

COVID-19 **Tier 2 (High)** – Regulations Relevant to premises who sell food or drink for consumption on the premise

The Health Protection (Coronavirus, Restrictions) (All Tiers) (England) Regulations 2020. Statutory Instrument No. 1374

Came into force on 2nd December

Schedule 2 – Tier 2 Restrictions - Part 3 - Other Restrictions on businesses

Reg 11 – Restriction on opening hours.

This regulation applies to a number of businesses including, pubs, bars, restaurants, cafes, social clubs, businesses providing food or drink for immediate consumption off the premises (excluding supermarkets, convenience stores, pharmacists, petrol stations) bowling alleys, cinemas, theatres.

A person responsible for carrying on a business or providing a service in the **Tier 2 area** must not accept, between the hours of 2200 and 0500 any orders for food or drink for consumption on the premise, or carry on that business between the hours of 2300 and 0500. Hours.

‘On the premise’ – an area adjacent to the premise which is habitually used by customers for consumption of food or drink from the premise or where seating is made available (whether by the business or not) is to be treated as part of the premise.

Of note - This means premises must take responsibility for ensuring food or drink purchased by customers is not consumed in any areas adjacent to the premise after 2300 hours. Premise may be counted as ‘open’ and in breach of this regulation if customers are regularly consuming food or drink in adjacent areas. Allowing customers to leave with open drinks is unacceptable as it clearly indicates their intention to carry on drinking outside the premise in the area adjacent.

Regulation 11 does not prevent such businesses selling food or drink for consumption off the premises between 2300 and 0500 subject to the following –

- 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 that has been pre-ordered as above, provided the purchaser does not enter inside the premises to do so, or
- c) 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.

Of note – Takeaway means takeaway, premises must take responsibility and ensure customers are aware of this requirement before serving them. Customers who consume in the area adjacent to the premise should be asked to move on. Allowing customers to purchase multiple drinks each or continuing to serve to customers who purchase food or

drinks to consume in the area adjacent to the premise is unacceptable and may mean your premise is in breach of the regulations.

Reg 13 – Restrictions on service of food and drink for consumption on the premises

This regulation applies to a number of businesses including, pubs, bars, restaurants, cafes, social clubs and casinos.

A person responsible for carrying on a business or providing a service 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.

A person responsible for carrying on a business or providing a service 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.

‘On the premise’ – an area adjacent to the premise which is habitually used by customers for consumption of food or drink from the premise or where seating is made available (whether by the business or not) is to be treated as part of the premise. Therefore customers using such areas are to be treated as on the premise and the above rules apply.

If a person responsible for carrying on a business contravenes these requirements, they can be issued a fixed penalty notice (FPN). The FPN starts at £1000, this increases incrementally up to £10,000. Alternatively the person can be prosecuted for the offence at Court.

Of note – Where possible payment should also be taken at the table, but may be taken at the bar or counter if sufficient safety measures are in place. We are advising premises who have removable furniture in public places, to remove such furniture by 2245 hours each night to ensure that customers do not use this furniture after 2300 hours.

Reg 14 – Requirement to close businesses selling alcohol for consumption on the premises (other than with a table meal)

A person responsible for carrying on a business of a pub, bar or other business involving the provision of alcohol for consumption **on the premise** must cease to carry on that business unless the alcohol is served as part of a table meal that consumed by the customer.

This regulation does not apply to a customer at a cinema, theatre, concert hall or sportsground and the alcohol is ordered by and served to a customer who has a ticket to watch a film, performance or event at such venues to consume while seated for the performance.

Table meal? – person must be seated at a table, meal must be a main meal, whether breakfast, lunch or dinner. The meal should be plated and more than a snack. A single item on a plate, such as a sausage roll or portion of chips is unlikely to be considered a main meal. However a sausage roll served with accompaniments such as vegetables or salad could be considered a main meal. Sharing platters on their own are unlikely to be considered a main meal. The alcohol is to be served ‘as part of’ the meal, the main purpose of frequenting the premise is to have the meal, the alcohol is secondary. Customers who intend

to drink alcohol should be served food promptly once on the premise and should not be allowed to remain on the premise, drinking alcohol, for an unreasonable amount of time after they have finished their meal.

