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FTB LICENSING UPDATE WEBINAR

14 OCTOBER 2020





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Taxi & PHV Update

Charles Holland

14 October 2020

FTB Licensing Update Webinar



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Uber Appeal 2: So U Win Again

- Deputy Senior District Judge Ikram 28/9/20
- 18 month licence with conditions
- <https://www.judiciary.uk/judgments/uber-v-tfl/>



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Uber Appeal 2: The prequel

- Licence granted in 2012
- November 2017 TfL refuse to renew
- 15 month “probationary” licence granted on appeal 1 by Chief Magistrate June 2018
- JR of that decision dismissed ([*R \(United Cabbies Group\) v. Westminster Magistrates \[2019\] EWHC 409 \(Admin\)*](#))



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Uber Appeal 2: Renewal refused

- September 2019 TfL grant 2 month licence and add conditions
- November 2019 TfL refuse
- Positive changes and improvement to culture, leadership and systems
- But pattern of failures by the company including breaches that put passenger safety at risk



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Uber Appeal 2: Driver Photo Fraud

- Vulnerability on the Driver App allowed account holders to change profile pictures to A.N. Other
- First discovered by Uber in October 2018
- Not reported to TfL until 31 May 2019
- Further information in appendix (not body) of conditioned June 2019 assurance report
- 14,788 trips



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Uber Appeal 2: Which is right?

*TfL: This raises questions as to whether ULL was trying to lessen the impact and significance of these issues hoping that they would go unnoticed, **or alternatively**, it gives cause to question the judgement of the senior operational management team as to the manner in which these issues were communicated and the importance that ULL attributed to them.*



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Uber Appeal 2: LTDA v. TfL

- LTDA given permission to participate “a slightly separate and more challenging voice”
- <https://www.ltda.co.uk/media-centre/campaigns/uber-licence-appeal-2020/>
- TfL: Court must determine whether TfL’s decision *is* wrong, in the light of the evidence now before it – TfL will assist the court.

Uber Appeal 2: Judicial approach

- *Despite their historical failings, I find them now, to be a fit and proper person*
- *the “fit and proper person” test is not a test of perfection*
- Judgment did not appear to address the question: was the decision wrong



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Statutory Taxi & PHV Standards

- Policing & Crime Act 2017, s.177(4):

Any public authority which has licensing functions under taxi and private hire vehicle legislation must have regard to any guidance issued under this section.



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ST&PHVS: role of statutory guidance

- *R (Munjaz) v. Mersey Care NHS Trust [2006] 2 A.C. 148*
... the Code does not have the binding effect which a statutory provision or a statutory instrument would have. It is what it purports to be, guidance and not instruction. But ... the guidance should be given great weight. It is not instruction, but it is much more than mere advice which an addressee is free to follow or not as it chooses.



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ST&PHVS: role of statutory guidance

- *R (Munjaz) v. Mersey Care NHS Trust* [2006] 2 A.C. 148

It is guidance which any hospital should consider with great care, and from which it should depart only if it has cogent reasons for doing so.



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ST&PHVS: role of statutory guidance

- *R (Munjaz) v. Mersey Care NHS Trust* [2006] 2 A.C. 148

In reviewing any challenge to a departure from the Code, the court should scrutinise the reasons given by the hospital for departure with the intensity which the importance and sensitivity of the subject matter requires.



ST&PHVS: self-declared role

- “common core minimum standards” (1.3)
- implement “unless ... compelling local reason” (1.3)
- “Having regard” is more than having a cursory glance at a document before arriving at a preconceived conclusion. (2.6)



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ST&PHVS: self-declared role

- ... the importance of thoroughly considering these standards cannot be overstated. It is not a question of box ticking; the standards must be considered rigorously and with an open mind.
(2.7)



ST&PHVS: incorporate into policy

- *... it may be that the ST&PHVS might be drawn upon in any legal challenge to a LA's practice, and that any failure to adhere to the standards without sufficient justification could be detrimental to the authority's defence. In the interest of transparency, all licensing authorities should publish their consideration of the measures contained in ST&PHVS, and the policies and delivery plans that stem from these. (2.8)*



S.11 Children Act 2004

- Puts a duty on LA to make arrangements for ensuring that (a) its functions are discharged having regard to the need to safeguard and promote the welfare of children and (b) any services provided by another person pursuant to arrangements made by it in the discharge of its functions are provided having regard to that need.



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ST&PHVS Structure

3. Administering the Licensing Regime
4. Gathering and Sharing Information
5. Decision Making
6. Driver Licensing
7. Vehicle Licensing
8. PHV Operator Licensing
9. Enforcement





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ST&PHVS Structure

Annex A – Assessment of Previous Convictions

Annex B – DBS information

Annex C – CCTV Information

Annex D – Staying Safe – Guidance for Passengers



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ST&PHVS – some features

- Written policies
- Licence duration
- Decision making
- Fit and proper test





Regime admin: policies

- *all licensing authorities make publicly available a cohesive policy document that brings together all their procedures on taxi and private hire vehicle licensing. This should include but not be limited to policies on convictions, a ‘fit and proper’ person test, licence conditions and vehicle standards. (3.1)*
- Primary & overriding objective: protect public (3.2) (“cannot be overstated”)



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Regime admin: policies

- Review every 5 years or on significant issues (3.5)
- Consult
- Any change in policy should be followed by a review of existing licences (3.14) with a pragmatic approach being taken to implementation.



