

REOPENING AND OPERATING YOUR HOSPITALITY BUSINESS

A Practical Guide



Compton Solicitors in Collaboration with Quantus Advisory Accountants and Business Advisors, Keenan Lynch Architects, Simon Clear & Associates and SEQ Safety Consultancy Limited to bring you a comprehensive guide to reopening your business.

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Foreword

Unprecedented doesn't even begin to explain what has happened to the Hospitality Industry over the past few months.

The Restaurants Association of Ireland took swift action in March, fighting for our members and for the survival of this industry. We lobbied hard for fairer treatment of business, culminating in the release of our 9-point COVID-19 Crisis Recovery Plan and various wins for the industry.

There has been hardship, and there has been loss, both to lives and businesses, but now comes the stage of rebuilding. We have held strong, and now we must all work together to pick ourselves up and to continue to stop the spread of COVID-19.

Outlined below is a comprehensive guide to re-opening your businesses. While we are happy to be reopening and returning to some semblance of normal life, it is important to remember our duty to continue to stop the spread of this virus.

I ask that all members and non-members of the Restaurants Association of Ireland take into account government guidelines in relation to hygiene, social distancing and planning preparations for reopening.

You have a duty of care to both employees and members of the public to ensure their safety and well-being while on your premises.

This booklet provides extensive information on issues such as financial preparations, Health and Safety requirements and HR. We encourage everyone to read it and take note of the contents. It is imperative that we are fully prepared ahead of June 29th.

I wish everyone in the Hospitality Industry the best of luck with reopening.

We can all do our part to operate safely and effectively during this time.

Yours Sincerely,

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RESTAURANTS
ASSOCIATION
OF IRELAND



Introduction

We are in the midst of a unique experience globally and there is a lot of uncertainty right now.

We have seen tremendous resourcefulness with many of our favourite restaurants now providing us with delicious takeaway options. It should be noted that in order to preserve the ability to keep this wave of take-away going past the 9 November 2020 it will be necessary to have the exemption extended. Simon Clear, planning expert, in his piece at Chapter 12 argues for change to the planning laws to bring them in line with modern practices of take-aways as we now know them. Pubs have equally shown their willingness to go the extra mile and many are delivering alcohol to their customers. Fiona Tonge, licensing solicitor, talks about the legal basis for this in Chapter 8.

This guide was conceived in that same spirit of solidarity. Our aim is to provide you with a comprehensive resource for businesses in the Hospitality Sector, to keep you up to date on the latest information and developments and to help you make the crucial decision of whether or not to reopen and when.

Every business will have its own unique set of requirements but we hope that this guide will help you start making plans to reopen your business and give you some clarity of what your business may look like in the future.

The landscape has changed and in order to reopen you will have to navigate through the minefield of new measures that will be required to comply with COVID-19 regulations. This may sound daunting but in the main it will involve adapting existing obligations, which you are already familiar with. You will have to consider your obligations to your employees, the interaction between your employees and your customers and the impact of COVID-19 on your business as a whole. While not exhaustive the following are some of the issues that are likely to arise.

1. Duty of Care

As an employer you have a duty to take reasonable measures to ensure the safety of your employees. An employer is obliged to carry out a risk assessment and this should now include the risk of injury due to COVID-19. In order to minimise the risk of injury to an employee and your own liability, an employer should provide appropriate training on the current [Government guidelines](#) to include the provision of personal protection equipment (“PPE”) as advised.

2. Business Interruption Insurance

Restaurants, pubs and hotels have experienced a loss of profit as a result of the COVID-19 pandemic. A lot of you will have provisional cover in place to cover interruptions to your business. Unfortunately, some insurance companies are declining cover for various reasons. In some cases, it is being claimed that the relevant clause does not extend to a pandemic of this nature. Other claims are being declined for late notification of claims. These and other reasons should not be accepted without question. Like all contracts, the relevant clauses must be interpreted properly to assess whether your claim is covered. There may be good arguments to rebut the basis on which an insurance company has declined cover. For example, it is not established that in every case a late notification entitles an insurer to decline cover. However that being said, it is essential that you notify your insurer now if you have not already done so, as the length of any delay is likely to be relevant in the overall assessment of whether cover has rightly been declined. **Please see Chapter 4 below for an in-depth update on Business Interruption Insurance claims.**

3. Force Majeure Clauses and the Frustration of Contracts

It is common for commercial and consumer contracts to contain an express force majeure clause, which provides that each party's obligations under the contract will end in specific circumstances, such as a pandemic. Where a contract does not contain such a clause the doctrine of frustration may have a similar effect. This may be significant to your business in circumstances where you have obligations under continuing contracts, which you can no longer comply with. It may make significant difference to your business if you can end such contracts and negotiate better terms that will aid the survival of your business.

4. Debt Management

In the event that a business cannot reopen or can't survive it will be necessary to address the consequences of this from a personal and corporate perspective. In relation to personal liability, employers who have given guarantees in respect of business liabilities may have to consider options such as Bankruptcy or a Personal Insolvency Arrangement if an informal agreement cannot be reached with creditors. On the corporate side employers will have to consider whether the business can be saved and if so whether the various options such as Examinership and a Scheme of Arrangement are appropriate. If it cannot be saved, what are the consequence of liquidating the business? At the very least it is likely that business owners will have to deal with the debt collection process, as creditors are likely to seek to enforce their rights. This process typically commences with a pre-action letter providing you with some limited time to discharge the debt. This is followed by an application to court for summary judgment in circumstances where it is claimed by the creditor that a debtor has no answer to the claim being made. Where there is a genuine dispute over the debt it is prudent to contest the claim. In other circumstances a debtor may be limited to seeking time to deal with the debt and/or judgment.

5. Defamation

As part of the reopening of the economy employers may have to seek relevant information regarding COVID-19 from employees and perhaps members of the public. This may include questions about existing infection or potential exposure. Depending on the nature of the responses an employer may have to ask an employee to stay at home or a customer to leave the premises. Each scenario has the potential to give rise to conflict and perhaps a claim in defamation based on the implication that the person in question has an infectious disease and/or is reckless to the health of others. In such circumstances an employer should be entitled to rely on the defence of qualified privilege where they acted in an appropriate manner. Qualified privilege, as a matter of public policy, protects certain statements. This defence is robust, however, it can be lost where someone misuses the protection. For example, if the real motive is to exclude an employee or refuse service to a customer for other non-COVID-19 reasons then the protection of qualified privilege will fail. As an overarching principle all such conversations should take place in as discreet a manner as is possible, and preferably out of the earshot and sight of others. This may not be possible, therefore it is important that your employees are made aware of the potential for conflict and appropriate training is given to them as to how best to deal with such situations.

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1. Delay of Phase 4 of the Government's Roadmap for Reopening Ireland

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On 4 August 2020 the [Government announced](#) that the entry into [Phase 4 of the Roadmap for Reopening Ireland](#) would be delayed from 10 August 2020 until, at the earliest, 31 August 2020.

Entry into Phase 4 of the Roadmap on 10 August 2020 would have seen the reopening of pubs, bars, hotel bars and casinos from that date. Additionally, gatherings of up to 100 people indoors (up from the current limit of 50) and up to 500 people outdoors (up from the current limit of 200) would have been permitted.

However, the Government's announcement on 4 August 2020 means that the current restrictions under [Phase 3 of the Roadmap](#) will continue to be in effect until at least 31 August 2020. In particular, it is important to note that the extension of the Phase 3 restrictions means that it remains the case that [pubs and hotel bars are only permitted to open if they are operating as restaurants](#). Please note that it not necessary to have a Restaurant Certificate to operate as a restaurant. See Chapter 9 below on Reopening your Pub for more information on this.

1. Other Measures Announced by the Government on 4 August 2020

As well as the delay of Phase 4 until 31 August 2020 at the earliest, [on 4 August 2020 the Government announced several other notable measures](#).

It was confirmed by the Government that face coverings in all shops and shopping centres would become mandatory across the country from 10 August 2020.

The Government also announced that all restaurants and pubs serving food will be required to close to customers at 11pm from Monday 10 August 2020, although they may remain open beyond this time for takeaways, deliveries and cleaning of premises only.

It was also announced that 5 countries (Cyprus, Malta, Gibraltar, Monaco and San Marino) had been removed from the [COVID-19 Green List](#) following a review. Any passenger arriving or returning from a country that is not on the COVID-19 Green List is asked to restrict their movements for a period of 14 days. Reviews of the list are carried out every fortnight.

2. Additional Measures in Place for Kildare, Laois and Offaly

[Additional measures for Kildare, Laois and Offaly](#) came into effect on 8 August 2020 and will remain in place until midnight 22 August 2020. Included in the measures are restrictions on travel, limits on indoor and outdoor gatherings and enhanced restrictions on cafés, restaurants and pubs operating as restaurants.

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2. Financial Considerations – When Should You Open?

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As the economy now starts to reopen, each sector has its own unique obstacles and the Hospitality Industry is no different. The guidelines set out by the Government for phased openings are the earliest advised opening dates with social distancing rules to be applied. **While some businesses have already reopened, not all businesses have.** The decision of when each business can open after the earliest advised opening date has to be taken carefully and not every business is the same.

There are a number of elements that will influence the financial decision as to when to reopen.

- The actual costs of re-opening
- The location of your customers prior to closing
- The impact of the social distancing

1. What Supports Are Being Provided at Present by the Wider Economy While You Are Closed?

You should examine what measures are currently available to you, whether you have reopened, decide to reopen or decide not to reopen and when these measures stop.

Measures currently being provided while your business is either closed or severely affected

- An extension for a commercial rates waiver until end of September 2020, giving a total 6 month waiver.
- Temporary Wage subsidy Scheme (TWSS) to be replaced with an Employment wage subsidy scheme (EWSS) on 31 August 2019. The EWSS is offering a flat rate €203 for each employee (whose weekly gross wage is between €203 and €1,462, otherwise not applicable) employed in the business once the specific criteria of turnover at below 70% of the same period in 2019 is met. It has yet to be clarified how the period is measured, whether by month, vat period or period July to Dec 2020 vs July to Dec 2019. It has been confirmed that proprietary directors will be reinstated to the EWSS from 1st September 2020, provided that they are retaining “ordinary” employees on their payroll.
- VAT and PAYE previously warehoused under period 1 (period 1 ends at the end of the 1st Vat period after business has recommenced trading) will be subject to interest at 0% for first 12 months and at 3% pa thereafter.
- Revenue to offer reduced 3% interest pa on all pre-COVID period debts, going forward from 1 August 2020. Interest currently 10% pa.
- Early Allowance of 50% of current Corporation tax losses to be carried back against previous year's profits.
- Self-employed individuals will be able to carry back up to €25,000 of their 2020 losses (and certain capital allowances) to shelter their 2019 profits.
- Legal clarification that business's whose taxes are warehoused will still be able to obtain a tax clearance certificate, once all other taxes are kept up to date.
- Top Vat rate to reduce from 23% to 21% from 1 September 2020 until 28 February 2021.
- Expansion in Restart Grant scheme increasing the upper limit of the grant from €10,000 to €25,000.

