

Community Service

Our Ref: Licensing Advice

Please ask for: Lorna Fryer

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Date: 01 October 2020

Urgent Please Read

Dear Sir or Madam,

Letter of Advice - The Health Protection (Coronavirus, Restrictions) (No. 2) (England) (Amendments) (No.5) Regulations 2020 and other relevant Coronavirus Regulations

I am writing to you following the passing of 3 new amendments to the Coronavirus Regulations. Please read this letter in its entirety, while long, it provides all you need to know about the current updates.

Rule of 6

No doubt many of you will have seen the announcement on the rule of 6. Regulation 2 of The Health Protection (Coronavirus, Restrictions) (Obligations of Hospitality Undertakings) (England) Regulations 2020 states:

- A person responsible for carrying on a business of a public house, café, restaurant or other relevant business must, during the emergency period, take all reasonable measures to ensure that—
 - a) no bookings for a table are accepted for a group of more than six persons unless one of the exemptions in regulation 5 of the Principal Regulations applies;
 - b) no persons are admitted to the premises in a group of more than six, unless one of the exemptions in regulation 5 of the Principal Regulations applies;
 - c) no person in one qualifying group mingles with any person in another qualifying group where this is not permitted under the Principal Regulations;
 - d) An appropriate distance is maintained between tables occupied by different qualifying groups.

For the purposes of this regulation:

- An “appropriate distance” means a distance between tables of—
 - a) at least two metres, or
 - b) at least one metre, if—
 - (i) there are barriers or screens between tables; the tables are arranged with back to back seating, or otherwise arranged to
 - (ii) ensure that persons sitting at one table do not face any person sitting at another table at a distance of less than two metres; or
 - (iii) other measures are taken to limit the risk of transmission of the coronavirus between people sitting at different tables;
- A “relevant business” is a business which provides food or drink for consumption on its premises.

This means that unless a group is all from the same household or it is the same household and their one linked household (social bubble/single adult household), groups or bookings cannot exceed 6 persons. It is also imperative that groups, or members of groups, do not mingle with one another. Where you distance tables, please make sure the persons seated at the tables comply by remaining at the “appropriate distance” from those on other tables.

If a premises (i.e. the person responsible for the premises) fails to comply with this legislation, they can be issued a fixed penalty notice (FPN). The FPN starts at £1000, this increases incrementally up to £4000. You could also be prosecuted for the offence.

Track & Trace and NHS QR code

As you are no doubt aware track and trace is now mandatory at premises. In addition, it is also mandatory to display the NHS QR code. Regulation 6,7,8,9, 10 and 16 of The Health Protection (Coronavirus, Collection of Contact Details etc and Related Requirements) Regulations 2020 states:

Requirement to display QR Code

6. (1) A relevant person must in an appropriate place, display and make available a QR Code at relevant premises that they occupy or operate with a view to achieving the aim in paragraph (2).

(2) The aim is to enable an individual who seeks to enter the relevant premises in a case set out in regulation 9 and has a smartphone in their possession to scan the QR code with that smartphone as, or immediately after, they enter the premises.

Requirement to request certain details of individuals

7. (1) This regulation applies where an individual (“A”) seeks to enter relevant premises in a case set out in regulation 9.

(2) Subject to paragraphs (3) and (4), the relevant person who operates or occupies those premises must request that A provides to them the details set out in regulation 10.

(3) The requirement in paragraph (2) does not apply where “A” has scanned the QR Code displayed and made available in accordance with regulation 6(2).

(4) The requirement in paragraph (2) does not apply where the relevant person has reason to believe that A is—

- a) unable to provide the details set out in regulation 10 owing to a physical or mental disability or other reason related to their health, or
- b) under the age of 16.

Requirement to request certain details of those in a group

8. (1) This regulation applies where a group of individuals seeks to enter relevant premises together in a case set out in regulation 9.

(2) A relevant person must request that—

- a) every member of the group provides the details set out in regulation 10, or
- b) that a single member of the group provides those details in place of any other member of the group doing so.

