



Community Services

Our Ref: Licensing Advice
Please ask for: Daniel Pattenden
Email:licensing@stalbans.gov.uk
Date: 15 April 2021

Urgent Please Read

Dear Sir or Madam,

Letter of Advice - The Health Protection (Coronavirus, Restrictions) (Steps) (England) Regulations 2021

Following our previous advice letter the Government announced some changes to the regulations. The Government are introducing a step system that is similar to the Tier systems. It looks as though areas will be placed into one of the steps (similar to the Tier System). The Steps are as follows:

- Step 1 – The whole country is in this step as of 29th March 2021.
- Step 2 – The whole country is in step 2 as of 12th April 2021
- Step 3 – This is due to start on the 17th May 2021 (according to the road map).

St Albans City and District Council will be in Step 2 from the 12th April 2021. Other steps will be based on how the area (which could be the city, county or region) is doing in terms of case numbers.

Step 2

At Step 2 businesses that provide food and drink for consumption on the premises will be able to open in some capacity.

The Legislation states:

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

9.—(1) A person responsible for carrying on a restricted business, or providing a restricted service, in the Step 2 area, must—

- (a) close any indoor premises, or indoor part of the premises, in which food or drink are provided for consumption on those premises, and*
- (b) cease providing food or drink for consumption indoors on its premises.*

(2) The requirement in sub-paragraph (1)—

- (a) does not require the closure of toilets, baby changing rooms or breast feeding rooms,*
- (b) [F17 subject to sub-paragraph (4),] does not prevent customers entering any indoor premises F18...—*
 - (i) to order food or drinks, or*
 - (ii) to pay for food and drink, and*
 - (c) is subject to the exceptions in paragraphs 10 and 11.*

(3) For the purposes of sub-paragraph (1), food or drink provided by a hotel or other accommodation as part of room service is not to be treated as being provided for consumption on its premises.

(4) A person responsible for carrying on a restricted business, or providing a restricted service, in the Step 2 area 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 outdoors on the premises, and

(b) the person takes all reasonable steps to ensure that the customer remains seated outdoors whilst consuming the food or drink on the premises.

(3) For the purposes of sub-paragraph (1), food or drink provided by a hotel or other accommodation as part of room service is not to be treated as being provided for consumption on its premises.

(4) A person responsible for carrying on a restricted business, or providing a restricted service, in the Step 2 area 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 outdoors on the premises, and

b) the person takes all reasonable steps to ensure that the customer remains seated outdoors whilst consuming the food or drink on the premises.

(5) A person responsible for carrying on a restricted business, or providing a restricted service, in the Step 2 area and 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 outdoors whilst consuming the food or drink on the premises.

(6) For the purposes of sub-paragraphs (1), (4) and (5), references to food or drink being for consumption on premises include a reference to consumption on an area adjacent to the premises of the restricted business or restricted service—

a) where seating is made available for its customers (whether or not by the business or the provider of the service), or

b) which its customers habitually use for consumption of food or drink served by the business or service.

What does this mean?

Food and drink can now be sold and consumed on outside seating provided by a premises (on the premises).

If you don't sell alcohol, you can allow persons on your premises to order, pay and collect their food and drink. However, these premises still have an obligation to ensure persons are seated and not moving around whilst consuming.

If you sell alcohol as part of your business, you need to ensure all persons are seated outside throughout their visit. This is similar to earlier requirements: it needs to be table service; you cannot allow people to order indoors or at a window; it must be seated at a

table. It payment can now be take inside, however this is **only** if you cannot take payment outside. You must ensure all reasonable steps are taken to keep people seated whilst on the premises, save for use of toilets and baby facilities.

Customers can use toilets indoors, as well as any baby facilities. You must ensure that all customers, when they enter to use a toilet or changing facilities, are wearing masks and where possible there is a one way system in place. You will need to ensure that all of this is covered and updated on your risk assessment.

Whether you sell alcohol or not you have an obligation to take reasonable steps to ensure those that customers making purchase for takeaway, do not stop and stay on seating nearby to consume. We understand this won't be easy; so we consider that a premises should take all practical steps to achieve this. You should confirm whether a customer is staying in your seating area or making a takeaway purchase. If doing takeaway, you should advise them that they must take their purchases away from the area. Signs asking persons, who purchase for takeaway, not to gather and consume nearby will also be likely to help.

What this regulation is trying to avoid is premises selling and allowing people to consume on nearby seating with no control. If you see a customer make a takeaway purchase, consume it and come back for further purchases you should avoid making a subsequent sale to that customer. If you knowingly allow this to happen you become responsible for that person being in that seating area.

What is outdoors?

Last time we used the Smoke-Free legislation to determine what was outdoors; the Government have defined what is indoors:

- *a place is indoors if it would be considered to be enclosed, or substantially enclosed, for the purposes of section 2 of the Health Act 2006(32), under the Smoke-free (Premises and Enforcement) Regulations 2006(33);*

As you can see the Government are now using the Smoke-Free legislation to define it indoors so the position for you has not changed.

This means that for something to be considered outdoors it must have 50% openings, this does not include any doors or windows that can be closed. Things like domes or enclosed marquees or similar cannot be used for "outside seating"; all seating must be outdoors and the purpose is to provide proper ventilation.

Performances of live and recorded music, in music and dance venues, is not permitted at Step 2.

We will write to you again once we have the date confirmed for step 2 to commence in this area. Once Step 2 has commenced we will review the regulations for step 3 and provide advice on them.

If you do not have an outside seating area, but have sufficient public highway space, you could apply for a temporary pavement licence (you can also apply to increase any area currently licensed). Please do this before the 12th April 2021 so that you have time to get the licence in place.

Applications can be found: <https://www.stalbans.gov.uk/licences-and-permits>

All of the above must be covered by a risk assessment, please ensure you have this in place before opening and social distancing is followed.

The full legislation can be found at:

<https://www.legislation.gov.uk/ukxi/2021/364/contents/made>

Guidance can be found at:

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

<https://www.gov.uk/guidance/working-safely-during-coronavirus-covid-19/restaurants-offering-takeaway-or-delivery>

If you have any questions please feel free to contact us.

Yours faithfully

Daniel Pattenden
Senior Licensing Officer