2. Financial Considerations – When Should You Open?

Restaurants and pubs that operate as restaurants have opened. There has been a surprising initial upsurge in business's in certain locations. As predicted the main beneficiaries of this were premises in suburban areas. Premises in the city centres have either decided not to open yet or if they did, have done so on a reduced basis due to the lack of tourists both national and international and offices continuing to mainly work from home. Businesses are only surviving due to the TWSS scheme. The upsurge of the first 2 or so weeks has relented and will continue to do so as the economy shrinks and the market floods more and more with pubs and restaurants reopening. The above stimulus has been put forward to both stimulate the economy and to support businesses. It is difficult to see where the jump start will be, and what may happen especially with how the EWSS criteria is set out, some businesses who will be eligible will limp along, while others who are not eligible, if their turnover is say 72% or 75% of previous year, will be financially be worse off.

Examples

- Premises A with €25,000 net per week with 25 staff at 70% GP margin. A 25% drop in net turnover amounts to €4,375 drop in Gross profit per week. No EWSS support. Full wage costs. ER PRSI of 11.05%
- Same premises with €25,000 net per week with 25 staff at 70% GP margin. A 30% drop in net turnover amounts to €5,250 drop in Gross profit per week. This business can benefit from EWSS support and receives €203 per staff member (assuming all staff are over €203 per week and under €1,462 per week). €203 x 25 staff €5,075. Total over all loss €175 with ER PRSI of 0.5%

This is not taking the reduction in the Vat from 23% to 21% into consideration. This will reduce the gap but not significantly in food led businesses.

2. Can I Get a Tax Clearance Certificate if I have Warehoused Taxes Under the July 2020 Jobs Stimulus?

Warehousing of tax debt will not impact on tax clearance. If you hold tax clearance prior to entering a warehousing arrangement, then tax clearance will continue while the arrangement remains in place.

The Revenue have confirmed that the issue of a Tax Clearance Certificate will not be affected by any business availing of the Tax warehousing scheme. All qualifying businesses can warehouse their VAT returns or PAYE/PRSI returns under period one. Period one started on 1 January 2020. Period 1 ends on the last day of the first full bi-monthly VAT taxable period which commences after the business has resumed trading. Per Revenue guidance, a Trade is deemed to have resumed following the easing of restrictions for the relevant sector as set out in the [Government's Roadmap for Reopening Society and Business](#), or at a later date on which trade recommences where it is demonstrated that the trade did not recommence before then. i.e. if a restaurant or a pub serving food recommenced on 29th June, period one ends on 31 August (first bi monthly Vat return after the business recommences)

It should be noted however that anyone with Corporation Tax liabilities outstanding will not be granted a Tax Clearance Certificate. If you have difficulty with corporation tax payment you should contact the Revenue without delay and enter into a scheme of arrangement with them if possible. Under the Stimulus, a reduced interest rate of 3% per annum (previously 10%) is to apply to tax debts that cannot be warehoused, i.e. older liabilities and debts not associated with COVID-19. Please note that under normal circumstances the Revenue require you to pay 40% of the debt in order to obtain a Tax Clearance Certificate. To avail of this measure, businesses must agree a phased payment

2. Financial Considerations – When Should You Open?

arrangement with Revenue before 30 September 2020. The reduced rate is applicable from 1 August 2020 or from the date of the agreement, whichever is later.

3. What Are the Costs of Reopening a Business?

As most businesses closed overnight, the normal closing costs associated with an orderly closedown did not occur. It is far easier to close a premises than it is to reopen one, and a reopening is different to an opening. Because of this, there may be costs you may not have incurred during an opening exercise that you may now incur during a reopening. Like most things that are suppressed, they will become an immediate, unexpected cost upon reopening.

Re-opening any business, let alone commercial kitchens and eating/drinking areas have their own practical and costly implications.

- Costs to implement social distancing measures e.g., Perspex, sanitation stations etc.
- Deep cleaning costs of kitchen and washrooms
- Purchase of stock from suppliers with no credit terms
- Stock taking costs
- Staff retraining
- HR manual upgrading
- Marketing
- Additional wage costs for security personnel and or health and safety personnel if needed to enforce the new social distancing measures
- Potential accrued holiday wage costs accrued up to the closure
- Potential redundancy costs for staff whose position is no longer required

4. How Will My Premises' Location Affect When I Will Reopen?

Location, location, location. The old adage still rings true. The question of when your business reopens, will be determined on when your customers will be in a position to dine and drink in your premises again. If you are in the suburbs or in a commuter town, and your customers are all working from home or are restricted by the 20km radius, you may get an extra boost from customers not normally in the vicinity of your business and therefore will wish to reopen fully at the earliest possible date (albeit under social distancing rules).

However, city centre premises reliant on tourists, office trade and general shopping footfall, may choose to delay reopening irrespective of the allowed reopening dates, as the costs of reopening will be too great for the number of customers that will be in the vicinity of your premises. In the leadup to a reopening of your premises, a worthwhile exercise is to contact the offices and businesses in your vicinity to understand what their plans are for reopening, and from there you will be able to judge your own reopening plan.

2. Financial Considerations – When Should You Open?

5. What Impact Will Social Distancing Have on my Trading Performance?

There will be immediate costs of reopening as mentioned above, but there are also the costs of lost revenue that most businesses will face due to the new social distancing rules that will come into place on reopening. Based on the recommended guidelines, most businesses should expect to have a reduction of between 50% and 60% in gross sales (sales inclusive of VAT) due to the impact of social distancing under the current guidelines and based on the current space available to them. Assuming the level of costs stay the same, this will have a significant impact on the bottom line of a business. A change of business practice maybe necessary to soften this (no live music, table service only, more outdoor seating to ensure social distancing can apply).

It is also important to note that on 4 August 2020, the [Government announced](#) that all restaurants and pubs serving food will be required to close to customers at 11pm from Monday 10 August 2020. Although restaurants and bars will be permitted to stay open beyond 11pm solely for takeaways, deliveries and cleaning, this measure will substantially impact businesses further as it will require them to close at what is traditionally the busiest time of the day for the majority of pubs and restaurants.

Most businesses will understand what their breakeven level is already, both from a cashflow point of view and from a profit and loss point of view. But what if the bar was lowered further? Based on the new levels of expected turnover, what is the most acceptable loss that can be incurred, and how long can this be incurred for? This is a separate exercise and should be carried out prior to any decision as to when to reopen given the current guidelines. This should be done on a 3-monthly basis as any more than 3 months in this current climate is unreliable. Regular monthly stocktaking by a professional stock taker will become more important now to judge on a shorter time frame, gross profit percentage levels, stock levels/reordering levels, etc.

Separate to the various versions of the moratoriums you may currently have in place on loans and financing from your financial provider, you may wish to apply for some additional financial assistance due to cashflow difficulties. This can be applied for in conjunction with [a SBCI working capital scheme](#) application which guarantees a loan interest rate of not more than 4% interest. If you wish to use this scheme, this must be applied for first and if successful, you can then apply to your financial provider. The financial providers currently using this scheme are limited to AIB, Bank of Ireland and Ulster Bank. Please note, a successful application by the SBCI will not guarantee a successful application from your financial provider.

In order to apply for additional financial assistance, you will be required to provide the following: -

Application for Additional Financial Assistance Requirements

- Detailed cashflow forecasting and profit and loss forecasting over a 12-month to 24-month period
- Up to date financial figures right up to date of closing showing a profitable business
- Some level of reserves in place and that you are using those reserves/ have the capability to use those reserves if needed
- Confirmation that taxes are paid up to date with the exception of the taxes set out at page 3 above, covered by the Revenue warehousing scheme.

2. Financial Considerations – When Should You Open?

6. Are There Any Grants Available to Help with Reopening?

Apart from the above-mentioned State Aid, there are a number of other small grants. On a Government level, there are several small grants and loans/ loan guarantees that are being put forward in order to help businesses reopen. On 15 May 2020 the [government approved the new restart grant](#) of between €2,000 and €10,000 which has now been increased as of 23 July 2020 up to a maximum of €25,000. The grant is based on commercial rates paid in 2019. Applications made from 22 May 2020 which have already been accepted can be extended to avail of the additional funding. This is a welcome addition, as the grants previously available were small and short term. The government have acknowledged that there are more specific sectoral grants required for the hospitality sector. We will keep you updated on any developments.

The July Stimulus package acknowledges the extension of measures which are required by businesses needed to be extended until such time as trading returns to pre COVID-19 levels if possible. The introduction of other positive direct cashflow and profitability measures are needed to sustain the economy once it restarts from its current hibernation, to include :-

- A reduction in all the VAT rates for a period of time until turnover is back at pre COVID-19 levels
- A waiver of Employer's PRSI to encourage businesses to continue to employ staff
- Rent grants/ loan interest grants for businesses to ensure that they have the cashflow so that they can pay their rent or loans on an ongoing basis

In spite of all this, some opportunities are starting to emerge to include an expansion of takeout and delivery services. It will be seen in Chapter 12 on Planning Considerations that the government will have to take measures to protect this fledgling business into the future from a planning point of view. It is too early to see what the long-term viability of this is as the economy starts to reopen and the "new normality" begins. This is possibly the first step for businesses that can provide take away and delivery services to take tentative steps back into the reopening process. New trends will emerge, and new concept businesses are and will be born of this crisis. Key to what happens next will be what supports will become available in order to avoid a prolonged recessionary period. This is like nothing we have seen before so the reaction to it cannot be the same as before. We await what comes in the next few weeks in relation to the above and will update you on any further financial measures available.

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7. Refinancing/Reorganising Your Business

In advance of reopening your business have you spoken to your creditors to ensure availability of credit lines/supply?

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Due to the uncertainty of trading conditions is there an ability to obtain smaller stock orders than you previously ordered, with the availability of further stock if trading takes off?

8. Honouring Vouchers

It would be recommended that you do a review of the gift vouchers which have been issued by your business but not yet redeemed. Some businesses may have encouraged customers to purchase vouchers while they were closed in order to maintain some level of cash flow into their business. However, customers may wish to redeem their vouchers when you reopen which may have an impact on your cash flow.

Vouchers purchased by customers prior to closure due to COVID-19 still have to be honoured.

Consumer protection in the area of gift vouchers underwent a significant development with the coming into force of the [Consumer Protection \(Gift Vouchers\) Act, 2019](#) in December of last year, which built upon previous consumer protection legislation. The new laws only apply to gift vouchers that were sold on or after the 2 December 2019. For further information please see the [CCPC Gift Vouchers article](#).

9. Contactless Payments

If you decide that you are only going to accept contactless payments when you reopen your business consumer law requires that businesses provide adequate and accurate information so that consumers can make informed decisions. You will have to let your customers know at the earliest possible opportunity in the booking process so that they can decide whether or not they want to still visit your premises. This is necessary to avoid misunderstandings and/or embarrassing incidents arising. It is important to remember that consumer protection laws still apply in these circumstances. For further information you can visit the [CCPC COVID-19 Hub](#).

10. Be Aware of Reckless Trading

As part of your assessment of whether or not to reopen your business you need to keep in mind whether or not you have the ability to sustain the business for a period of time to get it up and running or whether you are just adding to your debt.

You should take professional advice regarding the viability of your business before reopening. Reckless Trading is where a director is knowingly a party to the carrying on of any business of the company in a reckless manner. The most common occurrence of reckless trading is where it can be shown that the directors have permitted the company to incur liabilities without having reasonable grounds to believe that those debts would be paid. In certain circumstances Reckless Trading can also lead to personal liability for directors. Therefore, before you reopen it is very important that you stress test your business to see if you actually should be reopening.

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3. Your Business Premises – Legal Issues

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If you are renting your premises, you will also have to consider your obligations to your Landlord under your lease and the impact of COVID-19 on your business as a whole. Whilst not exhaustive, the following are some of the issues that are likely to arise.