9. (1) A case falls within regulations 6(2), 7(1) and 8(1) if an individual (whether alone or as a member of a group), seeks to enter relevant premises in order to—

- a) access a service or participate in an activity provided by or on behalf of the relevant person,
- b) provide a service or an activity by or on behalf of a relevant person, whether as a member of staff, as a volunteer, or otherwise, or
- c) visit those premises for any other purpose, except where the purpose is an exempt purpose.

(2) A visit is made for an exempt purpose within paragraph (1)(c) if it is made—

- a) by a constable or police community support officer acting in the course of their duty;
- b) by an emergency responder (other than a constable) acting in their capacity as an emergency responder;
- c) for the sole purpose of making postal, courier or other deliveries and collections, including of documents, food or physical goods.

Details to be requested under regulations 7 and 8

10.(1)The following information must be requested under regulations 7 and 8—

- a) the name of the individual;
- b) a telephone number on which the individual may be contacted;
- c) an e-mail address if the individual is unable to provide a telephone number;
- d) a postal address if the individual is unable to provide an email address;
- e) the date and time that the individual entered the relevant premises;
- f) where the individual is a member of a group seeking permission to enter relevant premises together, the number of people in that group (including any member of the group that has scanned a QR Code when seeking to enter the relevant premises).

Requirement to refuse entry

16. (1) Where paragraph (3) applies a relevant person must take all reasonable steps to prevent entry by an individual to the relevant premises that they occupy or operate.

(2) Where paragraph (4) applies a relevant person must take all reasonable steps to prevent entry by every member of a group which seeks to enter those premises.

(3) This paragraph applies where the relevant person becomes aware that an individual has not provided the details in regulation 10, having been requested to do so in accordance with regulation

(4) This paragraph applies where the relevant person becomes aware that no member of a group has provided the details set out in regulation 10, at least one of them having been requested to do so in accordance with regulation 8.

(5) For the purposes of paragraphs (3) and (4), a case in which the details set out in regulation 10 are to be treated as not having been provided includes one where the details provided are incomplete or the relevant person has reason to believe that the details provided are inaccurate.

(6) A reference in this regulation to a “group” includes a “sub-group” as referred to in regulation 8(3).

What this means and what we expect

What this all fundamentally means is that persons, be they individuals or groups, cannot enter or remain on a premises without completing some form of track and trace. This also includes the use of outside seating.

We would encourage all premises to use exclusively the NHS QR code, except in those circumstances where a person(s) is unable to use it. If a person(s) is unable to use the track and trace QR code, the premises (relevant person) must record those details. By all premises using the QR code it creates an expectation for members of the public to use QR codes and this will make the collection of this information easier.

If you offer seated consumption of food and drink, such as pub or restaurant, an individual acting as a host at the entrance to the premises, is likely the best way to ensure that anyone entering has completed track and trace.

If you are a premises that allows a mix of takeaway and seated consumption, such as cafés or coffee shops, you will be best placed to have a QR code at the counter. As the relevant person at a premises you must satisfy yourself that a person is going to take away a product; if they stay to consume on the premises they must complete track and trace.

However you wish to do it, it is mandatory and required by law. The premises (relevant person) must be satisfied that all individuals and groups, consuming food or drink on the premises, have registered with track and trace in some form. This is your responsibility and we would encourage you to document your plan to implement this requirement.

If a premises (and the person responsible for the premises) fail to comply with this legislation, they can be issued a fixed penalty notice (FPN). The FPN starts at £1000, this increases incrementally up to £4000. You could also be prosecuted for the offence.

To get a QR poster please visit <https://www.gov.uk/create-coronavirus-qr-poster>. Once there you complete the form and the government provide you with a QR code poster for your premises. You should also have a privacy notice and this is available on the Gov.uk website.

Curfew and table service

The latest government announcement was that nationally all premises must close at 10pm. The announcement also stated that premises selling alcohol would need to do table service. The Health Protection (Coronavirus, Restrictions) (No. 2) (England) (Amendment) (No. 5) Regulations 2020 state:

Restrictions on opening hours of businesses and services

4A. (1) A person responsible for carrying on a restricted business or providing a restricted service ("P") must not carry on that business or provide that service during the emergency period between the hours of 22:00 and 05:00, subject to paragraphs (2), (3) and

(4)(2) Paragraph (1) does not prevent P selling food or drink for consumption off the premises between the hours of 22:00 and 05:00—

- a) by making deliveries in response to orders received—
 - (i) through a website, or otherwise by on-line communication;
 - (ii) by telephone, including orders by text message; or
 - (iii) by post; or

b) to a purchaser who collects the food or drink in a vehicle, and to whom the food or drink is passed without the purchaser or any other person leaving the vehicle.