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Regime admin: licence duration

- Regular interim checks rather than short licences (3.6)
- 3 years driver, 5 years operator, only shorter where “appropriate in the specific circumstances of the case”
- No probationary licences (c.f. *R (oao United Cabbies Group (London) Ltd) v. Westminster Magistrates’ Court*)



Decision Making: structure

- *Some licensing authorities may decide to operate a system whereby all matters are delegated to a panel of officers; however, this approach is not recommended and caution should be exercised. Decisions must be, and be seen to be, made objectively, avoiding any bias. In addition, it may be more difficult to demonstrate compliance with the principles referred to above due to the close connection between the officers on the panel, and those involved in the operational discharge of the licensing functions. (5.10)*



Decision Making: structure

- Committee/Board model recommended
- Objective: separation of investigation and regime management
- Regardless of which approach is adopted, all licensing authorities should consider arrangements for dealing with serious matters **that may require the immediate revocation of a licence**. It is recommended that this role is delegated to a senior officer/manager with responsibility for the licensing service.



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Decision Making: fit and proper test

- *Without any prejudice, and based on the information before you, would you allow a person for whom you care, regardless of their condition, to travel alone in a vehicle driven by this person at any time of day or night? (5.12)*



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8h • 

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! DRIVERS WANTED !
We are currently looking for Hackney Carriage Drivers to join us at Station Taxis.
We have various shifts and vehicles available for immediate hire.
Apply Online <https://lnkd.in/dJ3qfm5>



Boris' next job could be at Station Taxis
(he just doesn't know it yet)

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6 • 3 Comments

 Like  Comment  Share  Send



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6 • 3 Comments

Like Comment Share Send

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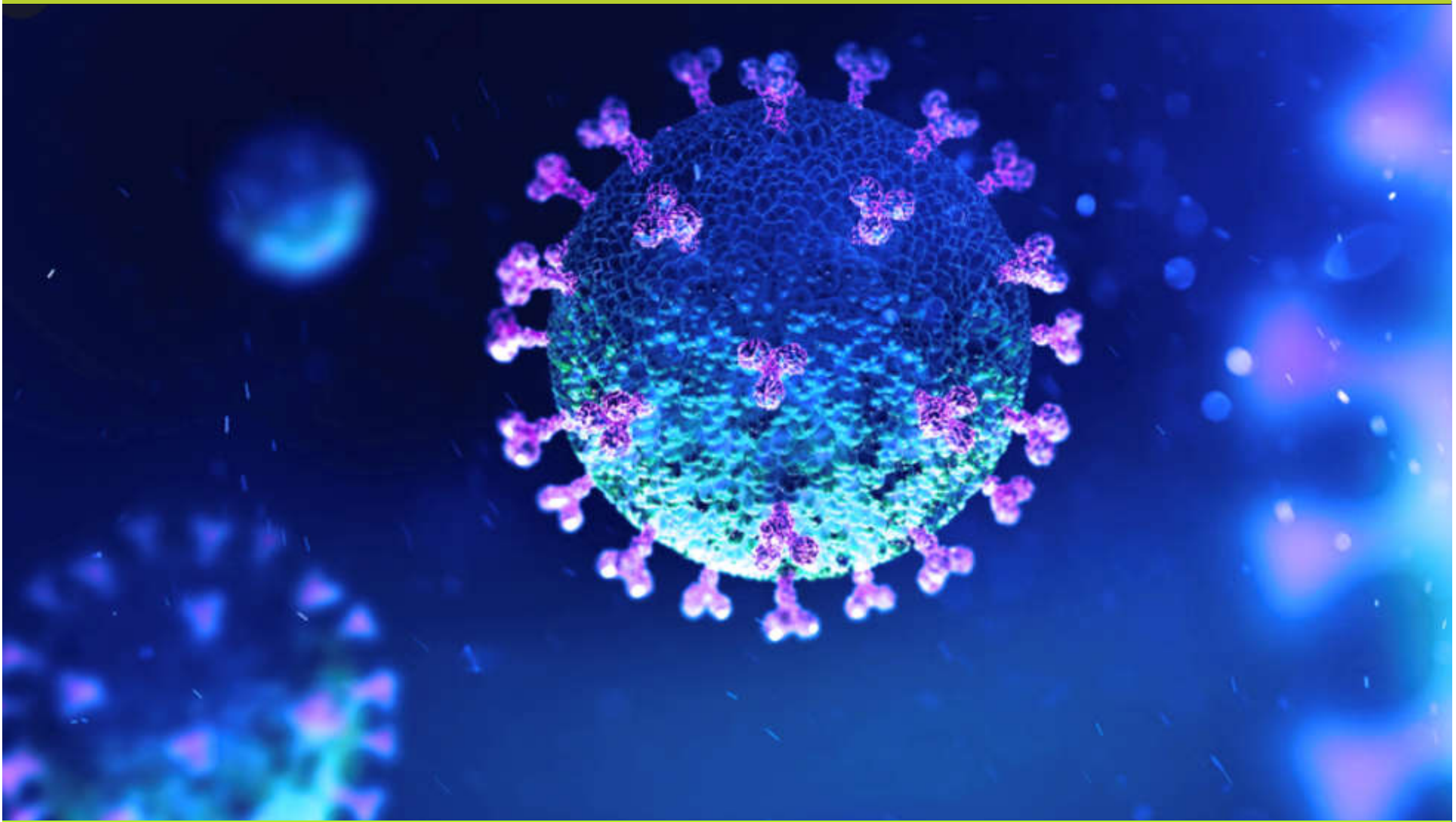