1. Rent / Discounted Rents

The [Emergency Measures in the Public Interest \(COVID-19\) Act 2020](#) (“Emergency Measures”) have made no change to the requirement to pay rent to your Landlord. The protections afforded to residential tenants by the measures to temporarily prohibit rent increases do not currently extend to commercial tenants.

Measures may or may not be introduced in due course but as it stands the rules governing your obligations to your landlord are within the four walls of your lease.

During the lockdown period you may have negotiated a rent concession or holidays with your Landlord. Returning to your business premises could mean you will be facing a return to full rental payments together with a demand for the balance of the rent due during the period of closure.

You should be proactive and engage with your Landlord before returning to your business premises and try to agree an appropriate payment plan that will suit the cash flow requirements of both you and your Landlord.

You will need to carefully consider the potential risks of forfeiture and other Landlord remedies which you could be exposed to if you cannot reach an agreement with your Landlord. You should make your Landlord aware of the likely proportionate decrease in your business’ future cashflow and rental payments should reflect the likely gradual return to normal trading.

A 3-month lease forfeiture moratorium has been granted in the UK but not here in Ireland. However, a reliance continues to be placed on Section 5(7)(a) of the Emergency Measures which provides that ALL proposed evictions in all tenancies in the State, including those not covered by the residential tenancies Act of 2004, are prohibited during the operation of the Emergency Measures. This only applies for the relevant period prescribed in the emergency measures and would prevent Landlords changing locks and taking control of premises for non-payment of rent. It is recommended that you continue to negotiate with your Landlord where possible for rent postponement or changes to rental payments to ease cash flow.

2. Service Charges

If you operate your business from a multi-let building you most likely pay a service charge on a quarterly basis. You should continue to pay your proportion of the service charge if possible unless otherwise agreed with your Landlord.

It is likely that there will be additional unanticipated costs incurred by your Landlord in preparing the building for social distancing, cleaning, and creating new policies and procedures. These additional costs may now be sought via the service charge. Recovery of these additional costs via the service charge will depend on the terms of your lease and whether the measures are “reasonable” in the circumstances or in the interests of good estate management.

3. Your Business Premises – Legal Issues

Consideration will have to be given to how the service charge for the building will be calculated as some tenants will be returning to their premises now whilst others will be prevented from returning until a later date. The question of whether your Landlord can claim the additional cost from their tenants arises particularly if there have been remedial works where business systems struggle following a long period of inactivity.

The [RICS professional statement for service charges in commercial property](#) sets the standards for management in commercial properties. This sets out the mandatory obligations that RICS members and regulated firms engaged in this area must comply with. Landlords, tenants, and their advisors should be familiar with this statement which provides practical and sensible guidelines for multi-let premises.

3. Business Insurance

It is imperative that your Landlord does not allow their Property Owner's Insurance Policy to lapse. Therefore, you should continue to pay the insurance contribution towards the landlord's policy in accordance with your Lease.

Moving forward we may see a rise in requests from prospective tenants that the rent will not be payable, either in full or in part, in the event of a future lockdown caused by a pandemic. Landlord's may see "COVID-19 clauses" creep into new leases.

Insurance against loss of rent resulting from Infectious diseases may not be readily available in the market. Landlords will, of course, want to avoid this at all costs and with the involvement of lenders and insurers in many transactions, it may not be an option at all.

Pandemics / Infectious Diseases have not traditionally been covered within 'Insured Risks' under a typical landlord's building insurance policy. Following the current crisis, that may remain the case meaning that the risk would fall squarely on the landlord's shoulders.

Landlords may have to weigh up the risks of losing tenants and having unlet premises against an opening of the floodgates, and will need to make a commercial decision as to whether they are prepared to agree to such a provision, should the issue arise.

In addition, many insurers are refusing to pay out under Business Interruption policies, but these will depend on the terms of your policy which must be checked carefully. **Please see Chapter 4 for more details.**

4. Lease Terms & Break Options

Post COVID-19 tenants agreeing new leases will likely be looking for shorter leases with more flexibility. You should review the term end and break dates in your leases and start early discussions with your Landlord, particularly if a lease is due to be renewed or a break date is nearing. You need to carefully review the terms of your lease in conjunction with your legal advisors as break options are construed strictly by the courts and time is usually of the essence.

5. Alterations

Due to social distancing requirements you will inevitably need to make changes to the layout of your premises. Careful attention should be paid to the terms of your lease and the alterations clause.

3. Your Business Premises – Legal Issues

Alterations and additions (and even partitioning) can require landlords' prior consent. Of course, there is the argument that they are works required by statute but it is always best to put your landlord on notice of any changes that you are making to the premises and obtain prior consent, if possible in the circumstances. Also (subject to planning, fire safety & licensing) you may need to change your business model to use outdoor areas, enclosed car parks, private laneways etc. for seating. If these form part of the landlord's premises, then check the terms of your lease and where required seek landlords' prior consent to any such works.

6. Commercial Rates & BID Levy's

In light of the global pandemic due to COVID-19 the Government made a decision in March of this year to put rates for businesses on hold.

It was announced at a special cabinet meeting held on the 2 May 2020 that additional measures to support those businesses forced to close, as a result of COVID-19, would be implemented. One of those measures was that commercial rates would be waived for a 3-month period from the 27 March 2020.

As of 23 July 2020 the Government has agreed an extension of the waiver until 27 September 2020 for those businesses affected by the pandemic.

The Government has secured a total of €600 million to cover the shortfall in commercial rates being collected for the local authorities over the six month period as many businesses have not be able to reopen under to the Government's Roadmap.

Minister for Public Expenditure and Reform, Michael McGrath TD has stated "The Government remains committed to supporting both local government and small and medium sized businesses. SME's are the lifeblood of our towns and villages and employ hundreds of thousands of people throughout the country... today's €600 million commercial rates waiver for six months will support businesses, protect local government funding and help bring people back to work."

The Restart Grant Scheme for micro and small businesses will be expanded and extended to provide up to a maximum of €25,000 per business, which will be implemented either through a rebate or waiver scheme based on rates payment for 2019. Further funding will be given to Firms which have already applied and received the Grant. The Grant will also now be extended to fund Firms with up to 250 employees.

We will be monitoring the progress of the Restart Grant Scheme currently being drawn up by the Department of Housing, Planning and Local Government together with the Department of Business Enterprise and Innovation and the Department of Public Expenditure and Reform.

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4. Business Interruption Insurance Claims – An Update

1. What is the Latest With Business Interruption Claims?

Much has been written about Business Interruption claims in recent weeks and there will be much more in the coming months with test cases here and in the UK going ahead. FBD Insurance plc has set aside €22 million to cover potential costs in case it loses a test case due to be heard by the Commercial Court in October. The test case has been brought against FBD Insurance plc by Pub owners over whether their policies cover the disruption in their trade caused by COVID-19.

2. What Does This Mean For Me?

Many of you have Business Interruption cover. It is commonplace to have it included in commercial insurance packages. However, there are subtle differences in the precise terms of each policy and these differences will determine whether or not you have a claim. The only thing that is clear at this point is that the question of coverage is not clear cut.

In most policies, Business Interruption is divided into two parts: -

1. The main cover which will firmly link any cover to damage (i.e. loss, damage or destruction) to your premises. In other words, you will only be covered where the premises you have insured is physically damaged so as to prevent or interrupt the business you carry on taking place in it. In this case, the extent of cover is generally calculated by reference to the Gross Profit you would have earned compared with the Standard Gross Profit you were earning from the business. Some Policies will have a Trends Clause, which arguably requires you to take into account prevailing circumstances such as damage to the surrounding geographical area, economic slowdowns, etc.
2. Many policies have developed beyond the standard Business Interruption clauses. They have added extensions to the standard cover which provide Non-Damage cover for Business Interruption where you are prevented from using your premises or access to your premises is restricted. These clauses do not depend on physical damage to your premises, but they do depend on the many factors stated in the policy. In general, they require an order to be made by a competent authority shutting down your premises.

Closure can be for a number of reasons but most relevant at present is where there is a Notifiable Disease. A Notifiable Disease may be defined in the policy. Should this be the case, it is unlikely that COVID-19 will be included. In other policies, the definition of Notifiable Disease is linked to a disease which is required to be notified to a local authority. In February 2020, the HSE declared that COVID-19 was a Notifiable Disease which means that there is a good argument to say that COVID-19 is a Notifiable Disease in respect of these policies and is therefore covered.

As is always the case, this is unlikely to be the end of the story. The remainder of the Non-Damage Business Interruption Clause is likely to require one of a number of things. Some policies may require that a Notifiable Disease occurred on or at the premises before cover will be granted. Other policies require the Notifiable Disease to have occurred within a specified radius of your premises or within the vicinity of your premises. There is much more scope for argument in relation to these policies.

4. Business Interruption Insurance Claims – An Update

3. So What is Happening With These Claims?

Many, if not the majority, of claims are being declined for one of the above reasons. In addition, some insurers are declining cover on the basis that COVID-19 is not the sole and direct cause of the loss. This is a complicated argument but in short, they are saying that if there is more than one cause for closing your premises, and these causes are separate, then you have no cover. Where COVID-19 is concerned, it is being argued that the closure of your premises is one cause for your loss, while the fall off in economic demand due to the pandemic is another cause for your loss and/or the Government imposed restrictions are yet another cause for your loss.

You would be right if you think this sounds overly technical. The principle is encapsulated in English case law, but the position is far from clear. First, as a matter of fact, the act of breaking up the pandemic and its effects into several causes may not be correct. It may well be the case that there is just one cause at play, namely, the COVID-19 pandemic. In which case this issue should not arise. Secondly, even if it is correct to separate the restrictions and the pandemic itself, this is unlikely to be the end of the matter. It is likely that a court or an arbitrator will have to consider whether it is fair and reasonable to exclude cover on this basis or whether some damages should be award in respect of the causes that are covered.

There is considerable argument to be had and this is what is in fact happening. In Ireland there are a number of test cases against FBD that are due to be heard in early October 2020. It is likely that a judgment will be handed down by the High Court in early 2021 if not before. These test cases will not resolve all of the interpretation points in respect of the wording of a particular policy but it is likely to resolve the issue of whether COVID-19 should be split into several causes and what is the consequence of doing so. The test cases will also provide a good road map in respect of several other claims, although there may be the possibility of an appeal which could delay matters. The Restaurant Association of Ireland is also supporting a number of cases against one Insurer designed to address the wording of a specific policy. The procedure being adopted is hoped to speed up part of the process and may bring pressure on Insurers to reconsider their decisions to decline cover.

In the UK there was an ambitious test case that commenced on 20 July 2020 and ran for 8 days. That case was brought by the Financial Authority (FCA) against 8 named Insurers in respect of 12 Business Interruption Clauses in their policies (some insurers have more than one policy under consideration). It is intended that these 12 policies will be determinative of other policies (not directly involved in the case) on the basis that the relevant clauses are materially the same. Several other insurers fell into this category bringing the total number of insurers whose policies were directly or indirectly considered to over 20. The FCA and the Insurers agreed an extensive list of Questions for Determination which covered the typical wording found in most of these policies. The outcome of the FCA test case will not determine the issues that are likely to arise in claims in this jurisdiction, but it will be persuasive and at the very least it is going to provide invaluable insight.