(3) Where P's restricted business or restricted service is a cinema, theatre or concert hall, paragraph (1) does not prevent P carrying on that business or service at or after 22:00 for the purpose of concluding a performance which began before 22:00.

(4) Paragraph (1) does not prevent P carrying on a restricted business or providing a restricted service located in a motorway service area between the hours of 22:00 and 05:00.

(5) If a restricted business or restricted service ("business A") forms part of a larger business ("business B"), the person responsible for carrying on business B complies with the requirement in paragraph (1) if that person does not carry on business A between the hours of 22:00 and 05:00, other than as provided for in paragraphs (2), (3) or (4).

Restrictions on service of food and drink for consumption on the premises

4B (1) Subject to the restriction on opening hours in regulation 4A(1), during the emergency period, a person responsible for carrying on a business or providing a service listed in Part 1 of Schedule which serves alcohol for consumption on the premises may sell food or drink for consumption on the premises only if—

- a) the food or drink is ordered by, and served to, a customer who is seated on the premises; and
- b) the person takes all reasonable steps to ensure that the customer remains seated whilst consuming the food or drink on the premises.

(2) Subject to the restriction on opening hours in regulation 4A(1), during the emergency period, a person responsible for carrying on a business or providing a service listed in Part 1 of Schedule 3 which does not serve alcohol for consumption on the premises may sell food or drink for consumption on the premises only if the person takes all reasonable steps to ensure that the customer remains seated whilst consuming the food or drink on the premises.

(3) For the purposes of paragraphs (1) and (2), 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) or which customers of the business habitually use for consumption of food or drink served by the business is to be treated as part of the premises of that business.

(4) If a business or service listed in Part 1 of Schedule 3 ("business A") forms part of a larger business ("business B"), the person responsible for carrying on business B complies with the requirement in paragraph (1) or (2) if that person complies with the requirement in relation to business A.

Premises subject to regulation 4a and 4b (part 1 of schedule 3)

1. Restaurants, including restaurants and dining rooms in hotels or members' clubs.

2(1) Businesses, other than businesses listed in sub-paragraph (2), providing food or drink prepared on the premises for immediate consumption off the premises.

(2) The businesses are—

- a) supermarkets;
- b) convenience stores, corner shops and newsagents;
- c) pharmacists and chemists;
- d) petrol stations.
- e)

3(1) Cafes, including workplace canteens (subject to sub-paragraph (2)), but not including—

- a) cafes or canteens at a hospital, care home or school;
- b) canteens at a prison or an establishment intended for use for naval, military or air force purposes or for the purposes of the Department of the Secretary of State responsible for defence;
- c) services providing food or drink to the homeless.

(2) Workplace canteens may remain open where there is no practical alternative for staff at that workplace to obtain food.

4. Bars, including bars in hotels or members' clubs.

5. Public houses.

6. Social clubs.

7. Casinos.

What this means and what we expect

Premises that fall into the schedule outlined above, except where there is an exemption, must be closed between 10pm and 5am. This means closed; not last orders at 10pm then close. It would be advisable for any premises providing a service, to set out a last order time that will give you ample time to empty a premises customers before 10pm.

A takeaway service can be run after 10pm, however this is delivery only. An order cannot be placed and then collected. The only exemption to this is if it is delivered to a purchaser who collects the food or drink whilst remaining in their vehicle.

Where a premises is mixed use, such as a bar or restaurant in a hotel, any part of the premises that is used to provide a service listed in schedule 3 part 1 (above) must close (including to residents of the hotel) at 10pm.

Table service is mandatory on any premises that serves alcohol for consumption on the premises. This means all premises with a premises licence allowing the sale of alcohol on the premises is deemed to fall within this requirement. This is full table service; there cannot be people ordering at a bar or needing to go somewhere to order. It is the duty of the premises (i.e. the relevant person) to ensure that all persons remain seated, unless there is a valid reason for them to be moving around (such as toilet or leaving to smoke).