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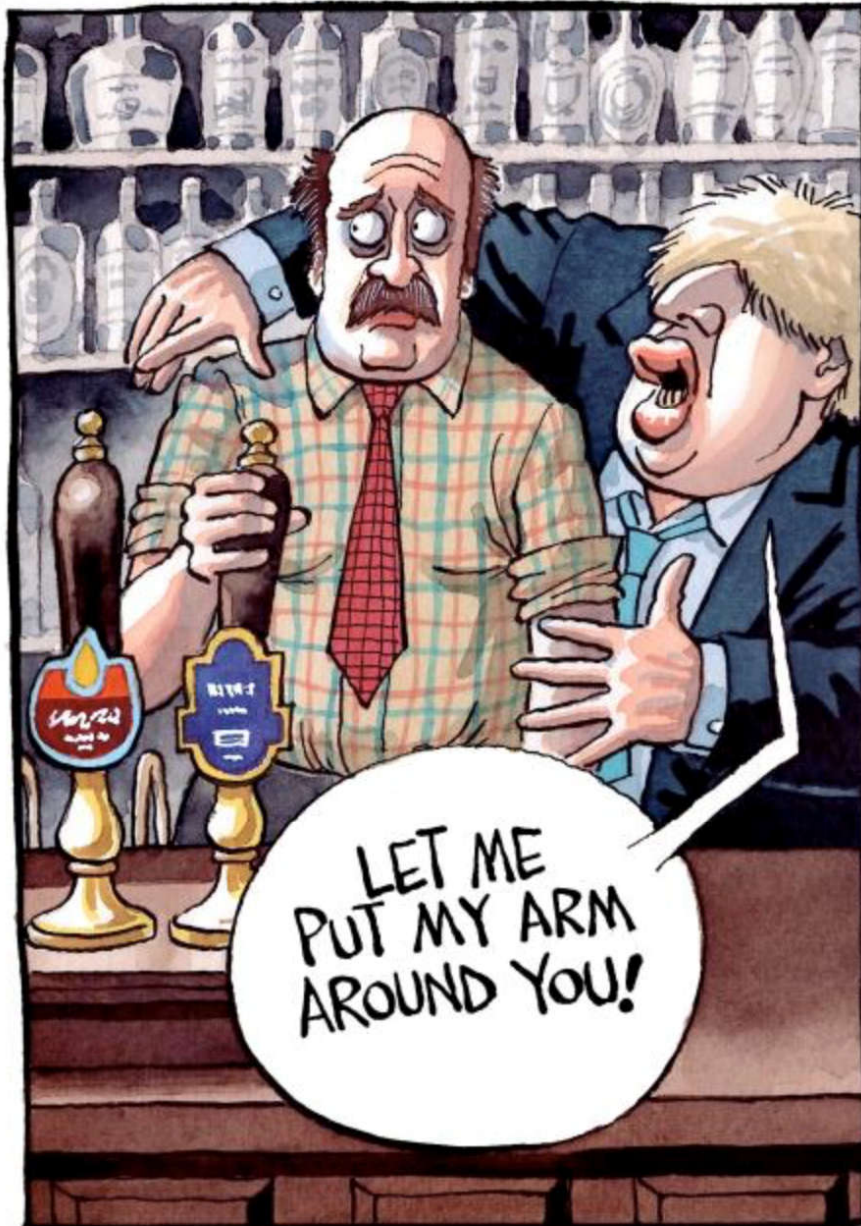
Obligations on Undertakings Regs



David Graham Barrister, Francis Taylor Building



Third Amendment...



Enabling powers & safeguards (1)

'The Secretary of State makes the following Regulations in exercise of the powers conferred by sections 45C(1), (3)(c), 45F(2) and 45P of the Public Health (Control of Disease) Act 1984...

...in response to the serious and imminent threat to public health which is posed by the incidence and spread of severe acute respiratory syndrome coronavirus 2...

The Secretary of State considers that the restrictions and requirements imposed by these Regulations are proportionate to what they seek to achieve, which is a public health response to that threat.

In accordance with section 45R of that Act the Secretary of State is of the opinion that, by reason of urgency, it is necessary to make this instrument without a draft having been laid before, and approved by a resolution of, each House of Parliament.'



Enabling powers & safeguards (2)



Approved by Lords on 9th October 2020.

Approved by Commons at 6p.m. yesterday evening.

Would have expired tonight (14 October) without such approval.

Enabling powers & Safeguards (3)

45R Emergency Procedure

[...]

