



Off-sales and compliance with the Health Protection (Coronavirus Restrictions) (England) Regulations 2020

Legislative Overview

The practical effect of Regulation 4 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).

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

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.**

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 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.