



PopplestonAllen

What you need to know about Step 3 openings from May 17

Written by solicitor Suraj Desor

Introduction

As cases come down and vaccination rates go up it is looking likely that Step 3 of the Government's Road Map out of Lockdown will go ahead as planned on the 17 May 2021.

How will this affect pubs, bars, restaurants and the rest of the hospitality sector? Suraj Desor solicitor at Poppleston Allen, who specialise in leisure licensing and advises some of the largest pub and restaurant chains in the UK, tackles some of the legal questions that operators may have as hospitality venues gear up for further easing of lockdown rules.

Note: The following information relates to England only and generally to Step 3, no earlier than 17 May. Note also that Government guidance may change and amended regulations may be made

What is Step 3 in a nutshell

Firstly, venues/sectors perceived as higher risk such as nightclubs, hostess bars and sexual entertainment venues are still not permitted to reopen, although generally speaking they can 're-purpose', for example as a bar.

Apart from these and specific restrictions relating to restaurants, cafés, bars, pubs, social clubs (including members' clubs) and casinos, there are no other premises which must remain closed in Step 3 or restrict the way they run their business (subject to usual social distancing, Covid risk assessments and capacity caps detailed further below).

In short therefore, if you are not a nightclub, dance hall, sexual entertainment venue etc then you can open, both indoors and outdoors. If you are a restaurant, café, bar, pub, social club or casino then you can open subject to restrictions on how you serve food and drink on the premises (see below).

All businesses must continue to comply with updated Covid guidance and regulations relating to Test and Trace, social distancing and the number of people in a group.

Can I operate inside and outside?

All businesses permitted to open will be able to open both inside and outside. However, there are limits on the numbers of customers or visitors you can accept in line with the wider social contact limits at this stage - unless a specific exemption exists.

You will not be permitted to accept bookings for, or admit in a group of, more than 30 persons where the group is located outdoors, unless any exceptions apply such as education/ training, gatherings necessary for certain purposes (includes work purposes/ emergency assistance) or to meet a legal obligation (for a full list of exemptions here [at paragraph 3 of Schedule 3 The Health Protection \(Coronavirus, Restrictions\) \(Steps\) \(England\) Regulations 2021](#))

Indoors, you are not permitted to accept bookings for or admit to the premises a group of more than 6 persons, again unless any exemptions referenced above apply or one of the specific indoor gathering exceptions applies [under paragraph 4 of the above Regulations](#) which include support groups and parent & child groups (no more than 15 persons) and marriages or civil partnerships and related receptions, commemorative and significant life events (no more than 30 persons).

Lastly, you must take all reasonable steps to ensure that no person joins another group or acts otherwise in a way that would contravene those rules.

Are there any restrictions on how I can serve food or drink (including alcohol) at my premises?

The rules relating to off-sales or takeaways and delivery do not change. You will be allowed to continue to operate as you have done so before 17 May 2021.

There is no national prohibition on takeaway sales of alcohol, and indeed the Business and Planning Act permits certain premises to allow off-sales of alcohol even if their licence does not authorise such sales.

However specific conditions on an individual premises licence and exemptions may apply – if you are in any doubt legal advice should be sought. Generally, ‘off-sales’ are permitted but it is critical that such drinks are taken away from the premises and not consumed in an ‘adjacent’ area, which under the regulations could be treated as part of the premises and therefore requiring table service.

Regarding the sale of food and drink for consumption on the premises, if you serve alcohol for consumption on the premises then you may only sell food or drink for consumption on the premises if that food or drink is ordered by and served to customers who are seated on the premises.

You need to take all reasonable steps to ensure that customers remain seated whilst consuming the food or drink on the premises (certain premises are exempt from this requirement, see below).

This is a continuation of the existing requirement under Step 2. Premises that do not serve alcohol for consumption on the premises will only be required to sell food or drink for consumption on their premises if they take all reasonable steps to ensure that the customer remains seated whilst consuming that food or drink on the premises; there is no need to provide table service.

Customers should generally remain seated but can use the toilets, breast-feeding or baby-changing facilities where appropriate.

Payment can be taken at the bar where payment at the table is not possible.