(4) Regulations contained in an instrument made in accordance with subsection (2) cease to have effect at the end of the period of 28 days beginning with the day on which the instrument is made unless, during that period, the instrument is approved—

(a) in the case of English regulations, by a resolution of each House of Parliament;

[...]

(5) But if on any day during that period, on proceedings on a motion that (or to the effect that) the instrument be so approved, either House of Parliament or, as the case may be, the National Assembly for Wales comes to a decision rejecting the instrument, the regulations cease to have effect at the end of that day instead.

[...]

(7) Subsections (4) and (5) do not—

(a) affect anything done in reliance on the regulations before they ceased to have effect, or

(b) prevent the making of new regulations.



Enabling Powers & Safeguards (4)

6. Review

The Secretary of State must review the need for the requirements imposed by these Regulations before the end of the period of six months beginning with the day on which they come into force.

7.— Expiry

(1) These Regulations expire at the end of the period of 364 days beginning with the day on which they come into force.

(2) This regulation does not affect the validity of anything done pursuant to these Regulations before they expire.



Duties - bookings

1A: Restrictions in relation to relevant premises

(1) A person who operates or occupies relevant premises in an area which is not part of the Tier 2 area for the purposes of the Tier 2 Regulations or of the Tier 3 area for the purposes of the Tier 3 Regulations must, during the emergency period, take *all reasonable measures to ensure that—*

(a) *no bookings are accepted for a group of more than six persons unless one of the exemptions in paragraph 3 of Schedule 1 to 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 paragraph 3 of Schedule 1 to the Principal Regulations applies;*

(c) *no person joins another group or otherwise acts in a way which would contravene the Principal Regulations.*

Tier 2: no bookings for two or more indoors, not more than 6 outdoors

Tier 3: no bookings for more than 6 if the group's to be located in a "relevant place" [para 4, sched 1 to Tier 3 Regs]; otherwise no bookings for 2 or ore



Duties

“relevant premises”.

has the same meaning as in the Health Protection (Coronavirus, Collection of Contact Details etc and Related Requirements) Regulations 2020

Reg.4:

"relevant premises" means a set of premises, whether indoors or outdoors, that are operated or occupied wholly or partly for the purpose of providing a service or an activity listed in the Schedule directly to an individual who wishes to access that service or participate in that activity.

---pubs, cafes, restaurants, bars; leisure and tourism services – arcades, art fairs, betting, bingo halls, cinemas, clubs, concert venues; sports stadia, heritage locations, hotels, sport and leisure centres, museums and galleries, music recording studios, public libraries, theatres; close physical contact services; community centres; youth centres; village halls



Duties

“indoors”. Reg 1(5)

(5) For the purposes of these Regulations premises, or any part of premises, are "indoors" if they, or it, would be considered enclosed or substantially enclosed for the purposes of section 2 of the Health Act 2006 under the Smoke-free (Premises and Enforcement) Regulations 2006

2.— Enclosed and substantially enclosed premises

(1) For the purposes of [section 2](#) of the Act, premises are enclosed if they—

- (a) have a ceiling or roof; and
- (b) except for doors, windows and passageways, are wholly enclosed either permanently or temporarily.

(2) For the purposes of [section 2](#) of the Act, premises are substantially enclosed if they have a ceiling or roof but there is—

- (a) an opening in the walls; or
- (b) an aggregate area of openings in the walls, which is less than half of the area of the walls, including other structures that serve the purpose of walls and constitute the perimeter of the premises.

(3) In determining the area of an opening or an aggregate area of openings for the purposes of paragraph (2), no account is to be taken of openings in which there are doors, windows or other fittings that can be opened or shut.

(4) In this regulation “*roof*” includes any fixed or moveable structure or device which is capable of covering all or part of the premises as a roof, including, for example, a canvas awning.



Duties

“acts in a way which would contravene the Principal Regulation”.

Schedule 1 of the **Health Protection (Coronavirus, Local COVID-19 Alert Level) (Medium) (England) Regs 2020**

No gatherings of more than 6;
facilitating or organising gatherings of more than 30 (subject to exemptions);
Not closing of business where required to do so under those Regs;
Not having ceased to carry on or provide “restricted businesses and services” [para 12 –nightclubs, discos, dance halls, any other venue which opens at night has a dance floor or other space for dancing and provides music live or recorded for dancing; SEVs; hostess bars], minor exemptions for operating shop, hire, takeaway, or café or restaurant in separate ‘self contained unit’ accessible from outside the premises used for the closed business. Not closing shop, café, restaurant 22:00-5:00 (except takeaways w/o entry inside or / deliveries); not taking reasonable steps to ensure food only consumed whilst seated; premises serving alcohol to ensure customers seated whilst drinking.



Duties

2.— Restrictions on hospitality undertakings

(1) 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—

[...]

(d) an appropriate distance is maintained between tables occupied by [persons who are not in the same qualifying group] 3 .

[...]

(2) For the purposes of this regulation—

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

(i) at least two metres, or

(ii) at least one metre, if

(aa) there are barriers or screens between tables;

(bb) 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

(cc) other measures are taken to limit the risk of transmission of the coronavirus between people sitting at different tables;

(b) a "relevant business" is a business which provides food or drink for consumption on its premises.



