and takeaway can remain operational and can be a new activity supported by the new permitted development right. This covers the provision of hot or cold food that has been prepared for consumers for collection or delivery to be consumed, reheated or cooked by consumers off the premises.</p> <p>Room service in hotels and accommodation.</p>
Cafés and canteens	<p>Food delivery and takeaway can remain operational (and as above)</p> <p>Cafés and canteens at hospitals, police and fire services' places of work, care homes or schools; prison and military canteens; services providing food or drink to the homeless.</p> <p>Where there are no practical alternatives, other workplace canteens can remain open to provide food for their staff and/or provide a space for breaks. However, where possible, staff should be encouraged to bring their own food, and distributors should move to takeaway. Measures should be taken to minimise the number of people in the canteen / break space at any one given time, for example by using a rota.</p>
<u>Retail</u>	Exceptions
All retail - with notable exceptions	<ul style="list-style-type: none"> • Supermarkets and other food shops • Off-licences and licenced shops selling alcohol, including those within breweries • Shopping centres may stay open but only units of the types listed in the guidance may trade • Corner shops and newsagents • Petrol stations
Outdoor and indoor markets	Market stalls which offer essential retail, such as grocery and food
<u>Accommodation</u>	Exceptions
Hotels, hostels, B&Bs, holiday rentals, campsites and boarding houses for commercial use	Where people live in these as interim abodes whilst their primary residence is unavailable, or they live in them in permanently they may continue to do so.

	<p><u>Critical workers</u> and non-UK residents who are unable to travel to their country of residence during this period can continue to stay in hotels or similar where required.</p> <p>People who are unable to move into a new home due to the current restrictions can also stay at hotels.</p> <p>Where hotels, hostels, and B&Bs are providing rooms to support homeless and other vulnerable people such as those who cannot safely stay in their home, through arrangements with local authorities and other public bodies, they may remain open.</p> <p>Those attending a funeral will be able to use hotels when returning home would be impractical.</p> <p>Hotels are allowed to host blood donation sessions.</p> <p>NB: Food and drink as part of room service is permitted.</p>
Caravan parks/sites for commercial uses	Where people live permanently in caravan parks or are staying in caravan parks as interim abodes where their primary residence is not available, they may continue to do so.
<u>Assembly and leisure</u>	Exceptions
Museums and galleries	
Nightclubs	
Cinemas, theatres and concert halls	Small group performances for the purposes of live streaming, radio or TV could be permissible where Public Health England guidelines are observed and no audience members attend the venue.
Bingo halls, casinos and betting shops	
Spas and massage parlours	
Skating rinks	
Fitness studios, gyms, swimming pools or other indoor leisure centres	Any suitable assembly or leisure premises may open for blood donation sessions.
Arcades, bowling alleys, soft play centres and similar	
<u>Outdoor recreation</u>	Exceptions
Playgrounds, sports courts and pitches, and outdoor gyms or similar	

Takeaway and delivery facilities should remain open and operational

People can enter premises to access takeaway services, including delivery drivers.

Businesses are encouraged to take orders online or by telephone.

They should not provide seating areas, indoors and outdoors, for customers to consume food and drink. Ordering in advance is strongly encouraged to avoid waiting, as per Public Health England guidelines. This includes ensuring a distance of 2 metres between customers and staff; letting people enter in small groups and controlling queues outside premises.

Above extracted from

<https://www.gov.uk/government/publications/further-businesses-and-premises-to-close/further-businesses-and-premises-to-close-guidance>

(also see comments on page 1 re: planning)