The table meal must be served by the premise, customers bringing their own food does not satisfy the table meal requirement.

'On the premise' – an area adjacent to the premise which is habitually used by customers for consumption of food or drink from the premise or where seating is made available (whether by the business or not) is to be treated as part of the premise. Therefore customers using such areas are to be treated as on the premise and the above rules apply.

The Health Protection (Coronavirus, Restrictions) (Obligations of Undertakings) (England) Regulations 2020. Statutory Instrument 1008

Came into Force on 18th September but amended on 28th September and 14th October 2020

These regulations apply to premises whether indoors or outdoors that are operated or occupied for the purpose of providing food or drink for the consumption on the premises.

The Principal Regulations (Statutory Instrument 1374 – The Health Protection (Coronavirus, Restrictions) (All Tiers) (England) Regulations 2020, allows for gatherings to take place in business premises only if the business puts in place the required precautions (risk assessment and takes all reasonable measures to limit the risk of transmission) and the people only participate in the gathering alone or as a member of a 'qualifying group'.

A **'qualifying group'** – when inside – consists only of persons from the same household or persons of two households which are 'linked households'.

A **'qualifying group'** – when outside - can be of no more than six persons unless they are from the same household or they are members of two households which are 'linked households'.

A person in one qualifying group must not become a part of another group or otherwise mingle with any person who is not part of their qualifying group.

Reg 1A (1A) – (Taking bookings and admitting customers - Indoor vs outdoors)

A person who operates or occupies relevant premises in a Tier 2 area must take all reasonable measures to ensure that—

- No bookings are accepted or persons are admitted to the premise
 - (a) for indoor seating, for a group of 2 or more, unless all persons are from the same household or from 2 linked households or another gathering exception applies.
 - (b) for outdoor seating, for a group of more than 6 unless all persons are from the same household or from 2 linked households or another gathering exception applies.
- No person joins another group or otherwise acts in a way which would contravene the Tier 2 Regulations

This essentially boils down to:-

Indoors - same households only

Outdoors - maximum of 6 people, who can be 6 people from 6 different households.

'Linked households' where a household that comprises of one adult and one or more children who are under the age of 18 (as of the 12th June 2020), the adult may choose to be linked with one other household.

'Linked childcare households' this allows a household with a child aged 13 or under to link with one other household for the purposes of childcare.

(Neither of the households may then be linked with any other household for a period of 14 days).

Linked Christmas households – This only applies between and including the 23rd and 27th of December. In relation to businesses, when indoors, this only applies when the gathering takes place in a place of worship. Therefore customers will not be able to use this as a reason to attend locations such as pubs and restaurants indoors together.

Of note – When taking bookings for indoor seating you should be asking whether the people attending are all from the same household (or from two linked households) and refusing bookings where they are not and where no other exception applies.

Other exceptions include gatherings for wedding receptions consisting of no more than 15 people, for a commemorative event following a person's death consisting of no more than 15 people, for work purposes only where it is reasonably necessary to gather and cannot be done by other means. Social work gatherings will not be deemed as necessary.

Of note - A place is indoors if it would be considered to be enclosed, or substantially enclosed. Interpretation of this is taken to be the same as under the Smoke-free (Premises and Enforcement) Regulations 2006. Which states that a premise is substantially enclosed if it has a roof or ceiling and the walls cover 50% or more. Therefore a marquee or similar would only be classed as outdoors if at least 50% of the walls are open.

You may find that customers are making bookings for two separate tables in order to get around the restrictions. You should not knowingly allow this. Please remember that the premise commits an offence by taking a booking of more than 6 people and / or allowing a group of more than 6 people to enter unless an exemption applies.

. If however you are not aware that this has been done and then it becomes apparent after they are seated, we would advise that if the parties from different bookings are trying to mingle with each other (without remaining in the set groups of six) they are asked to leave.