Duties

2A.— Requirements relating to signage and information

(1) A responsible person must, during the emergency period—

(a) display a notice providing the information in paragraph (2); 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 in paragraph (4).

(2) The information referred to in paragraph (1)(a) is that any person present at the relevant area 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

(3) A notice under paragraph (1)(a) must be displayed in a conspicuous location at the relevant area

(4) 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

(5) For the purposes of this regulation, a business is carried on in a relevant area if any part of the premises from which the business operates is in the relevant area.



Duties

2B.— Prohibition on preventing a person from wearing a face covering

(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.

(2) In this regulation, a "relevant person" is a person 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.



Enforcement: criminal offences

3.— Offences and penalties

(1) A person who *without reasonable excuse* contravenes a requirement in [regulation 1A, 2, 2A or 2B] commits an offence.

(2) An offence under this regulation is punishable on summary conviction by a fine.

(3) If an offence under this regulation committed by a body corporate is proved—
(a) to have been committed with the consent or connivance of an officer of the body, or
(b) to be attributable to any neglect on the part of such an officer,
the officer (as well as the body corporate) is guilty of the offence and liable to be prosecuted and proceeded against and punished accordingly.

(4) In paragraph (3), "officer", in relation to a body corporate, means a director, manager, secretary or other similar officer of the body corporate.

(5) Section 24 of the Police and Criminal Evidence Act 1984 2 applies in relation to an offence under this regulation as if the reasons in subsection (5) of that section included—

(a) to maintain public health;

(b) to maintain public order.



Enforcement: FPNs

4.— Fixed penalty notices

(1) An authorised person may issue a fixed penalty notice to anyone that the authorised person reasonably believes—

- (a) has committed an offence under these Regulations; and
- (b) is aged 18 or over.

(2) A fixed penalty notice is a notice offering the person to whom it is issued the opportunity of discharging any liability to conviction for the offence by payment of a fixed penalty to an authority specified in the notice.

(3) The authority specified in the notice must be—

- (a) the local authority (or as the case may be, any of the local authorities) in whose area the offence is alleged to have been committed ("the relevant local authority"), or
- (b) an officer designated by the Secretary of State, or by the relevant local authority, for the purposes of this regulation ("the designated officer").

(4) Where a person is issued with a notice under this regulation in respect of an offence—

- (a) no proceedings may be taken for the offence before the end of the period of 28 days following the date of the notice;
- (b) the person may not be convicted of the offence if the person pays the fixed penalty before the end of that period.

Enforcement: FPNs

Penalty £1000, reduces to £500 if paid within 14 days.

If second or subsequent offence from a selection enumerated (relating to COVID-19), then:

2nd offence	£2000
3rd offence	£4000
4th and subsequent offence	£10,000

- and no discount for early payment.

Who may prosecute / issue FPNs?

Regulation 4

(12) In this regulation—

(a) "authorised person" means—

(i) a constable;

(ii) a police community support officer;

(iii) a person designated by the Secretary of State for the purposes of this regulation;

(iv) a person designated by the relevant local authority for the purposes of this regulation;



Who may prosecute / issue FPNs?

5. Prosecutions

Proceedings for an offence under these Regulations may be brought by the Crown Prosecution Service and any person designated by the Secretary of State.

8. Designations

A person who is designated for the purposes of regulation 9(13) or 10 [of the Health Protection (Coronavirus, Restrictions) (No. 2) (England) Regulations 2020 or regulation 6(16) or 7] 1 of the Principal Regulations is to be treated as if they were designated for the purposes of regulation 4(12)(a) or 5 as appropriate, of these Regulations.

The Secretary of State letter dated 16 June 2020.

Savings in reg2(3) of the No.2 Regs and Schedule 3 para 7 of the Medium Risk Regs.



Enforcement: criminal offences

Designations under the Health Protection (Coronavirus, Restrictions) (England) Regulations 2020

The Secretary of State makes the following designations, in relation to England, with immediate effect, in exercise of the powers conferred by regulations 8(12)(a)(iv), 10(3)(b), 10(11)(a)(iii) and 11 of the Health Protection (Coronavirus, Restrictions) (England) Regulations 2020¹ ("the Restrictions Regulations"):

Enforcement: general

1. For the purposes of regulation 8 of the Restrictions Regulations, each specified authority (see paragraph 5 below) is hereby designated by the Secretary of State as a relevant person who may take such action as is necessary to enforce any requirement or restriction imposed by regulation 4 (business closures) or 5 (further business restrictions) of the Regulations, including giving a prohibition notice under regulation 8(2) of the Regulations in relation to any contravention of regulation 4 or 5.
6. These Designations replace the designations made under the Health Protection (Coronavirus, Restrictions) (England) Regulations 2020 made at 5pm on 4 April 2020 and at 9am on 23 April 2020. Any enforcement action taken, function carried out, notice issued or prosecution brought under those designations before their replacement continues to have effect after that replacement.



MATT HANCOCK

Secretary of State for Health and Social
Care

At ~~10.00~~ 10.00pm on 16 June 2020



Enforcement: criminal offences



[Designation letter 16 June 2020](#)

PDF, 224KB, 2 pages

This file may not be suitable for users of assistive technology.