4. What Should You Do Now?

The vast majority of you unfortunately will have suffered considerable loss due to COVID-19 closures. If you have Business Interruption cover with an extension that includes Non-Damage Restriction on Use of premises or Denial of access to premise, then there may be potential to reclaim these losses. You may have already been declined cover directly by your insurer or through your broker, but the matter may not be at an end. Depending on the wording of your policy and the outcome of the test cases your claim may well be valid. You must notify your insurer in accordance with the notification rules in your policy. Typically, this means notifying them without delay or within a set time as set out in

4. Business Interruption Insurance Claims – An Update

your policy. If you are outside these time limits this may not be fatal to your claim, but it will add further complication to it. If cover is declined, then you should take preliminary legal advice as to whether there is scope to challenge the declination of cover. As said above, matters are likely to become much clearer in the weeks to come and you should not abandon what might otherwise be a good claim without proper advice.

Here at Compton Solicitors we understand the dire economic circumstances that businesses are experiencing at present. Please contact Lorraine Compton, Joy Compton, or Shane Dunlop with any queries.

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5. Turning the Lights Back On – Reopening Your Premises

1. What You Can Do Now

a) You should ensure building security measures are in place

- Check properties are locked securely, and valuables removed/stored securely
- Check alarms are operating effectively and ensure security companies have correct contact information
- Carry out regular visits to the property where possible, if in accordance with Government restrictions

b) Consider the required social distancing procedures for customers and employees as this will have a significant impact on the number of guests which you can cater to and on your employee operations. Guidelines for the reopening of hotels, restaurants, bars and cafes are currently being drawn up by Fáilte Ireland and will be released in the coming weeks once approved by the government and HSE.

- Review your floor plans for common dining areas and redesign seating arrangements to comply with social distancing requirements.
- Arrange tables so that the distance is in line with government guidelines.
- Arrange tables so customers face each other from a distance in line with government guidelines.
- Consider the use of screens between tables.
- Consider the construction of individual seating booths.
- Consider the use of screens between customer and Maître d at the entrance before seating.
- Consider the use of screens between customer and employees at pay points.
- Consider the provision of hand sanitiser stations at entrance/exit points and bathrooms.
- Consider the use of technology solutions where possible to reduce person-to-person interaction: mobile ordering and menu tablets; text on arrival for seating; contactless payment options.
- Consider the provision of signage in relation to new seating and ordering procedures.
- Determine entrances/exits to and from bathrooms to establish paths that mitigate proximity for customers and employees.
- Consider creating additional space by utilising external areas where permitted.

5. Turning the Lights Back On – Reopening Your Premises

The World Health Organisation (“WHO”) have published [guidelines on their recommended social distancing requirements for restaurants, breakfast, dining rooms and bars](#). The HSE have yet to publish their recommended social distancing requirements for the Hospitality Sector and it is important to bear in mind that these may differ from the WHO guidelines. **Physical distancing of 2 metres does not apply to members of the same household.**

Careful consideration will also be required in relation to employees and how this will impact on operations particularly within confined spaces such as kitchens, stores, and offices.

- a) Review your floor plans for kitchen/food preparation areas to ensure compliance with government guidelines on social distancing between fellow employees in food production
- b) Review workstation layouts and implement where possible a food production line solution
- c) Consider staggering workstations so employees avoid standing directly opposite one another or next to each other
- d) Consider the use of screens between workstations
- e) Consider the use of screens at pass over points between kitchen staff and floor staff for food collection
- f) Assess your kitchen equipment levels in line with newly adjusted seating numbers to reduce unnecessary movement of kitchen staff (predominately related to kitchen porter staff)

Again, it is recommended that before making any alterations that government and HSE guidelines are reviewed as and when they become available and are complied with. We will keep you updated on the latest developments. The HSE have indicated that guidelines will be released in advance of each phase and this will be dependent on the success of the previous phase.

As every restaurant dining area and kitchen layout is designed for the space, the theme of the restaurant and the menu, careful consideration will be required before any layout changes.

When you are considering layout changes or the use of external areas to implement social distancing measures, it is important to consider planning permissions, landlord consent, licensing legislation, health and safety legislation and the impact on the existing fire safety strategy.

- c) You should schedule inspections and maintenance/alteration works to allow for reopening, prioritising those than can be done in accordance with the [Government’s Roadmap](#).

2. What You Can Do Under Phase 3 of the Government’s Roadmap

The Government has confirmed that from 29 June the following services may reopen: well-being services, hairdressers, barbers, nail salons, driving schools and all remaining retail (e.g. book makers,

5. Turning the Lights Back On – Reopening Your Premises

pubs & hotel bars operating as restaurants, cafes and restaurants providing on premises food & beverages and hotels, hostels and caravan & holiday parks) can also reopen.

Indoor gatherings of up to 50 and outdoor gatherings of up to 200 people are permitted when conducted in line with public health advice.

Organisations are to develop plans for return to onsite working by employees such as social distancing, hygiene and cleaning measures, compliance in higher risk areas and plans for medically vulnerable/pregnant etc staff members.

Phase 3 Recommendations

1. You should carry out a general inspection of the building to ensure the building is in acceptable structural condition
 - a. Highlight any structural issues which may have developed over the period of closure, that if left unchecked could cause harm to employees/customers
2. You should carry out any missed or delayed external maintenance works.
3. Inspections of the various services within the building should be undertaken

Fire Safety	General Services	Kitchen Services	Bar Services
Fire Detection Emergency lighting and signage Fire Doors on escape routes operating effectively	Air conditioning / heating systems Lighting Pest Control Security	Gas Fire Suppression Smoke extraction systems Grease extraction systems Refrigeration systems Water systems	Alcohol Dispensing systems Coffee Machines Refrigeration systems Water systems

4. **Breweries recommend giving at least 3 weeks' notice in respect of servicing for alcohol dispensing systems.**
5. Water and ventilation systems should be inspected in line with the [Return to Work Safety Protocol](#) which highlight the risk of legionella contamination during the period of closure.
6. Carry out alterations of seating arrangements to comply with new guidelines to be released the coming weeks.
7. Carry out works to provide additional external spaces where possible bearing in mind alcohol and planning issues.

*For further information on the phases, go to the [Government's Roadmap](#).

5. Turning the Lights Back On – Reopening Your Premises

Following reopening, the services should be inspected and maintained on a regular basis as per standard operating procedures. With regard to COVID-19 and specifically air conditioning and ventilation systems the [WHO advises](#) that whilst COVID-19 is transmitted from person to person via tiny droplets and has not been proven to be transmitted by air, maintenance and replacement of filters should be undertaken as usual. For more information on this topic please see item 25 of the [HSE's Frequently Asked Questions](#) from the 6 March 2020. We will keep you updated on any developments.

3. Legionnaire's Disease

As these systems have been idle for considerable period of time there is an increased risk of contamination, for example the growth of legionella within water and ventilation systems. Systems should be inspected on return to your premises and appropriate steps should be taken to remove any contaminants. The [Return to Work Safety Protocol](#) has highlighted the risks and we would strongly recommend that the HSA article on the [Control of Legionella](#) is read in detail.

CHECKLIST

- ✓ Ensure building security measures are in place if not already addressed
- ✓ Consider the required social distancing procedures for customers and employees.
- ✓ Review your dining areas and kitchen/food preparation arrangements to comply with new guidelines once released.
- ✓ Schedule inspections and maintenance/alteration works to allow for reopening, prioritising those than can be done in accordance with the Government's Roadmap.

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6. Health & Safety Requirements

As businesses prepare to reopen, it is vital that you understand that the risks associated with COVID-19 remain. The potential ramifications due to the claims associated with health and safety of staff and customers are not yet known. The Department of Business, Enterprise and Innovation and the Department of Health have produced the [Return to Work Safety Protocol](#), providing steps that employers and workers shall take in order to reduce the risk of the spread of COVID-19 in the workplace.

It is an ever-changing landscape and guidance may change over the coming weeks and months. It is strongly recommended that organisations align themselves with a good standard of safety management and recording steps to manage the COVID-19 risks within the workplace. Guidelines for hotels, restaurants, bars and cafes have now been drawn up and are available on Fáilte Ireland's COVID-19 Hub. It is important to bear in mind that the Guidelines have been updated to clarify that service personnel should be included in calculating capacity limits.

Before returning to work, employers are advised to review and abide by the government's [Return to Work Safety Protocol](#). You should take some time to understand the requirements and assess the criteria for implementation in your own premises. Remember that there are organisations who can support you in the implementation. The [Return to Work Safety Protocol](#) sets out in very clear terms for employers and workers the steps that they must take before a workplace reopens, and while it continues to operate.

1. Practical Implications of the Protocol for the Hospitality Industry Include:

- a) Creation of business-specific plans and procedures for the management of COVID-19 and integration into your existing safety documentation (safety statement, risk assessments, etc.).
- b) Ensuring that an assessment has been carried out on sources of COVID-19 within the workplace. Keep a record of such assessments.
- c) Deciding on what controls are needed to eliminate or reduce the spread, such as:

- Redesigning of spacings on the premises, such as table spacings
- Queuing systems allowing social distancing
- Erecting physical barriers
- No entry signs
- Splitting of breaks and shifts
- Limiting personnel to certain areas
- Covering of food, utensils, cutlery, plates, etc. until needed
- Removal of communal non-essential equipment
- Creation of one-way systems using signs
- Floor marking
- Barriers

- d) Where an assessment identifies that social distancing is not possible, you will need to consider alternatives such as physical barriers and suitable PPE (visors, masks, etc.)

6. Health & Safety Requirements

- e) Assess your workforce before returning. Carry out a return to work risk assessment, making a note of individual risk factors such as any underlying health issues of workers. Where this may be the case, you as an employer must decide whether or not the roles can be carried out at home. Preferential support could be given such as ensuring social distancing. This should also include the evaluation of time management to assist in the reduction of personal interaction.
- f) Logging of contact details for staff on the premises where possible for contact tracing purposes. A booking system used to keep track of names would have to be done strictly in conjunction with GDPR guidelines.
- g) Implementing temperature testing in line with Public Health advice. For staff, consider that they take their temperature prior to attending work. Please see Section 5 of the [Return to Work Safety Protocol](#) for more information on temperature checks.
- h) Training your workforce to the new requirements – It is extremely important to keep your workforce trained in: -

- The policies and procedures implemented
- The correct use of PPE
- Hand hygiene protocols
- Practical requirements and how these should be followed

The protocol requires that all staff are trained with the latest advice and guidance.

- i) Continued implementation of Hazard Analysis and Critical Control Point system (HACCP) and any other food/safety management systems
- j) Implementing a regular disinfectant regime throughout the premises, recording when and where this has been done. Employees should be trained to wiped down their workstations before and after each shift with disinfectant.
- k) Consider redesigning/repositioning your workstations and workflow processes and removal of unnecessary fixtures and fittings/furniture and equipment.
- l) Restricting personnel to certain work areas where possible.
- m) Engage with your suppliers to make them aware of your procedures. Include the possibility of deliveries during off-peak times or using an alternative entrance. It is important that all activity on the premises is coordinated in line with your pre-prepared COVID-19 response plan.
- n) Consider reducing the number of items on your food and/or drinks menu to simplify work processes
- o) Avoid unnecessary handling of money where possible and promote use of contactless transactions bearing in mind consumer protection law as set out above in Financial Considerations.
- p) Removing access to public self-service machines, such as vending machines.

