

Off-sales and 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 recent fine weather and relaxation in some lockdown measures has seen the public understandably seek to regain a degree of the life that existed before lockdown and this includes consumption of alcohol with friends and family. Licensed premises have seen their businesses severely impacted and are having to adapt quickly to this new world to ensure the reactivation of their businesses can meet the new challenges and laws. The Police and Local Authority are responsible for ensuring compliance and likewise face new challenges and as lockdown is further relaxed no doubt more questions will arise.

One particular concern over the past few weeks has been groups gathering outside or close to premises that are offering off sales and, in some cases ignoring social distancing guidelines or engaging in anti-social behaviour requiring police involvement.

This is challenging for both the Premises and the Police and Local Authorities. The regulations are new, untested and have caused confusion for many. Partnership has never been so important to enable problems to be identified and resolved swiftly. Premises will need to ensure their risk assessment and methods of operation have considered these new risks and where relevant there should be engagement with local police and licensing authorities and we are seeing some Authorities helpfully provide guidance to premises to support them.

Whilst premises licences may allow off sales of alcohol for collection and takeaway, if problems are identified, premises could still face potential enforcement under Coronavirus regulations and the Licensing Act 2003. Given that social distancing is a

public health issue, breaches of these rules is not an offence and would not appear to engage the licensing objective of public safety which section 182 Guidance (para 2.7) defines this as “ safety of persons using the relevant premises rather than public health which is addressed in other legislation”.

Whilst police can and will deal with those persons committing offences, they will also take a holistic view and where alcohol is thought to have played a part in the cause of the problem, they may seek to mitigate further risk by taking action against a premises.

Regulations and laws are always open to interpretation and challenge but in these challenging times with new social risks and rules it is hoped pragmatic partnership working will avoid many issues and resolve the few that might arise quickly as there is a shared common aim to have safe and compliant premises.

Legislative overview

The practical effect of Regulation 4¹ is that pubs and restaurants are required to stop selling food and/or drink for consumption on the premises unless exempt under Regulation 4(2).

Regulation 4(3) states that: *“An area adjacent to the premises of the business where seating is made available for customers of the business (whether or not by the business) is to be treated as part of the premises of that business”*.

The practical effect of Regulation 4(3) is that the prohibition includes places where seating is available that are next to or adjoining premises that sell food or drink, and prevents people from sitting or congregating in those areas. This is to prevent consumption taking place in beer gardens, outside seating and other “adjacent” areas.

Although they are not subject to the closure provisions, supermarkets and off licences would be expected to prevent the consumption of alcohol in areas adjacent to their premises.

These Q and A's have been prepared to assist all involved in how to navigate the issues identified:

Q: Can I legally provide off-sales in sealed or open containers from my premises – for example a pint of draught beer to take away and consume elsewhere?

A: Yes, if you have the necessary off-sales permission on your licence with no further restrictions. This will be stated on your premises licence and you should check the times and days permitted and review any conditions that might be relevant. **Note: Any off-sales authorised by a Club Premises Certificate MUST be sold in sealed containers.**

¹ <http://www.legislation.gov.uk/ukxi/2020/350/contents/made>

<https://gov.wales/health-protection-coronavirus-restrictions-wales-regulations-2020-amended>

Q: Can I provide seating for customers of the business, for the purposes of consumption?

A: No. Seating cannot be made available (and this can include areas not under the control of the premises) and this is not restricted to seating within the premises such as beer gardens and adjoining smoking areas, but would include areas adjacent to the premises which also might include public benches.

Q: If I knowingly allow customers to take alcohol away in open or sealed containers for consumption in a seated area as outlined above, is there an offence committed?

A: Yes, this would be a breach of Regulation 4, which is a criminal offence and a Prohibition Notice could be served, or it could be felt that this is undermining the licensing objectives and a licence review could be instigated.

Q: What if customers take away alcohol and are congregating in the immediate vicinity, and consuming their alcohol?

A: It is clear that the intention of the regulations was to discourage any sort of congregation on or near licensed premises. If there are breaches of the regulations or ASB then as above, the premises could be subject to enforcement.

Q: What social distancing measures need to be in place?

A: Adequate social distancing measures should be put in place to protect staff and customers wishing to purchase or collect food or drink from your premises. Consider accepting only contactless payments and consider relevant government guidance.

Q: To what extent am I responsible for behaviour of customers who lawfully purchase drinks to take away, but then congregate elsewhere in such a fashion to be breaching regulations or social distancing guidelines in an area away from the premises?

A: It would be hoped that premises will take a common sense approach and would promote and encourage social responsibility of customers (as within the existing Licensing Act responsibilities), and it would not be expected that customers are asked to confirm where they intend to take the alcohol to. If however off sales are made in open containers it might be reasonable to consider where the customer is going to consume the alcohol.

Enforcement could be both under LA 2003 and the Coronavirus Regulations.

Q: What about customers who take their drinks whether in sealed or open containers and consume them in an area that is caught by a Public Space Protection Order (PSPO) also known as controlled drinking zones??

A: If persons are consuming alcohol in a controlled area or PSPO, their alcohol can be seized or the person can be asked to dispose of the alcohol (check

your local authority controlled zones). Consider posters to advise your customers.

Q: What about individual responsibility? – is it right that the premises can be responsible for the behaviour of individuals or groups beyond the premises or adjacent to them?

A: Yes they can be – it will depend on the specific circumstances at the time. While individuals have responsibility for their actions depending on the facts their behaviour could be linked to the premises

Q: What advice should I give to customers and should I be warning them about social distancing?

A: While customers are attending to collect or order food or drinks best practice would suggest you have undertaken a risk assessment to consider the issues and in the same way you advertise under age sales policies you may wish to consider customer messaging as their behaviour could have a direct impact on the premises. You may wish to contact your local authority for advice and guidance.

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