▶ [Request an accessible format.](#)

Details

This document supports the government's guidance on staying at home. It provides full guidance on the government's announcement made on 23 March 2020 and the list of businesses and premises expected to close.

The Designation letter applies to both the Health Protection (Coronavirus, Restrictions) (No. 2) (England) Regulations 2020 and the Health Protection (Coronavirus, Restrictions) (Leicester) Regulations 2020.

Published 23 March 2020

Last updated 24 September 2020 [+ show all updates](#)



Questions



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REMOTE HEARINGS AND CIPs DURING COVID-19

JAMES RANKIN

BARRISTER

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REMOTE HEARINGS

- Are they working?
- Drawbacks?
 - Taking instructions; Canterbury CC
 - cannot gauge mood of the committee;
 - unwieldy; The Forge Canterbury CC large number of attendees
 - does the process exclude those who are not tech savvy?
- Is this the future ?



Cumulative Impact Policies

- Are they now redundant?
- Bristol CC thinks so
 - from August 1st 2020 all 6 CIPs removed including City Centre and Whiteladies Road
 - consulting on a smaller CIP for City Centre
- LB Merton consulting on removal of CIZ for Wimbledon Village. Objections; little reason for its retention
- Leeds CC has chosen not to review its CIP for City Centre. View taken that it would take too long to reinstate. Working “pragmatically with operators to support them where we can”



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Westminster CC Policy out for consultation

“We have reviewed our policy approach in light of the findings from the CIA and the implication of changing our policy approach in light of COVID-19. We have therefore taken a pragmatic approach in considering the CIA findings and our policy approach to it. COVID-19 has changed the way venues are operating at the moment and the number of people utilising them. As such, we have decided that expanding the current Cumulative Impact Area and implementing further restrictions on other premises uses within this area would not be appropriate. Due to the current COVID-19 impact and restrictions on the hospitality sector we do not believe that this approach will be at odds with our duty to promote the licensing objectives.” Para 1.7





Further WCC proposals

- Consultation ends 15th November 2020
- Remove CIZ for Edgware Road and Queensway
- Area to East of Covent Garden no longer part of CIZ
- Core hours inside West End CIZ for pubs/bars/music and dance venues end at 21.00!!!!
- New Special Consideration Zone (“SCZ”): West End Buffer Zone; East Covent Garden; Bayswater Queensway and Edgware Rd; Mayfair and Victoria





SCZ Policy

A. In addition to meeting the other policies within this statement, applications within a designated Special Consideration Zone should demonstrate in their operating schedule that they have taken into account local issues identified within the 2020 Cumulative Impact Assessment.

B. Applicants should include within their operating schedule sufficient mitigation that they propose will reduce the impact of their venue and reduce the risk of failing to promote the Licensing Objectives and adding to the issues in the area.





A Practical Example WCC

- WCC's CIP established in 2016 when the landscape of The West End was very different. Presumption of refusal new grants; variations; increased capacity.
- “Strictly enforced; no exception to the policy that premises are well run...”
- **Society of Exploration 1 Bedford Street WC2** (just inside stress area).
 - Inception Group 5 premises Phileas Fogg
 - award winning concept
 - extension to 2am from midnight 6xpw



The Arguments

- CIP created when West End was choked with licences
- Curtain lifted post lockdown on a wasteland.
- Many casualties were licensed premises
- Were licences kept alive by transfer pre liquidation/voluntary arrangement/appointment of administrator (s.27)? May be kept alive by Interim Authority (s47) or transfer within 28 days.
- Unknown how many casualties.
- Application sought only to replace just one of the casualties



The Arguments contd

- Phileas Fogg had weathered the storm. Not one member of staff had been made redundant
- Post lockdown there were no tourists and no office workers; cannot host talks or gin tastings
- Capacity reduced; compelled to reduce the number of bookings
- When 10pm curfew is lifted the extended hours were necessary just to achieve the same turnover as pre lockdown
- Just inside stress area. Longer hours mean less chance of migration to stress area
- Far from residential accommodation
- CGCA supported!



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Arguments contd

- Easy transport links Bedford Street/Strand taxis; night buses; 24 hr tube;
- No anti reps from police/EHO
- Capacity reduction 373-250
- **Temporary Licence** for 2 years





What will happen after 2 years?

