

Licensing Without Hiccups

UK – April 2021



Reopening of Hospitality After the Pandemic

As pubs, restaurants and bars begin to reopen to serve food and drink outside, the UK government has [announced](#) that it will allow pubs and restaurants to erect a marquee in their garden for the whole summer without the need for planning permission. This will include restaurants and bars situated within listed buildings. The government has not yet published the regulations that implement these changes, but the measures come as part of a £56 million Welcome Back Fund designed to help businesses make the most of the summer and recover from the effects of the pandemic.

As well as these measures, the government has published guidance that includes changes to the requirements for track and trace. Venues in hospitality and the tourism and leisure industry will now be required to display an official NHS QR code poster so that customers and visitors can “check in”, or alternatively, ask every customer or visitor over the age of 16 to provide their name and contact details. Previously, only one member of a group was required to provide these details.

This is a timely reminder for those in the hospitality industry to verify that their policies and procedures are COVID-19 secure. This should include carrying out a COVID-19 secure risk assessment and ensuring that all members of staff are familiar with the steps required to keep people safe, including enhanced procedures for cleaning, wearing face coverings while working indoors and enforcing the “rule of six”.

COVID-19: Updated Guidance for Hospitality Industry

In light of COVID-19 restrictions being eased, the government has also updated its [guidance](#) for restaurants, pubs, bars and takeaway services on working safely. Key changes include the requirement for venues serving alcohol to take payment outdoors where possible. As a last resort, those venues can take payment indoors if payment outdoors is not possible, for example, due to a technical issue. For venues not serving alcohol, customers are able to order and collect food and drink from a counter, but must be seated when consuming food and drink. The guidance also recommends that ventilation should be used to reduce the risk of transmission, including mechanical ventilation using fans and ducts, natural ventilation through doors and windows or a combination of the two.



COVID-19: Enforcement Powers for Local Authorities

The government has also updated its [guidance](#) to reflect additional enforcement powers for local authorities in their efforts to keep premises COVID-secure. Enforcement officers are able to take targeted action against unsafe premises by issuing Coronavirus Improvement Notices (CIN), Coronavirus Restrictions Notices (CRN) and Coronavirus Immediate Restrictions Notices (CIRN). A CIN may be issued when a business is failing to fulfil a provision set out in the relevant coronavirus regulations and will be applied for a minimum of 48 hours. Failure to comply with a CIN could lead to a fixed penalty notice (FPN) of £2,000 and/or a CRN or CIRN.

A CRN will be issued where a recipient fails to comply with a CIN and such non-compliance creates a risk of exposure to the virus. Failure to comply with a CRN during its operational period will result in an FPN of £4,000 and possibly a new CRN or CIRN.

A CIRN can be issued where rapid action is needed to close a premises or restrict an activity to stop the spread of the virus. Such closure will be for a 48-hour period initially and may be withdrawn or allowed to expire if the premises have taken corrective action. Failure to comply with a CIRN will result in an FPN of £4,000.

It is, of course, also possible that in circumstances where such a notice has been issued, a premises licence could be reviewed by the licensing authority and other responsible authority, on the grounds of public safety and/or prevention of crime and disorder.

We would anticipate, however, that authorities will seek to work with responsible operators in the first instance and co-operation with reasonable requests in the event of an accidental breach or oversight may help to avoid formal enforcement action.

Duty to Protect

The government has published a [consultation](#) on a proposed new Protect Duty. This is a legal requirement for public places to ensure preparedness for and protection from terrorist attacks. The Protect Duty delivers on a manifesto commitment to improve the safety and security of public venues and spaces, drawing on lessons learned from previous terrorist incidents. The consultation will run for 18 weeks and close on 2 July 2021. It seeks views on who the duty should apply to; what it will require stakeholders to do; how compliance should work; and how the government can support those in scope. It also consults on whether Licensing Committees are best placed to oversee such a duty. It is at least possible that the Protect Duty could be added as a licensing objective in the future.

It is expected that the duty will apply to specified owners and operators of public venues, large organisations and those responsible for public spaces. This will include sports stadiums, festivals, music venues, hotels, pubs, clubs, bars, casinos, retail stores, shopping centres and markets. The findings and recommendations of the Chairman of the [Manchester Arena Inquiry](#) are also likely to be considered as part of the consultation process, with a report expected this summer.

Although this is only a consultation at this stage, operators of licensed premises should consider how such a duty might impact on their operation, the risks of terrorism in relation to their operation, and what the appropriate safeguards are.



Digital Proof of Age

The Home Office has [announced](#) that retailers, bars and restaurants have been invited to put forward proposals to trial new technology when carrying out age verification checks during the sale of age restricted items. Trials by successful applicants will begin this summer and must be completed by April 2022. The pilots will allow a range of digital age verification technology to be tested, such as digital ID cards, which cannot currently be used for alcohol sales.

It is, of course, the case that mandatory conditions attached to all premises licences authorising the sale of alcohol require that the age verification policy must require ID bearing a photo, date of birth and either a holographic mark or an ultraviolet feature. It is difficult to see how a digital system could meet that requirement. Therefore, until there is a change to the conditions, any digital proof of age should not be accepted by licensed operators and retailers for the sale of alcohol unless they are taking part in a pilot.



Claim Issued in the High Court for the Continuation of Local Authority Remote Meetings

The Association of Democratic Services Officers (ADSO) and Lawyers in Local Government (LLG) have [announced](#) that they, along with Hertfordshire County Council, have issued a claim in the High Court to allow for the continuation of local authority remote meetings beyond 6 May 2021. This could include hearings of licensing sub-committees for contested applications, or reviews of premises licences. This is when the [Local Authorities and Police and Crime Panels \(Coronavirus\) \(Flexibility of Local Authority Police and Crime Panel Meetings\) \(England and Wales\) Regulations 2020](#), which allow for local authorities to hold remote meetings, are due to expire. ADSO and LLG have consistently called for local authorities to hold remote meetings, with benefits including reduced travel, cost savings, increased participation and equality of access. The claim has been [supported](#) by Local Government Secretary, Robert Jenrick.



Challenge to Birmingham Street Trading Policy

The High Court has heard a challenge by two street traders against the newly adopted [Birmingham Street Trading Policy](#). The policy says that Birmingham City Council will consider whether applicants for street trading consents have demonstrated that products they propose to sell are “innovative”. The applicants, who have traded in Birmingham for over 40 years, allege that the policy is uncertain, anti-competitive and breaches [The Provision of Services Regulations 2009](#). They argue that the policy gives an unfair advantage to shop retailers who have no need to innovate.

Outside London, local authorities may require licences for street trading, if the council has chosen to adopt the requirement for a licence. Therefore, requirements can vary depending on location. Typically, street trading licences are required by street vendors, but are sometimes relevant for operators of other licensed premises, for example, where a licensed premises wants to provide facilities outside its property for takeaway food and drink, which can be accessed by passers-by on the street.

Contacts



Nicola A. Smith
Director, Birmingham
T +44 121 222 3230
E nicola.smith@squirepb.com



Stephanie L. Perraton
Partner, Birmingham
T +44 121 222 3559
E stephanie.perraton@squirepb.com