6. Health & Safety Requirements

- q) Extended your businesses working hours to accommodate scheduled staggered lunch breaks/splitting shifts or new working hours,
- r) Consider your waste streams and how these are handled safely by your staff and contractors.
- s) Designate an isolation area in the event that a staff member or a patron has a suspected case on the premises and follow documented internal procedures in this event.
- t) Erect signage, floor markings and barriers in prominent locations and areas where it is possible that congregation may occur.
- u) Appoint a COVID-19 compliance officer within the premises responsible for ensuring disinfection is carried out, that staff are adhering to policies and that practical measures are in place to reduce the spread.

Note: The implications of the protocol document go beyond health and safety and it is advisable that Human Resource and Operational teams are involved with the implementation of all policies and procedures.

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7. HR Matters

1. Human Resources Considerations

All businesses need to adapt their workplace procedures and practices to comply fully with the COVID-19 related public health protection measures identified as necessary by the HSE, the Department of Business, Enterprise and Innovation and the Department of Health (together “the guidelines”).

The [guidelines](#) set out in very clear terms for employers and workers the steps that must be taken before your workplace reopens, and while it continues to operate. As part of your steps to reopening your business you need to review your business model and ensure that you are complying fully with the public health protection measures and guidelines.

As part of your assessment, you need to consider how your employees will be impacted on their return to work. It is imperative that employees returning to work are given induction training and ongoing training in relation to COVID-19 prevention measures in line with all guidelines.

HSE signage and reminders on respiratory and hand hygiene should be displayed prominently in your business premises. Posters are available under the [COVID-19 posters and resources](#) section of the HSE website. Also the HSA have published [templates](#) for employers to assist them with putting in place steps as part of the Return to Work protocol such as the employee [Return to Work Form](#) and the [COVID-19 Response Plan](#).

Keeping in mind social distancing procedures and work safety protocols, you need to assess whether or not there will be sufficient room for all of your existing employees to return to the business. You need to consider what changes will need to be implemented in your business to ensure the safety of your employees. Some matters to be considered as a result implementing such measures are as follows: -

a) Have employees’ roles changed in the new business?

If employees’ roles have changed in the business, you need to consider whether or not existing employees can be assigned to other roles within your business. You must discuss any changes in roles with your employees. If employees are agreeable to the change in their role and can be trained to carry out different duties, then this may be a viable solution for your business.

It may be necessary to consider other options such as job sharing, week on week off or reduction in salaries. It will be necessary to discuss any changes with your employees.

Where there is not sufficient work you might have to consider laying off employees, putting employees on short-time hours and in some cases redundancies. There are a number of specific procedures that have to be followed in relation to lay off, short time and making employees redundant. Specific legal advice should be obtained before embarking on any such a course of action.

b) What if an employee does not want to take a changed role or attend work?

Given the specific circumstances of your business, can employees be required to attend work as normal and are employees to be paid if they are not attending work?

7. HR Matters

There may be various reasons such as health risks or other factors behind an employee's reluctance to return to work and decision to self-isolate. These should be given fair consideration. To deal with these concerns, options like remote working from home or availing of leave such as annual leave, paternity leave or another form of leave should be considered and may be agreed between you and your employee. However, if there are no alternative options available it is important that there is clear communication between you and your employees so they understand that they are expected to turn up for work and what the consequences of not attending work will be. You should ensure that all HR policies are up to date, that you have up to date policies in place for working from home and that all employees are treated equally regarding being given the option of remote working from home.

In advance of your employees returning to work, you must carry out a check to ensure that there are adequate safeguards in place to reduce the risk of employees contracting the virus, particularly those employees who may be vulnerable to contracting the virus and/or live with vulnerable people.

c) **Can I impose mandatory temperature checks on employees? Are there data protection/privacy concerns?**

Currently there is no public health advice that requires employers to conduct mandatory temperature checks on employees in the Hospitality Sector as of the 28 May 2020. However, in the [Return to Work Safety Protocol](#) there is an expectation that employers will “implement temperature testing in line with Public Health advice” and that employees will “complete any temperature testing as implemented by the employer” on that basis. As guidance and advice is continuously evolving it is vital that you stay up to date with the latest requirements as they will impact on your business.

If you are considering introducing temperature testing, you need to ensure that such testing complies with GDPR and is carried out in accordance with public health advice when introduced. You should inform your employees of the reason why you are seeking their data, confirm that the data will not be used for any other purpose and also confirm that this information will only be held for as long as necessary in the circumstances and in light of the purpose to be achieved.

Even though taking your employees' temperature is for the management of public health issues any measures taken by you will need to be **necessary and proportionate**.

The Data Protection Commissioner has said that such decisions should be informed by the guidance and/or directions of public health authorities, or other relevant authorities.

You must be able to identify a legal basis for the processing of any personal data and where an activity involves the processing of health data e.g. taking employees temperatures, you must also identify an exemption under Article 9 of GDPR. The [Data Protection Commission in its guidance on data protection and COVID-19](#) notes: “In circumstances where organisations are acting on the guidance or directions of public health authorities, or other relevant authorities, it is likely that Article 9(2)(i) GDPR and Section 53 of the Data Protection Act 2018 will permit the processing of personal data, including health data, once suitable safeguards are implemented. Such safeguards may include limitation on access to the data, strict time limits for the deletion of such data, and other measures such as adequate staff training in order to protect the data protection rights of individuals.”

7. HR Matters

You must update your data protection policies in line with the above guidance and ensure that any actions taken by you are necessary and proportionate to the aim to be achieved.

Any data that is processed must be treated in a confidential manner i.e. any communications to staff about the possible presence of coronavirus in the workplace should not generally identify any individual employees.

d) Is an employee entitled to be paid while they are self-isolating in line with Government recommendations following a trip abroad?

The Government [currently advises against all non-essential travel abroad](#).

Anyone entering, or returning to, Ireland will be required to fill out a Passenger Locator Form. Failure to complete this form is an offence and can result in a fine of up to €2,500 or imprisonment for up to 6 months.

If a passenger entering, or returning to, Ireland is travelling from a location that is on the [COVID-19 Green List](#) ("Green List"), they will not be required to self-isolate for 14 days. See [here for further details](#). This may be subject to change.

If a passenger entering Ireland is travelling from a location that is not on the Green List, then the Government requests that they restrict their movements for 14 days. [See here for further details](#).

If an employee is self-isolating in line with the Government's request following their return from a country that is not listed on the Green List, their pay entitlements during this period will be dependent on the terms of their contract of employment.

2. Employer Liability Insurance and Public Liability Insurance

The position in relation to whether Employers Liability Insurance would extend to cover claims from employees for catching COVID-19 at work or whether or not Public Liability Insurance would extend to cover claims by customers for catching COVID-19 coming on to your business premises should be discussed with your insurance broker. It is imperative that all health and safety legislation, guidelines and protocols are followed to the fullest so that in the event of any such claims you are able to show that your business has complied fully with all applicable legislation, guidelines and policies and isn't found to be lacking.

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8. Your Alcohol Licence – What You Need to Know

8. Your Alcohol Licence – What You Need to Know

1. Online / Takeaway Sale of Alcohol

a) Can your Restaurant sell alcohol online with takeaway service?

Not all licences permit the sale of alcohol as part of the takeaway offering. The type of alcohol that you can offer will also be dependent on the type of licence you hold:

Pub Licence/ Hotel Licence	Wine Retailer's On Licence and Restaurant Certificate	Special Restaurant Licence
Permitted to sell ALL types of alcohol as part of the takeaway offer for consumption off the premises.	Permitted to sell wine as part of the takeaway offer for consumption off the premises. Beer cannot be sold for consumption off the premises.	NOT permitted to sell any alcohol as part of the takeaway offer.

If you are going to offer online alcohol sales, you must clearly highlight appropriate terms and conditions regarding the sale and the delivery of alcohol. They should include the type of alcohol for sale, the permitted hours, the restaurants strict over 18's policy and the consequences which will flow if any underage person attempts to accept delivery.

b) Does the sale of alcohol have to take place on the premises?

Yes, you must ensure that all transactions for the sale of alcohol are taken at the licensed premises. A customer can do this by either paying at the premises, online or over the phone using a credit/debit card online.

If you are permitted to provide off sales, it should be noted that any sale of alcohol, in a closed container, for consumption off the premises, should not be consumed within 100 metres of the licensed area.

c) Can you deliver pints to your customer?

There has been a lot of media coverage in relation to publican's delivering alcohol from their premises. This practice is not in contravention of the liquor licensing laws as they relate to publican's licence, provided that the sale of the alcohol takes place on the licenced premises. This requires the alcohol to be paid for in advance, on the licenced premises, online or over the phone to the licenced premises. Care must be taken that alcohol orders are only accepted from and delivered to persons over the age of 18.

8. Your Alcohol Licence – What You Need to Know

d) What are the permitted hours for the sale of alcohol by delivery/takeaway?

The sale of alcohol can only occur: -

- Monday to Saturday between the hours of 10:30am – 10:00pm
- Sunday between the hours of 12:30pm – 10:00pm

e) How do you prevent the sale of alcohol to underage persons?

It is imperative that you implement a strict staff training programme and proper procedures to ensure that alcohol is not ordered or delivered unless sufficient ID is presented.

It is an offence to sell, deliver or permit an employee to sell or deliver alcohol to any person under the age of 18. In the eyes of the law, a licence holder is considered to have permitted the sale or delivery of alcohol to a minor when no steps are taken to prevent it.

The only defence available for such an offence is that the person was over 18 and presented a Garda Age Card showing the person is over the age of 18. It is not a defence to show a forged age card was presented nor is it a defence to show reasonable grounds for believing the person was over 18.

Conviction for a first offence is an automatic closure order for up to 7 days.

f) What if a Delivery Service Delivers Alcohol, on Your Behalf, to an Underage Person?

It is your responsibility to make sure any delivery of alcohol by a third party/ delivery service is carried out by staff who are trained in the responsible sale of alcohol who ensure the person accepting the order is over 18, by checking ID. You need to be extremely vigilant and safeguard yourself against errors made by third parties.

Some Suggested Safeguards

- Clearly highlight an order contains alcohol;
- Prompt to the driver to ask for a Garda ID;
- Have a clear procedure for alcohol to be returned to the restaurant if no ID is presented;
- Delivery should be carried out by a trained member of staff.

Please note that the above suggested safeguards are not an exhaustive list and is merely a suggested guide to assist you in reducing the risk of an offence being committed. However, unless the delivery is carried out by a trained member of staff, there is an obvious substantial risk.

8. Your Alcohol Licence – What You Need to Know

2. Licence Renewals and Consequences of Failure to Renew

a) Licences Which Must be Renewed Through Customs & Excise

The following licences are to be renewed annually by 30 September through Customs & Excise:-

Publican's Licence (Seven Day Ordinary)	The payment of excise duty is determined by the level of turnover.
Publican's Licence (Hotel with a Public Bar)	The payment of excise duty is determined by the level of turnover. A hotel must also prove that they are registered with Bord Fáilte/Fáilte Ireland.
Publican's Licence (Hotel without a Public Bar)	The payment of excise duty is determined by the level of turnover. A hotel must also prove that they are registered with Bord Fáilte/Fáilte Ireland.
Special Restaurant Licence	€500.00 excise duty is payable on renewal.
Wine Retailer's On Licence	€500.00 excise duty is payable on renewal.

Please review the [guide](#) on how to renew your licence with Customs & Excise using ROS online.