Reg 2 (1) – (Table Spacing)

A person responsible for carrying on a business of a public house, café, restaurant or other relevant business (one which provides food or drink for consumption on its premises) must take all reasonable measures to ensure that an appropriate distance is maintained between tables occupied by persons who are not in the same qualifying group.

For the purposes of this regulation:

(a) An "appropriate distance" means a distance between tables of—

- i) at least two metres,
- ii) or at least one metre, if—
 - there are barriers or screens between tables;
 - the tables are arranged with back to back seating, or otherwise arranged to 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

- other measures are taken to limit the risk of transmission of the coronavirus between people sitting at different tables

Regulations 1A – relating to singing and dancing and **regulation 1C** relating to music volume were revoked on the 14/10/20 and so no longer apply. Please see paragraph on the final page regarding these areas.

Reg 2A – Requirement relating to signage and information

2A (1) a person responsible for carrying on a business of a public house, café, restaurant or other relevant business (one which provides food or drink for consumption on its premises) must –

- (a) display a notice providing the information; or
- (b) take other measures to ensure that any person who enters the relevant area without wearing a face covering is given the information specified.

The information referred to in paragraph 1(a) is that any person is required to wear a face covering under the Health Protection (Coronavirus, Wearing of Face Coverings in a Relevant Place) Regulations 2020 unless an exemption under those Regulations applies to the person or the person has a reasonable excuse under those Regulations not to wear a face covering; and it must be displayed in a conspicuous location at the relevant area.

The information to be given to the person under paragraph (1)(b) is that the person is required to wear a face covering unless an exemption applies to the person or the person has a reasonable excuse not to wear a face covering

Of Note - signage at the entrance to your premise and in locations within your premise referring to the need to wear a face covering when not seated is the most effective means to achieve this. Please see later paragraphs which discuss face coverings further and the offences committed by the individuals who do not wear them.

Reg 2B – Prohibition on preventing a person from wearing a face covering

2B (1) a responsible person must not, during the emergency period, prevent, or seek to prevent, any relevant person from wearing a face covering while the relevant person is present at the relevant area. (Pubs, cafes, restaurants are relevant areas)

A relevant person is one who is required to wear a face covering under regulation 3 (1) of the Health Protection (Coronavirus, Wearing of Face Coverings in a Relevant Place) Regulations 2020 while present at the relevant area.

If a person responsible for carrying on a business fails to comply with these regulations, they can be issued a fixed penalty notice (FPN). The FPN starts at £1000, (reduced to £500 if paid within 14 days) this increases incrementally up to £10,000 for further offences. Alternatively the person can be prosecuted for the offence at Court.

The Health Protection (Coronavirus, Collection of Contact Details etc and Related Requirements) Regulations 2020. Statutory Instrument 1005

Came into Force on 18th September - Track & Trace and NHS QR code

These regulations apply to venues providing services for the purposes of consuming food or drink on the premises (including in seating made available adjacent to the premises)

Reg 6 - Requirement to display NHS QR Code - must be displayed in an appropriate place and be available.

The QR code is defined as the QR code issued by the secretary of State – which is the NHS QR code – using other QR code systems does not satisfy this requirement.

Reg 7 - Requirement to request certain details of individuals – people who enter your premise, that do not scan the QR code, must be asked to provide their details. This does not apply if someone is unable to do this due to a physical or mental disability or if they are under 16 years old. Police Constables, PCO's acting in the course of their duty, other emergency responders and delivery personnel do not have to be asked.

Details that must be recorded are – (listed under Reg 10)

- 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;

Reg 8 – Requirement to request certain details of those in a group – If a group enters (maximum of six) then 1 member of the group can provide details on behalf of the group. In such a case you must also record the number in the group.

Reg 12, 13, 14 and 15 - Requirement to retain and disclose details – You must retain the information securely for 21 days, after which you must destroy this information as soon as practicable. You must disclose this information where requested to do so by the Secretary of State or Public Health Officer in relation to contact tracing.