What are the rules around staff and customers wearing face coverings?

Unless seated to eat or drink, customers should be encouraged to wear face coverings whilst indoors.

A notice must be displayed in a conspicuous location informing customers of this requirement for face covering under [The Health Protection \(Coronavirus, Restrictions\) \(Obligations of Undertakings\) \(England\) Regulations 2020](#) unless an exemption applies to the person or the person has a reasonable excuse under the [Health Protection \(Coronavirus, Wearing of Face Coverings in a Relevant Place\) Regulations 2020](#) (which includes to eat or drink).

Alternatively, you must take other measures to ensure that any person who enters the premises without wearing a face covering is given this information.

Staff must wear face coverings in indoor areas unless they are separated from customers by a screen or similar.



Do my customers have to order a substantial meal, or any food, with a drink?

No. Indoors, as with outdoors under the previous Step 2, there is no legal requirement for customers to order any kind of food alongside their drink in order to be served alcohol in premises. However, you should check if there are any conditions on your premises licence that effectively require you to provide alcohol as ancillary to food - as these conditions must still be observed.

What are the rules around last orders and when should customers have left the premises by?

Last orders are dictated by the licence-holder in accordance with the times permitted on their alcohol premises licence. Like Step 2, there is no general curfew as with previous restrictions.



Do customers still have to be distanced and what are the rules around table spacing requirements?

Yes, and tables should be spaced out at “appropriate distance” which under Government regulations means at least 2 metres apart or 1 metre with mitigation (for example barriers or screens, or seats do not face each other, or there are other measures to limit the risk of transmission) – this applies both indoors and outdoors.

Remember that the requirement is that your customers are seated, not necessarily at a table.

However, clearly more general control of customers can be achieved by the use of tables.

Do I need to worry about roofs and the 50% rule anymore?

Yes. If your marquee or gazebo was previously classed as ‘indoors’ because it had a roof and more than 50% walls (generally speaking), then, whilst under Step 3 you can allow customers to sit there and consume food and drinks, they and you will still be subject to the rules under Step 3 about ‘indoors’ - so treat those marquees and structures as ‘inside’, just like the main part of your pub or bar.

If your marquee or gazebo is considered ‘outdoors’, then it will benefit from the more relaxed rules under Step 3 for outdoors about groups of up to thirty.

Remember you still have obligations under the smoking ban so any smoking shelter must still comply with the so called 50% rule if it has a roof.

Can my pub/ bar offer any kind of entertainment - if so what is permitted (karaoke, quizzes, live music, live TV/ sport)?

In terms of providing entertainment, [Government guidance](#) sets out restrictions on some types of events such as live performance events and business events, including caps on attendance. The current guidance states the objective is “To maintain social distancing when providing entertainment within or outside restaurants, pubs, bars and similar venues that serve food or drink.”

You will usually need to:

1. Determine the viability of entertainment and maximum audience numbers. Make this consistent with social distancing outside and within venues, and with other safety considerations.
2. Prevent entertainment, that is likely to encourage audience behaviours with increased transmission risk. For example, loud background music, communal dancing, group singing or chanting.
3. Reconfigure your entertainment spaces to ensure customers are seated rather than standing. For example, repurposing dance floors for customer seating.

4. Communicate clearly to customers your arrangements for entertainment. Clearly supervise them with extra staff if appropriate.”

The Guidance states that venues should lower music and other background noise and prevent shouting, singing and dancing in the venue by making sure music and broadcasts are played at a low volume.

In terms of showing live TV/ sport, venues can show live TV/ sport inside and outdoors, subject to following Government guidance (and conditions of your licence). Be mindful of the above guidance on broadcasts likely to encourage audience behaviours increasing transmission risk such as loud background music, group singing or chanting.

What about music?

There is no specific prohibition of live bands or recorded music (subject to your premises licence), but current guidance is likely to continue such that hospitality venues may provide ancillary performance activity, such as live music, for seated food and/or drink customers but should not charge for this ancillary performance or admit an audience in addition to seated food and/or drink customers, and that loud music, including loud background music should not take place.