In order to renew a publican's licence, hotel licence, wine retailers on licence or special restaurant licence through Customs and Excise you must have a valid and up to date Tax Clearance Certificate. Please see Chapter 2 on Financial Considerations above for more information on obtaining a Tax Clearance Certificate if you have warehoused taxes under the July 2020 Jobs Stimulus.

b) Licences Which Must be Renewed By Your Local District Court at Annual Licensing:

Not all licences can be renewed by Customs & Excise. The following licences require renewal at the Annual Licensing Court which is held in each District Court area in the last week of September/ first week of October:

Restaurant Certificate	The Restaurant Certificate expires each at the Annual Licensing Court. An application must be made to the Annual Licensing Court every year for a new Restaurant Certificate. The notice of application must be served on An Garda Síochána (10 days' notice) and the local District Court Clerk (4 days). In order to renew a restaurant certificate, you must also be the holder of a current Publican's Licence (Seven Day Ordinary) or a Wine Retailer's On Licence.
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8. Your Alcohol Licence – What You Need to Know

Music and Singing Licence	The Music and Singing Licence expires each at the Annual Licensing Court. An application must be made to the Annual Licensing Court every year for an annual Music and Singing Licence. The notice of application must be served on An Garda Siochana (14 days' notice), the Fire Officer (1 months' notice) and the local District Court Clerk (4 days).
Dance Licence	The Dance Licence expires each at the Annual Licensing Court. An application must be made to the Annual Licensing Court every year for an annual Dance Licence. The notice of application must be served on An Garda Siochana (1 months' notice), the local Authority (1 months' notice), the Fire Officer (1 months' notice) and the local District Court Clerk (7 days). The application for a Dance Licence must also be published in a local newspaper 1 month prior to the Annual Licensing Court date.

An application must be made to the District Court on your behalf presenting the necessary proofs for the renewal of the licence.

It should be noted, that in the City and County of Dublin all paperwork for the renewal of licences, usually have to be lodged by 1 September due to the large volume of licences in the Court area. We will issue an update when it becomes clear what changes there will be to the renewal process this year.

c) Annual Returns and Auditors Certificates Required for Renewal of all Licences in Dublin City or County.

It has become the practice in the Dublin District Court that confirmation must be given by your Auditor/ Accountant in respect of the filing of annual returns and compliance with tax requirements. The Courts Office in Dublin and the Institute of Chartered Accountants have agreed a standard letter which must be filed in the District Court office with other renewal documents by 1 September.

Please note, if the Company's next annual return date falls between the 28 August and 25 November, please also ask your accountant to confirm that the company accounts are being processed and are intended to be filed on 'X' date. This will also need to be confirmed by way of letter from the company secretary.

Please ensure that any issues which prevent your Auditors/ Accountants from being able to complete the above, are dealt with immediately to allow the renewal of your licence. Please note, in the Dublin area, a licence will not be renewed without an Auditors/ Accountants Letter. Please check with your local District Court requirements if you are outside of Dublin to establish if it is required in your area.

8. Your Alcohol Licence – What You Need to Know

d) [The Importance of Renewing Your Licence for the Licensing Year 1 October 2019 Through 30 September 2020 If You Have Not Already Done So](#)

In the current climate, you may be slower off the mark to renew your licence, however please note, you are at risk of prosecution for trading without a licence after the existing licence expires. Taking out a licence half-way through the licensing year does not retrospectively authorise the sale of alcohol from the beginning of the licensing year.

If you do not renew your alcohol licence from 2019/2020 before 30 September 2020, Customs & Excise will not be able to renew it after this date. They can only renew a licence if a licence was in force for the previous licensing year and if you/ your company has a valid tax clearance certificate.

Trading without a licence is a particularly serious offence as your entire stock of alcohol could be confiscated. More than one conviction can also lead to a forfeiture of your licence. To ensure no problems arise you should lodge the renewal application with Revenue before 30 September each year.

e) [What happens if you allow your alcohol licence to lapse?](#)

The licensing year runs from 30 September each year to 12 o'clock midnight on 30 September of the following year. You must renew your licence before 30 September of the following year to ensure your licence does not lapse.

Publican's Licence (Seven Day Ordinary)	If you fail to renew your licence during the course of a licencing year, a Circuit Court application must be made to revive the licence, so as long as the application is made within 5 years of the licence being allowed lapse. See How to Revive a Lapsed Licence in the next section.
Special Restaurant Licence	If you fail to renew your licence during the course of a licencing year, a Circuit Court application must be made to revive the licence. To avoid a further first-time payment of €3,805.00 in excise duty you must prove to the court that the premises was previously licensed with a Special Restaurant Licence. See How to Revive a Lapsed Licence in the next section.
Restaurant Certificate	If a Restaurant Certificate is not renewed at the Annual Licensing Court at the end of September/ first week of October each year, it will lapse. A new application must be made to the District Court to certify the premises as a restaurant. In order to do so, there must be a current Publican's Licence (Seven Day Ordinary) or Wine Retailer's On Licence in place.

8. Your Alcohol Licence – What You Need to Know

Wine Retailer's On Licence	If a Wine Retailer's On Licence is not renewed before 30 September each year, the licence will lapse. An application will have to be made to Customs for a new Wine Retailers On Licence which can take approximately 8 weeks.
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If the reviving or restoring of your licence involves an application to Court, the premises will undergo a full examination, similar to when the licence was first granted. For the revival of a pub licence or special restaurant licence through the Circuit Court, the Fire Officer will be a notice party and will have to be satisfied that the premises is in compliance with up to date fire safety regulations, which could be costly. A revival application also gives objectors a chance to object to the revival of the licence, so great care should be taken to renew licences promptly every year.

3. What to do if Your Wine Retailer's On Licence and/or Restaurant Certificate Lapse?

If a Wine Retailer's On Licence is not renewed by 30 September in any licensing year it will require a new application to be made to Customs and Excise. If a Restaurant Certificate is not renewed at annual licensing in a given year it will require an application to the District Court for a new certificate similar to when it was first granted. Compliance with fire, planning and evidence that the premises is "structurally adapted for use and bona fide and mainly used as a restaurant" will have to be given to the court.

a) How long will the application for a Wine Retailer's On Licence take?

If you allow your Wine Retailer's On Licence to lapse, you will have to apply to Customs and Excise for a new licence which can take approximately 8 weeks. Once the Wine Retailer's On Licence has issued from Customs and Excise you can apply to the District Court for a Restaurant Certificate.

b) Are there any Notice Parties to the Restaurant Certificate Application?

Yes – a notice must be served on An Garda Síochána 10 days before the Court date. The Fire Officer is not a notice party to the Restaurant Certificate Application.

c) Will I have to prove the planning and fire safety status of my premises?

An Architect will need to be instructed to give evidence as to the planning and fire safety status of your building.

d) What else must I prove if my planning permission and fire safety is in order?

The District Court may certify a premises as a restaurant, if it is satisfied that the restaurant is "structurally adapted for use and bona fide and mainly used as a restaurant".

Great care should be taken to ensure that your licence is renewed in a timely manner and is not allowed lapse, as to do so will incur unwanted costs.

8. Your Alcohol Licence – What You Need to Know

4. How to Revive a Lapsed Publican's Licence or Special Restaurant Licence?

If the reviving or restoring of your licence involves an application to Court, the premises will undergo a full examination, similar to when the licence was first granted.

a) Can there be objectors to the Revival Application?

Yes – an application to Court gives objectors a chance to object to the revival of the licence.

A notice must be published in a local newspaper and served on An Garda Síochána and the Fire Officer a month before the Court date.

b) Will I have to prove the planning and fire safety status of my premises?

An Architect will need to be instructed to give evidence as to the planning and fire safety status of your building. The Architect will need to engage with the Fire Officer at a very early stage to ensure that the application is given consent to proceed.

c) Will the Fire Officer inspect the Premises?

Depending on the Local Authority, the Fire Officer may choose to inspect the premises and for certain documentation to be furnished to him/her in advance of the inspection.

For example, in the Dublin Metropolitan Area, a practice direction was given by the President of the Circuit Court, stating that:

1. It is the policy of the Dublin Fire Authority to inspect all premises that are applying to the Circuit Court for licences.
2. Unless ALL the requisite certifications are lodged with the Fire Authority a minimum of two weeks in advance of the Circuit Court hearing date, an inspection will not be carried out and the matter will not be heard.

The Fire Officer will have to be satisfied that the premises are in compliance with up to date fire safety regulations, which can be a very costly undertaking.

d) What else must I prove if my planning permission and fire safety is in order?

A house keeping exercise of your business will need to be carried out to ensure the Title to the property is in order and that a sufficient staff training programme is in place.

The original licence which has now expired will also have to be produced in Court.

***Note:** for the revival of a publican's licence, a revival application must be made within 5 years of lapsing.

Great care should be taken to ensure that your licence is renewed in a timely manner and is not allowed lapse, as to do so will incur unwanted costs.

8. Your Alcohol Licence – What You Need to Know

5. Sale of Alcohol in Outdoor Spaces

a) How do I know what area my licence covers?

In most premises, the extent of the licensed premises will be delineated by a red line on a set of licensing drawings, filed in Court when your licence was first granted. This red line may differ from the plan on your Title Deeds (conveyance or lease). It is important you are familiar with the exact boundaries of your licence. The area within this red line is the licensed area in which you are permitted to sell alcohol.

If the outdoor seating area is not covered by the current licence, and you wish to sell alcohol from the area, you can make an application to Court to extend the Licence to include the outdoor seating area.

Planning advice should be sought prior to the use of any outdoor area as a dining area/ beer garden or smoking area or prior to the carrying out of any works to any outdoor area.

b) Can I serve alcohol on the footpath outside my premises?

While there are no countrywide laws prohibiting drinking in public, each local authority area is entitled to pass Bye-Laws prohibiting the consumption of alcohol in a public place. It is important to note, that there may be Bye-Laws in place which prohibit you from serving alcohol on a public footpath or walkway. For example, in the city of Dublin there are Bye-Laws adopted which prohibit the consumption of alcohol in public places.

Dublin City Council have confirmed that if you have a Street Furniture Licence in place, alcohol can be served and consumed in the area covered by the Street Furniture Licence. Although failure to comply with the provisions of the Act and Bye Laws may result in the withdrawal of the Street Furniture Licence.

Street Furniture Licences can be obtained countrywide, you should contact your Local Authority to confirm what their application process is and if you are permitted to serve alcohol in the area.

c) Where can the sale of alcohol take place?

The sale of alcohol cannot take place outside the licensed area. If you have a beer garden/ smoking area or street furniture which is not currently included within the red line, you can only serve people alcohol, provided they pay for the alcohol within the licensed area.

When preparing the layout of your premises in line with the COVID-19 regulations, you should bear in mind that customers may be required to enter onto the premises to make payment for alcohol even where customers may be able to consume their meal with alcohol outside. Adaptation of the internal layout to your premises should be considered even where customers may be able to consume their meal and alcohol outside.

A case should be made by the Hospitality Industry to modify the operational restrictions imposed by the licensing laws in order to allow restaurants utilise their outside space in a way that limits patrons being required to enter your premises to pay for alcohol which is being consumed in the outside area.

8. Your Alcohol Licence – What You Need to Know

If you are permitted to provide off sales, it should be noted that any sale of alcohol, in a closed container, for consumption off the premises, should not be consumed within 100 metres of the licensed area.

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9. Reopening Your Pub

9. Reopening Your Pub

1. What is the Current Position on the Reopening of Pubs?

On 4 August 2020, Taoiseach Micheál Martin announced the Government decision to delay moving into [Phase 4 of the Government's roadmap](#).

As a result of this announcement, the current restrictions under Phase 3 will continue to apply to pubs and hotel bars meaning they are only permitted to open if they are operating as restaurants (although they do not need to hold a Restaurant Certificate). The position will be reconsidered at the end of August 2020, with the earliest lifting of restrictions occurring on 31 August 2020.