Reg 16 – Requirement to refuse entry to those who have not provided details

Where someone does not provide their details you must take all reasonable steps to prevent entry by the person to your premise.

If a person (or business) responsible for the provisions of a service fails to comply with the requirements under 6, 7, 8, 10, 11 or 13 without reasonable excuse, they can be issued a fixed penalty notice (FPN). The FPN starts at £1000, (reduced to £500 if paid within 14 days) this increases incrementally up to £10,000 for further offences. Alternatively the person can be prosecuted for the offence at Court.

Of Note - If you are using a QR code system whether the NHS one or other, you need to be satisfied that customers have scanned the QR code therefore it is advised that they do this in front of staff. Where possible you should use a dedicated staff member to meet and greet customers as they enter your premise, advising customers on all requirements.

You should not allow customers to add their details to a book where they are then able to view other customers details (this would breach GDPR). This also provides an obvious risk of virus transmission if the same pen etc are being used. Use of a track and trace proforma slip is one way around this if you don't have a dedicated staff member at the entrance to your venue. The use of slips also makes it easier to store and then destroy customers details after 21 days.

Face Coverings – The Health Protection (Coronavirus, Wearing of Face Coverings in a relevant Place) (England) Regulations 2020. Statutory Instrument No. 791.

Staff working in a number of locations, which are indoors, including restaurants, pubs, bars who come or who are likely to come within close contact of any member of the public must wear face coverings when they are in areas open to the public.

Staff who work behind bars / counters should wear face coverings if they are likely to come within 2 metres of customers (even customers just walking passed the bar / counter). If screens cover the bar / counter sufficiently (complete covering without large gaps) then masks do not need to be worn as this prevents staff from coming into close contact.

However staff may still need to wear masks behind screens if they are in close contact with other staff members – this should be identified through a risk assessment for the staff – this would not fall under the face coverings regulations but instead under the Health and Safety at work regulations.

There is also a requirement for members of the public to wear face coverings when in a number of locations, including restaurants, pubs and bars.

People can have a 'reasonable excuse' in relation to the requirement to wear a face covering which means they do not commit an offence. One of the reasons, listed as a reasonable excuse is 'they have removed their face covering to eat or drink'. Therefore unless customers are eating or drinking they should be wearing a face covering, for example when entering and leaving or if they get up to use the toilet.

Premises are required to request customers to wear face coverings and should ask those not wearing coverings to leave unless they state they are exempt (if someone states they are exempt you will need to take this on face value). If you suspect someone is lying and they are a regular customer, you are welcome to report your concerns to the Police. Police will also support premises where customers refuse to leave or become aggressive. Signs located at the entrance to your premise and within will ensure you comply with the requirements placed on your business detailed on page 5 above.

Please note that a visor does not constitute a face covering.

It is the person who does not wear the face covering who commits an offence. They can be issued a fixed penalty notice (FPN). The FPN starts at £200, this increases incrementally up to £6,400. Alternatively the person can be prosecuted for the offence at Court.

Further points to note -

One area causing confusion is in relation to music. Music must not be played at a level which causes customers to shout, sing, dance or move closer to each other in order to talk. As a result the risk of transmission is increased. The guidance on this can be found here <https://www.gov.uk/guidance/working-safely-during-coronavirus-covid-19/performing-arts>

Please keep music to a background level only. Premises found to be playing music too loudly will be referred to Environmental Health who can take action under Health and Safety Regulations.

We hope that this information assists in your understanding of the new requirements. Please contact us if you are unsure about any points, we are happy to help. We will be continuing to conduct visits at premises and have done so at a number of premises already. We have found that by attending and allowing customers to see Police it assists premises with customer compliance.

Please also see the Government guidance for restaurants, pubs, bars and takeaways that is updated with the changes and gives further information - <https://www.gov.uk/guidance/working-safely-during-coronavirus-covid-19/restaurants-offering-takeaway-or-delivery#takeaways-2-2>