Where events such as live music are taking place, these should be ticketed and held in a separate room from regular food and drink customers to prevent mixing with event attendees. Attendance caps will apply.

What are the rules around smoking outdoors?

Your customers can continue to smoke outdoors. However, venues will be prohibited from providing shared smoking equipment such as shisha pipes for use on the premises. In terms of any outdoor structure such as a gazebo, for it to be permitted to be used for smoking it must not be classed as 'indoors' (see page 7).



Can pool tables, darts, fruit machines etc. be used?

Whilst there is no specific prohibition on any of these activities (subject to conditions on your licence), again current guidance is likely to continue, and operators should consider whether providing indoor games such as fruit machines, pool, darts, etc is within the spirit of the guidance.

Operators considering such use should be mindful of updated guidance and ensure such activities are conducted by customers in a COVID Secure way (including regular sanitisation), with appropriate risk assessments, social distancing restrictions.



Cinemas, theatres, concert halls and sports grounds

The general rule that premises serving alcohol must only do so when it is ordered at, served to and consumed by seated customers is relaxed for these businesses. An old rule from the Tier system is re-introduced allowing food or drink which is ordered by a customer who has a ticket, to order at the bar so long as that food or drink is consumed in the seating provided to watch the film, performance or event, as the case may be.

Again, custom and practice over the last few months has clearly established that, for example, grass roots live music venues can be considered “concert halls” for these purposes and we see no reason why that should change.

What are the legal requirements for licensees and customers for Test and Trace? And can my member of staff at the venue ask customers for proof of vaccination?

All customers, not just a ‘group leader’, will have to provide details either through the app or directly to the premises. Venues have to display the official NHS QR poster as well – venues must take reasonable steps to refuse entry to those who refuse to provide contact details.

Venues are permitted to refuse entry on whatever grounds they wish, provided this is not discriminatory under Equality legislation (for example due to sex, race, religion, disability etc.).

Are there any circumstances when rules do not apply or differ e.g. for a business meetings, weddings, other events and other gatherings?

Yes, there are similar exemptions as before under previous rules. For example business events such as conferences, trade shows, exhibitions and private dining events such as charity or gala dinners and awards ceremonies, and corporate hospitality will be permitted to resume under Step 3, however capacity limits apply and must be adhered to at any point throughout the event.

Further details of the capacity limits can be found in the [Government guidance](#).

What are the rules around hosting other events such as like weddings and receptions ?

Government guidance states up to 30 people will be able to attend weddings, receptions, and wakes, along with other types of significant life events including bar mitzvahs and christenings.

Following a recent change of government policy the number of mourners at a funeral is now unlimited, subject to how many people the venue can safely accommodate with social distancing.

What do you and your managers need to be aware of in case of a COVID 19 inspector visit?

It is vital you ensure your venue complies with the relevant updated COVID-Secure guidance and adheres to all relevant legal requirements, including taking reasonable steps to limit the risk of transmission, completing a related risk assessment; and ensuring policies and procedures are in place so that those attending do not mix beyond what is permitted by the social contact limits.

If you fall foul of your obligations, you could find yourself subject to enforcement action, significant fines, and in case of serious breaches and/or those not properly rectified in a timely manner, forced closure and facing a Review of your premises licence. As always, if you are in any doubt seek legal advice.



Suraj Desor Solicitor

Suraj acts for a wide range of clients, from independents to national operators with multiple sites. His clients come from a number of different sectors, including major pub and restaurant chains, entertainment venues, wine retailers, hotels, late night operators, developers and online alcohol delivery and food businesses.

He advises clients on all aspects of licensing law, including:

- new premises licence applications and variations
- premises acquisitions which includes due diligence, reviewing and drafting licensing clauses in agreements and leases
- representing clients in contested hearings and at meetings with the responsible authorities and police

Suraj's work at times involves premises located in difficult areas and he has achieved notable success in towns and cities where cumulative impact policies are in place. On top of licensing advice, Suraj provides training to clients, stakeholders and local authorities on licensing, including practical and interactive licensing committee training on processes and decision-making. In addition to the above, Suraj advises on compliance with weights & measures and consumer protection from unfair trading legislation and its impact on licensed operators.

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