Where a premises does not sell alcohol (no premises licence to do so), it is expected that any purchase of food or drink for consumption on the premises will be consumed at a table. A premises (i.e. relevant person) must satisfy themselves that a person is going to take a product away to consume it; if they stay to consume they must sit at a table to consume.

If a premises (person responsible for the premises) fails to comply with this legislation, they can be issued a fixed penalty notice (FPN). The FPN starts at £1000, this increases incrementally up to £10000 and eventually to prosecution.

Face Coverings

You will have heard that the requirements for face coverings have changed. This means staff working in restaurants with table service, pubs, bars, including hotels and social clubs, must now wear face coverings when working in an area that is open to the public. There is also a requirement for members of the public to wear face coverings in premises except where a reasonable cause or exception applies. Obviously, the face coverings can be removed to eat and drink. They should be worn when moving to go to the toilets or to leave the premises.

This legislation is enforced by the Police and failure to comply is an offence punishable by FPNs or prosecution.

We thank you for the work you have done so far, we know it is challenging and how much effort is required: many venues are doing excellent work.

However, nationally and locally there has been an increase in Covid numbers since lockdown has been eased. Locally the number of cases are increasing.

We want to avoid a local lockdown, or shutting premises and venues, if we can. We are concerned that we may need to do that if we do not collectively manage to control the number of cases locally. We need your help and support to avoid the need for further measures to be imposed

There are seven steps to take to protect your staff and your customers during the pandemic. These can be found at the end of this letter.

It is very important that you adhere to the new legislation set out above, we will not hesitate to take action, including imposing fines. We will be proactively visiting premises and doing spot checks across the District.

There are useful 'Play Your Part' posters to download at:

<https://www.hertfordshire.gov.uk/about-the-council/coronavirus/play-your-part-campaign.aspx>

There is also useful information about making your workplace COVID-secure at:

<https://www.gov.uk/guidance/working-safely-during-coronavirus-covid-19>

We cannot stress enough how important it is to get this right. We do not want the situation to escalate which might mean we have to start closing venues.

Yours faithfully

Joanne Wagstaffe
Chief Executive
Three Rivers District
Council

Prof. Jim McManus
Director of Public
Health for
Hertfordshire Public
Health England

Chief Insp. Linda
Coates
Hertfordshire
Constabulary

Lorna Fryer
Lead Licensing
Officer, Three Rivers
District Council

Seven Steps for Covid Security

Step 1. Complete a Covid-19 risk assessment. Share it with all your staff. Find out how to do a risk assessment at: <https://www.hse.gov.uk/coronavirus/working-safely/risk-assessment.htm>

Step 2. Clean more often. Increase how often you clean surfaces, especially those that are being touched a lot. Ask your staff and your customers to use hand sanitiser and wash their hands frequently.

Step 3. Ask your customers to wear face coverings where required to do so by law. That is especially important if your customers are likely to be around people they do not normally meet. Some exemptions apply. Check when to wear one, exemptions, and how to make your own: <https://www.gov.uk/government/publications/face-coverings-when-to-wear-one-and-how-to-make-your-own/face-coverings-when-to-wear-one-and-how-to-make-your-own>

Step 4. Make sure everyone is social distancing. Make it easy for everyone to do so by putting up signs or introducing a one-way system that your customers can follow. Enable people in the same party who do not live together to remain a safe distance apart. Make sure that you manage queues into the premises, by ensuring that people socially distance. To assist with maintaining queues place markings on the floor at intervals of 2m, have a queue cut off point and ensure someone from the premises monitors the queue.

Step 5. Increase ventilation by keeping doors and windows open where possible and running ventilation systems at all times.

Step 6. Take part in NHS Test and Trace by keeping a record of all your customers for 21 days. From 18 September, this will be enforced in law. Some exemptions apply. Check how to maintain records to support NHS Test and Trace at: <https://www.gov.uk/guidance/maintaining-records-of-staff-customers-and-visitors-to-support-nhs-test-and-trace>

Step 7. Turn people with coronavirus symptoms away. If a staff member (or someone in their household) or a customer has a persistent cough, a high temperature or has lost their sense of taste or smell, they should be isolating.