According to [Fáilte Ireland's Guidelines](#), food businesses such as pubs, bars, gastropubs, restaurants and cafés are considered “**controlled environments**”. In controlled environments, the minimum social distancing requirements may be dropped from 2 metres to 1 metre in certain circumstances. For food businesses, this may be done if the “risk mitigation requirements” outlined in [Appendix 1 of the Guidelines](#) have been met.

Any pubs that are considering reopening at present will need to adapt their businesses in light of the current circumstances and restrictions. In this Chapter Compton Solicitors examine the main considerations for pubs that wish to reopen and operate as restaurants.

Main Considerations for Pubs seeking to Reopen and Operate as Restaurants

- Operating as a Restaurant – Serving a “Substantial Meal”
- Social Distancing
- Pre-Booked Time Slots & Limits on Duration
- Consequences of Adding or Altering Food Facilities, Food Equipment or Internal Layout
- Contact Tracing
- Payment Facilities
- COVID-19 Training
- Failure to Follow the Reopening Guidelines Could Result in an Objection

2. Operating as a Restaurant – Serving a “Substantial Meal”

Under Phase 3, pubs are required to operate as restaurants in order to reopen. Fáilte Ireland has issued their [Guidelines for Reopening of Pubs](#) (the “Guidelines”) which pubs need to comply with should they wish to reopen as restaurants. It is important to note that these Guidelines are subject to change and will be updated in line with Government restrictions and public health advice and so they should be reviewed regularly.

Fáilte Ireland's Guidelines state that “**For the purpose of opening in Phase 3, pubs should be required to serve a substantial meal under the definition currently in the Intoxicating Liquor Act 1962, as well as meeting other features expected of a restaurant.**”

9. Reopening Your Pub

[Section 9 of the Intoxicating Liquor Act, 1962](#) states as follows:

9.—(1) For the purposes of the Licensing Acts and the Registration of Clubs Acts a meal served in any premises after the commencement of this Act shall not be deemed to be a substantial meal unless—

(a) the meal is such as might be expected to be served as a main midday or main evening meal or as a main course at either such meal, and

(b) the meal is of a kind for which—

(i) having regard to the prices charged for meals in the premises at times other than prohibited hours, or

(ii) if meals are not normally served in the premises, having regard to all the circumstances,

it would be reasonable to charge a sum that is not less than—

(I) the sum (if any) that for the time being stands fixed under subsection (2) of this section, or

(II) if no sum stands fixed for the time being under the said subsection (2), five shillings.

Currently, the meal in question must be of a **kind for which it would be reasonable to charge a sum of not less than €9**.

Fáilte Ireland have indicated that under the Guidelines, it is necessary that one such meal is served per person – i.e. it would not be sufficient for a group of 4 persons to only order one meal for the entire group.

Importantly, it was confirmed by then Taoiseach Leo Varadkar on 29 June 2020 that pubs are not required to obtain a ‘Restaurant Certificate’ in order to operate as restaurants for the purposes of the Phase 3 requirements.

3. Social Distancing

a) Social distancing for customers seated at tables

The Guidelines state that physical distancing of 2 metres should be kept between tables.

However, if this is not possible, the Guidelines state that this can be reduced to 1 metre in “**controlled environments**” if the risk mitigation requirements outlined in [Appendix 1](#) have been met.

Pubs, bars, gastropubs, restaurants and cafés are all considered controlled environments and so where such a business meets all of the risk mitigation requirements outlined in [Appendix 1 of the Guidelines](#), the minimum physical distancing may be reduced to 1 metre.

9. Reopening Your Pub

Physical distancing is not required between individuals from the same household, rather it is required between tables or seats of individuals from different households.

It is important to note that one of the risk mitigation requirements is that “customers should be seated at a table except when using the toilet, paying and departing”. Therefore, a queuing system to order at the bar would mean that the premises is not in compliance with all of the risk mitigation requirements needed to reduce the minimum social distancing from 2 metres to 1 metre.

b) Social distancing for employees

The Guidelines state that “as far as reasonably possible” a distance of 2 metres and a minimum of 1 metre should be maintained between employees.

Where a 2 metre distance between employees isn’t possible, “all other measures to protect employees should be in place”. The Guidelines give examples of such measures, including organised working groups to facilitate reduced interaction, the provision of PPE, staggered workstations and so on.

4. Pre-Booked Time Slots & Limits on Duration

Under the Guidelines, where all risk mitigation requirements in [Appendix 1 of the Guidelines](#) have been met, and physical distancing is reduced to **1 metre**, “pre-booked time limited slots must be in place for customers”. In such a case, these time slots may be **for a maximum of 105 minutes plus at least 15 minutes between bookings** to allow for adequate cleaning and for customers to enter and leave without mixing.

However, where physical distancing of **2 metres** is maintained, the Guidelines state that “**time limited slots of 105 minutes duration are not a requirement**”.

Under the Guidelines, the 2 metre physical distancing requirement does not apply to members of the same household, rather it is required between tables and seats of individuals from different households.

5. Consequences of Adding or Altering Food Facilities, Food Equipment or Internal Layout

It is important to note that, as the [Guidelines](#) state, the same legal requirements that applied to a premises before COVID-19 still apply.

The Guidelines note that there is a legal requirement to have a Food Safety Management System in place that is based on the principles of [HACCP](#) and to have a Health and Safety Statement. The COVID-19 Response Plan mentioned in the Guidelines is also a requirement under the [Return to Work Protocol](#).

It is also important to note that any additions or changes to a premises that have been made may give rise to potential planning or fire safety issues. You should take appropriate advice from your architect or engineer in this regard.

9. Reopening Your Pub

6. Contact Tracing

The Guidelines state that businesses must take the name and contact number of one person within each party, giving the example of the person who books the table. This person should be advised to keep a record themselves of who was in their party in case it is later needed for contact tracing.

Details must be securely kept by businesses for 1 month. Businesses are not required to take the name and contact details of each person within each party.

7. Payment Facilities

The Guidelines advise that, where possible, customers should use either contactless or card payment. Card machines must be cleaned and disinfected after use by each customer.

If employees handle cash, the Guidelines require employees to be provided with gloves and to observe Public Health advice on hand hygiene.

8. COVID-19 Training

The Guidelines state that all employees must receive training on COVID-19 safety as well as disinfection protocols, with “more comprehensive training” being required for any teams in frequent customer contact.

The Guidelines give Front of House, Operations and Security teams as examples of those in frequent customer contact.

9. Objection to Renewal of Alcohol Licence

On 2 July 2020, An Garda Síochána and the Licensed Vintners Association (“LVA”) released a [joint statement](#) warning all pubs in Dublin to ensure that they follow [Fáilte Ireland’s Reopening Guidelines](#).

The joint statement confirmed that An Garda Síochána would be conducting inspections of licensed premises and that pubs which disregard the Guidelines “may receive an objection to their licence when it comes up for renewal”. Donall O’Keeffe of the LVA also emphasised that “no one should be cutting any corners” and that “severe” enforcement action, up to potential loss of licences, could be taken.

Similarly, Compton Solicitors have made inquiries as to what the attitude of the court will be at the licence renewal stage and it has been indicated that any non-compliance with COVID-19 regulations could be taken into account in the granting of renewals.

The joint statement also reiterated that under the Guidelines, all pubs have to serve a “substantial meal” to each person who is consuming alcohol in their premises.

****Important: This Chapter presents a summary of some of the main considerations when seeking to reopen a pub under [Fáilte Ireland’s Guidelines](#). It is important that you read the full Guidelines prior to taking any action and, if necessary, seek appropriate advices.**

9. Reopening Your Pub

****Important:** Anyone considering adapting their pub to operate as a restaurant in order to reopen should first consult their architect in order to ascertain whether any fire or planning issue arise as a result of the potential changes to the premises.

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10. Street Furniture Licensing

10. Street Furniture Licensing

Outdoor seating areas can be considerably valuable to restaurants, cafés and bars and often play a key role in attracting customers. However, depending on the ownership of the land on which the furniture is to be placed, a licence from the relevant city or county council may be required. Failure to obtain a licence where required, or failure to act in accordance with the licence granted, can constitute an offence, and may result in the forced removal of the outdoor seating area.

Street Furniture Licences are available country wide, you should make enquiries with your Local Authority, to ascertain what the application process is.

Given the impact that social distancing measures will have on the number of tables and chairs permitted, restaurants, cafes and bars will be keen to utilise any outside space available to them.

We will set out the relevant considerations for outdoor seating areas and also advertising boards as required by **Dublin City Council**. Please note, in light of the COVID-19 restrictions Dublin City Council together with many other local authorities have also introduced a Temporary Covid Street Furniture Permit (“Temporary Permit”) which can be applied for free of charge and will last for a period of 6 months. For more information on Temporary Permits, including important insights gained from discussions with Dublin City Council, please see Chapter 11 below.

1. What is a Street Furniture Licence?

A Street Furniture Licence grants permission to put tables and chairs on the footpath outside your premises. The area must be under your control and must be suitable to accommodate the seating area. You must also be able to serve food to the public which can be eaten on-site.

2. How to Apply for a Street Furniture Licence?

1. Arrange a meeting with your local authority’s street furniture unit
2. Publish a notice in a public newspaper
3. Place a notice on your premises
4. Complete the relevant [Application Form](#)
5. Discharge the appropriate fees
6. Obtain Public Liability Insurance for €6.5 million

To apply for the Street Furniture Licence, within the Dublin Metropolitan Area, you will first need to arrange a meeting with Dublin City Council’s Furniture Unit. After the meeting, a specified notice of intention to apply for the licence must be published in a national newspaper. A notice summarising the application must also be displayed on the premises in a manner that is visible to the public. After this, a completed application form must be submitted, which will then be considered by Dublin City Council.

The Street Furniture Licence is subject to various general conditions that are important to note: -

- The licenced area must be enclosed by screens;
- The design must be approved by Dublin City Council;
- Planning permission is required for any front or side awnings used to cover the licenced area;
- Public Liability Insurance to the satisfaction of Dublin City Council must also be obtained.

10. Street Furniture Licensing

Importantly, the granting of a licence does not guarantee its renewal in subsequent years. Dublin City Council retains the right to cancel, suspend or vary the terms of the licence at any time. Additionally, the street furniture may only be placed on the street within the times specified on the licence and must be removed no later than 10:00pm daily, save for where written permission is otherwise provided by Dublin City Council.

3. Changes to application process due to COVID-19?

Should you wish to apply for a Street Furniture Licence, it is important to note that the procedure for obtaining one may have changed in light of the ongoing COVID-19 pandemic. You should therefore contact your Local Authority to confirm if there any changes to the application process.

For example, Dublin City Council have confirmed that they are accepting applications as normal, but indicated the following changes: -

1. It is not necessary to have an inspection carried out.
2. You will need to have a minimum of 2 metre's pedestrian clearance outside the licensed area.
3. There may be further conditions relating to licences in light of the need for social distancing

Additionally, your Local Authority may have introduced an alternative, temporary scheme to allow for the placing of street furniture outside business premises on public land in order to assist businesses in operating in light of the COVID-19 restrictions. The [Temporary Permit scheme](#) introduced by Dublin City Council is one such example (see Chapter 11 below). Contact your Local Authority to see if this is the case for you.