- Full reasons not released yet (summary reasons 24/9/20)
- Applicant will be in a strong position to argue for a permanent extension dependent on:
 - Track record
 - Clearer picture of true extent of closures
 - Will WCC review their policy?
 - Legitimate expectaion





The Future and other LAs

- If they do not review/remove their CIPs, then LAs will have to adopt a pragmatic approach
- If they want vacant premises to be reoccupied and to continue to receive business rates, will have to be more sympathetic towards applications which run contrary to policy





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FURTHER INFORMATION:

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“ENFORCEMENT OF COVID-19 REGULATIONS IN LICENSED PREMISES”

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October 2020



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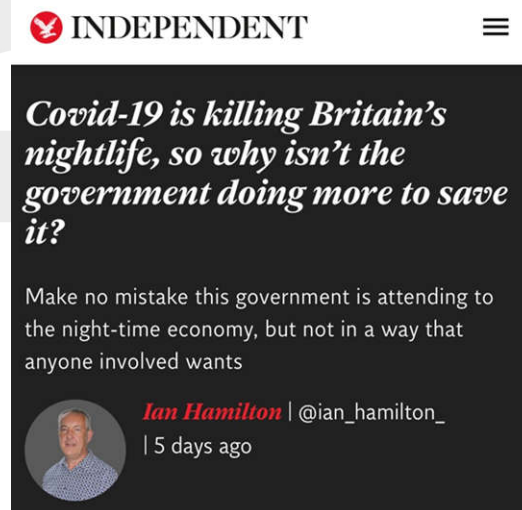


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THE IMPORTANCE OF THE NTE

“Nightclubs and the wider night-time economy are not a “nice to have” optional extra, they are for many the only way to feel as though they are alive and not simply existing.”





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CO-OPERATION, PRAGMATISM & FLEXIBILITY



Home Office

**Revised Guidance issued
under section 182 of the
Licensing Act 2003**

April 2018





PRINCIPAL ENFORCEMENT POWERS: 1 OF 2

- **Summary Review** – s.53A, LA03
- **Individual premises direction** – r.3 of No.3 Regs
- **Health & Safety Prohibition Notices** – involve a risk of serious personal injury - s.21-22 of HSWA 1974
- **Nuisance/Disorder Closure Notice/Orders** – s.76-80, Anti-Social Behaviour, Crime & Police Act 2014



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PRINCIPAL ENFORCEMENT POWERS: 2 OF 2

- **“Take such action as is necessary”** – r.7(1) of No. 2 Regs
- **Prohibition Notice** – r.7(2) of No.2 Regs
- **Fixed Penalty Notice** – r.9 of No.2 Regs & r.4 of Obligations on Undertakings Regs
- **Criminal Proceedings** – r.8 of No.2 Regs & r.3 Obligations on Undertakings Regs
- **Standard Review** – s.51, LA03



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SUMMARY REVIEWS



S.53A-D LICENSING ACT 2003



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SUMMARY REVIEWS

*“Orthodoxy is no more proof of legality
than novelty is of illegality.”*

- Turner J

Extreme Oyster v Guildford BC (2013) EWHC 2174



SUMMARY REVIEWS

- The premises is licensed for sale of alcohol, and
- A Police Superintendent (or above) has certified that in his opinion the premises is associated with:
 - serious crimeOr,
 - serious disorderOr,
 - both.



“SERIOUS CRIME”

- S.53A(4) defines “serious crime” by reference to s.81 Regulation of Investigatory Powers Act 2000.
- I.e. conduct that:
 - Constitutes an offence for which a person who is 21 years of age or over with no previous convictions could reasonably be expected to be sentenced to imprisonment for 3 or more years

Or...

“SERIOUS CRIME”

- Involves the use of violence (NB: not “serious violence”)

Or,

- results in substantial financial gain

Or,

- is conduct by a large number of persons in pursuit of a common purpose.

“OFFENCE OF PUBLIC NUISANCE”

- See R v Rimmington & Goldstein [2005] UKHL 63:

“A person is guilty of a public nuisance who (a) does an act not warranted by law, or (b) omits to discharge a legal duty, if the effect of the act or omission is to endanger the life, health, property... or comfort of the public...”

“OFFENCE OF PUBLIC NUISANCE”

- Max: Life imprisonment
- Wide scope of offending – varying sentences.
- R v Harvey [2003] EWCA Crim 112 - life imprisonment reduced to 3 years on appeal.



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OTHER LICENSING OBJECTIVES

- At full summary review – all licensing objectives engaged:
 - Crime & Disorder
 - Protection of children from harm
 - Public nuisance.
 - Public safety (see s.182 Guidance § 2.7)



“LALLI”

- ***Lalli v Commissioner of Police for the Metropolis and London Borough of Newham* [2015] EWHC 14 (Admin):**
 - Single incident can satisfy “*associated with*” serious crime or serious disorder test.
 - Not for sub-committee to look behind Superintendent’s Certificate.
 - Certificate – theoretically - susceptible to Judicial Review



“ASSOCIATED WITH” – S.182 GUIDANCE

- Compare with Guidance § 12.7:

“... it is not expected that this power will be used as a first response to a problem and summary reviews triggered by a single incident are likely to be the exception.”



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“SUMMARY REVIEW INTERIM APPEALS”

- Interim steps pending appeal – can include suspension
- Right of appeal against interim steps pending appeal
- Must be lodged within 21 days of decision
- Appeal heard within 28 days by magistrates’ court



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“INDIVIDUAL PREMISES DIRECTION”

**Reg. 3 of The Health Protection (Coronavirus,
Restrictions)(No.3) Regulations 2020**







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“INDIVIDUAL PREMISES DIRECTION”

- Home Office Guidance (17 July 2020).
- *“Local authority powers to impose restrictions: Health Protection (Coronavirus, Restrictions) (England) (No.3) Regulations 2020”*

<https://www.gov.uk/government/publications/local-authority-powers-to-impose-restrictions-under-coronavirus-regulations/local-authority-powers-to-impose-restrictions-health-protection-coronavirus-restrictions-england-no3-regulations-2020>

“INDIVIDUAL PREMISES DIRECTION”

- These regulations include powers for local authorities to make a Direction that:
 - restricts access to, or closes, individual premises (r.4);
 - prohibits certain events (or types of event) from taking place (r.5);
 - restricts access to, or closes, public outdoor places (or types of outdoor public places) (r.6);



“INDIVIDUAL PREMISES DIRECTION”

- LA needs to be satisfied the direction:
 - Responds to a serious and imminent threat to public health in the local authority’s area; and
 - Direction is necessary to prevent, protect against, control or provide a public health response to the incidence or spread of infection in the local authority’s area of coronavirus; and
 - The prohibitions, requirements or restrictions imposed by the direction are a proportionate means of achieving that purpose.

“INDIVIDUAL PREMISES DIRECTION”

- Reg.4 - LA can impose “prohibitions, requirements or restrictions in relation to the entry into, departure from, or location of persons in, specified premises”.
- Direction may be given for the purpose of:
 - closing the premises
 - restricting entry to the premises, or
 - securing restrictions in relation to the location of persons in the premises.



“INDIVIDUAL PREMISES DIRECTION”

- Direction cannot relate to :
 - Essential infrastructure
 - Vehicles, trains, vessels or aircraft used for public transport or carriage or haulage of goods
- LA must have regard to need for public to have access to essential public services and good.



“INDIVIDUAL PREMISES DIRECTION”

- Direction bites on owner, occupier or other person involved in managing entry into or departure from the premises or location of persons in premises.
- Directions may reference (among other things):
 - Number of persons in premises
 - Purposes for which a person is in the premises
 - Facilities on the premises



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“INDIVIDUAL PREMISES DIRECTION”

- LA must take reasonable steps to give advance notice to :
 - Person carrying on a business from premises
 - Owner occupier of premises
- Appeal lies to magistrates’ court and may make representations to Secretary of State.



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“INDIVIDUAL PREMISES DIRECTION”

- LA must notify Secretary of State asap after direction given,

And,

- Review at least every 7 days – if conditions no longer met must revoke or amend & re-issue
- LA must have regard to any advice of Director of Public Health

“HSWA PROHIBITION NOTICE”



s.22 of Health and Safety at Work Act 1974



HSWA PROHIBITION NOTICE

- “Authorised inspector” may issue PN if activities as carried on, or likely to be carried, on will “involve a risk of serious personal injury”. (No longer a need for the risk of serious personal injury to be “imminent”).
- May include requirement that an activity should not be carried on until specified matters have been remedied.
- Take effect immediately or be deferred until end of a specified period.



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“TAKE SUCH ACTION AS IS NECESSARY”

A red, rectangular stamp with a distressed, ink-like texture. The words 'TAKE' and 'ACTION' are stacked vertically in a bold, sans-serif font. The stamp is tilted slightly to the right.

**Reg. 7(1), The Health Protection (Coronavirus,
Restrictions)(No.2) Regulations 2020**

REG.7

- 7(1)- A relevant person may take such action as is necessary to enforce any requirement imposed by regulation:
 - 4 – closed premises: nightclubs, discos (etc), SEV's, hostess bar (Police & LA)
 - 4A – 10pm curfew (Police & LA)
 - 4B – alcohol premises to sell food/drink to seated customers (Police & LA)
 - 5 – Rule of 6 (Police)
 - 6(10) or (11) - access restricted by Direction of Sec of State (Police)

“ASB CLOSURE NOTICE/ORDER”



s.76-80 Anti-Social Behaviour, Crime & Policing Act 2014



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ASB CLOSURE NOTICE

- Closure *Notice* – police or local authority
- Closure *Order* – magistrates' courts.
- Statutory Guidance (last updated July 2020):

<https://www.gov.uk/government/publications/anti-social-behaviour-crime-and-policing-bill-anti-social-behaviour>



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ASB CLOSURE NOTICE

- Police officer (Inspector or above) or local authority, satisfied on reasonable grounds that:
 - The use of the premises has resulted, or (if the notice is not issued) is likely soon to result, in nuisance to members of the public [see R v *Rimmington*],
 - [Or Disorder], and
 - The notice is necessary to prevent the nuisance ... from continuing, recurring or occurring.

ASB CLOSURE ORDER

- Closure Order – if Notice not cancelled must make application to magistrates' court (s.80) – heard within 48 hours of service of closure notice.
- Court make closure order if satisfied:
 - A person has engaged or (if the order is not made) is likely to engage, in disorderly, offensive or criminal behaviour on the premises; OR



ASB CLOSURE ORDER

- Use of the premises has resulted, or (if the order is not made) is likely to result, in serious nuisance to members of the public;
- [Or Disorder]
- AND - the Order is necessary to prevent the behaviour, nuisance or disorder from continuing, recurring or occurring.
- For criminal behaviour trigger – offences if breach COVID regs.



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FURTHER INFORMATION:

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FTB LICENSING UPDATE WEBINAR

14 OCTOBER 2020