4. What Permissions do I Need?

Where the land on which the outdoor seating area is to be located is privately owned, the issue of obtaining a licence from the relevant authority does not arise. It is therefore important to first check the title of the property in question, to establish the property's boundaries. It is not uncommon that the area directly outside a premises constitutes part of the title of the property. If you are erecting an outdoor seating area or structure on private land it may require planning permission and in the case of a protected structure, there may be conservation issues.

In contrast, where the outdoor seating area is to be located on public land, such as a footpath, a Street Furniture Licence will be required. **If an outdoor seating area is placed on public land without a Street Furniture Licence having been obtained, it will be subject to removal. For example, it has been reported that the Chief Executive of Dublin City Council has [confirmed that illegal street furniture will be removed if necessary.](#)**

It is also important to note that the building or placing of any structure other than what is permitted in the Street Furniture Licence may require planning permission.

If the proposed outdoor seating area is to be used for smoking, there are certain requirements it must meet. A smoking room/area only complies with the law if it the structure is either: -

- An area with no roof, whether fixed or mobile
- An outdoor area may have a fixed or moveable roof, so long as not more than 50% of the boundary is covered i.e. by a wall, windows, gate. In other words, if there is a roof, whether it be fixed or movable, 50% of the boundary must remain as open space.

10. Street Furniture Licensing

5. Fees for Street Furniture Licence?

There is an initial licence fee of €100 and thereafter the annual renewal fee is €50. The annual fee per table is €125 and the annual space rental charge varies from €200 to €500 depending on the zone your premises is located in and whether the outdoor area in question is greater or lesser than 4 square metres.

Please note that Dublin City Council have confirmed that all existing Street Furniture Licences will be extended free of charge for a period of 6 months from their expiry date.

6. Can Alcohol be Served in the Outdoor Seating Area?

If you have obtained a street furniture licence, alcohol may (if the street furniture licence permits) be consumed in the outdoor area covered by the street furniture licence, but the actual sale of the alcohol, that is, the paying for the alcohol, must take place within the licensed area.

Street Furniture Licences are available country wide, you should make enquiries with your Local Authority, to ascertain what the application process is and if alcohol is permitted to be served. Dublin City Council have confirmed that alcohol can be consumed and served within the area covered by the Street Furniture Licence.

If you are permitted to provide off sales, it should be noted that any sale of alcohol, in a closed container, for consumption off the premises, should not be consumed within 100 metres of the licensed area.

7. Advertising Boards – What You Need to Know

In September 2019, Dublin City Council issued a notice regarding advertising boards placed on the public footpath or roadway, stating that a system of regulation for such would commence from 1st September 2019. Consequently, if one wishes to place an advertising board or structure outside their premises on the public footpath or roadway, they will need to obtain a licence from Dublin City Council. Any unlicensed structures will be subject to removal.

To apply for an Advertising Structures Licence, you must:

- First contact Dublin City Council's Advertising Board Unit, giving details of the proposed advertising board and its location
- An on-site meeting will then follow
- The applicant must then submit a completed application form with a non-refundable fee of €100.

subject to general conditions similar to those that apply to Street Furniture Licences.

8. Overview

It is vital to obtain a Street Furniture Licence, where required, in order to avoid having the outdoor seating area removed and committing a possible offence under the Roads Act, 1993 and possibly Bye-Laws, if enacted. It is also possible that your Local Authority has introduced an alternative, temporary scheme to allow for street furniture outside business premises on public land in light of the COVID-19 restrictions. See Chapter 11 below for more details on this.

10. Street Furniture Licensing

Similarly, as of 1 September 2019, an Advertising Structures Licence is required to place an advertising board on the public footpath or roadway, any unlicensed boards will be removed by Dublin City Council.

While the above article focused on the licencing requirements for outdoor seating areas and advertising boards as set down by **Dublin City Council**, similar considerations arise in respect of areas under the control of other city and county councils, and it is just as important to ensure compliance in such cases. Enquiries should be made with the relevant Local Authority to ascertain the position.

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11. Temporary Covid Street Furniture Permits

11. Temporary COVID Street Furniture Permits

On 9 June 2020 Dublin City Council ('DCC') [announced](#) that it was inviting applications for "expanded street furniture provision" from businesses in order to assist them in "getting back up and running" in light of the COVID-19 restrictions. Such provisions for street furniture will be dealt with by way of a Temporary Covid Street Furniture Permit, should the application be granted.

We will set out the relevant considerations for those interested in applying for a Temporary Covid Street Furniture Permit as required by DCC. It is also possible that your Local Authority has introduced an alternative, temporary scheme to allow for street furniture outside business premises on public land in light of the COVID-19 restrictions.

1. What is a Temporary Covid Street Furniture Permit?

A Temporary Covid Street Furniture Permit ('Temporary Permit') gives permission for its holder to place tables and chairs outside their premises where food is sold for consumption on the premises.

In essence, the Temporary Permit is very similar to a Street Furniture Licence (see Chapter 10 above) in that it grants permission to place tables and chairs outside a premises that serves food for consumption on the premises. However, the Temporary Permit scheme has been introduced by DCC specifically to assist business reopening in the midst of the restrictions relating to the COVID-19 pandemic and so the process of applying for and being granted a Temporary Permit is quicker and more streamlined than with Street Furniture Licences.

There are, however, some differences between a Temporary Permit and a Street Furniture Licence that are important to note :-

- To apply for a Temporary Permit, Public Liability Insurance must be obtained that provides cover to a minimum value of €2.6 million. For Street Furniture Licences, the minimum cover of the policy is €6.5 million.
- The Temporary Permit will only be granted for a 6 month period.
- Street furniture may only be placed on the street within the times specified on the Temporary Permit. Should street furniture be placed on the street outside of the permitted times the Temporary Permit will be immediately rescinded and the furniture removed at the expense of the holder of the permit.

It is also important to note that DCC have indicated that, depending on street capacity, it would be possible for the holder of an existing Street Furniture Licence to apply for a Temporary Permit in order to expand their current outdoor seating area, provided the requisite conditions have been met.

2. How to Apply for the Temporary Permit?

To apply for the Temporary Permit, you will first need to make a request via the [Covid Mobility Measure Request Form](#) online, which will be assessed by the Covid Mobility Unit and the Public Spaces Working Group. If it is possible to accommodate the request the applicant is sent an application form which must be completed and returned to DCC along with evidence of a sufficient Public Liability Insurance policy. Such policies must indemnify DCC against 3rd party claims and provide a minimum cover of €2.6 million.

11. Temporary Covid Street Furniture Permits

It is intended that once DCC receives the completed application form, permits will be issued within a period of 3-5 working days. Permits will be issued free of charge and will be valid for a period of 6 months.

DCC have also confirmed that the holders of existing Street Furniture Licences will have their licences extended for a period of 6 months beyond their expiry dates free of charge.

The Temporary Permit is subject to various general conditions that are important to note. These include :-

- The area covered by the permit must be enclosed by screens
- The design must be approved by Dublin City Council
- Side awnings or front awnings may not be used to cover the permitted area
- A change in use of the area covered by the Temporary Permit requires a new application

3. What Permissions do I Need?

Where the land on which the outdoor seating area is to be located is privately owned, the issue of obtaining a Temporary Permit does not arise. It is therefore important to first check the title of the property in question, to establish the property's boundaries. It is not uncommon that the area directly outside a premises constitutes part of the title of the property. If you are erecting an outdoor seating area or structure it may require planning permission and in the case of a protected structure, there may be conservation issues.

If, however, the temporary seating area is to be located on public land, such as a footpath, then it will be necessary to obtain the Temporary Permit (or Street Furniture Licence). Again, any building of an outdoor seating area or structure may require planning permission.

If the proposed outdoor seating area is to be used for smoking, there are certain requirements it must meet. A smoking room/area only complies with the law if the structure is either: –

- An area with no roof, whether fixed or mobile
- An outdoor area may have a fixed or moveable roof, so long as not more than 50% of the boundary is covered i.e. by a wall, windows, gate. In other words, if there is a roof, whether it be fixed or movable, 50% of the boundary must remain as open space.

4. Can Alcohol be Served in the Area Covered by the Temporary Covid Street Furniture Permit?

Similar to the Street Furniture Licence granted by DCC, alcohol may be consumed in the outdoor area covered by the Temporary Permit, but the actual sale of the alcohol, that is, the paying for the alcohol, must take place within the licensed area.

11. Temporary Covid Street Furniture Permits

Local Authorities can differ on the procedures that are in place. You should make enquiries with your Local Authority, to ascertain if a similar temporary procedure is in place, how to apply and if alcohol is permitted to be served.

If you are permitted to provide off sales, it should be noted that any sale of alcohol, in a closed container, for consumption off the premises, should not be consumed within 100 metres of the licensed area.

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12. Planning Considerations

12. Planning Considerations

This note refers to the Hospitality Industry in general and the future operations of facilities in the sector. The Industry has been very significantly affected by the consequences of the emergency provisions. Current Government guidance and flexibility refers only to restaurants and cafes within this overall sector and is for a temporary period.

1. Current Planning Guidelines and Regulations – COVID-19

On 29 March 2020 the Minister for Housing, Planning and Local Government introduced amended Regulations and Guidelines on 29 March to deal with the potential uncertainty which has arisen where there is an interaction between the public health measures that have been implemented, and operational restrictions imposed by planning conditions.

The exempted development provisions under the Regulations have been amended in respect of change of use (Class 14) to exempt a change from “use for the sale of food for consumption on the premises to use for the sale of food for consumption off the premises” for a limited period and reversion to the status quo after the cessation of emergency measures introduced by legislation.

The Guidelines shall remain applicable until such time as they are revoked by the Minister, in accordance with Section 28(4) of the Act, i.e. no later than 9 November 2020, unless a resolution approving the continuation of the emergency measures has been passed by both Houses of the Oireachtas.

The Government guidance indicates the Planning and Development Act, 2000 (“PDA”) allows some discretion in relation to the enforcement of planning conditions and advises of the need to exercise discretion insofar as possible, taking account of the public health advice and recommended HSE measures in relation to COVID-19 and in the interests of the common good.

Business operators are altering their current work practices to ensure the safety of their staff and customers, including through social distancing, in line with HSE public health requirements. These measures have impacts on their capacity to provide full service within the restrictions, which may be reflected in planning conditions associated with their premises.

2. Conditions Relating to Delivery or Take-away from Restaurants and Cafés

The dual impact of social distancing and the requirement for increased delivery of food to the homes of self-isolating and vulnerable people, has impacted on the normal operation of the services sector.

Amendments to Planning and Development Regulations exempt temporary changes of use from restaurant to take-away use for a specified period in the context of the current emergency.

Whereas once disparaged, take-aways are now seen as an essential service. Many restaurants and cafés are currently precluded by a condition of their planning permission to operate a take-away service to sell food and drinks for consumption off the premises.

Where such restrictions are in place as a result of a condition of planning permission, Class 14 change of use exemptions may not apply but planning authorities are requested to take an accommodating and flexible approach to restrictive conditions to ensure they do not become a barrier

12. Planning Considerations

to the provision of necessary take-away services and the continued viability of restaurant and café businesses, during this unprecedented time.

Planning authorities may consider any breaches of planning condition in relation to restaurants or cafés operating a delivery or take-away service to be “of a minor nature”, other than where issues arise which could seriously impact on public health and safety.

This planning provision does not preclude the need to comply with any other regulatory requirements for food businesses, as appropriate.

3. Rebooting the Hospitality Industry

Since the financial collapse in the previous decade, with added strictures on smoking and drink driving penalties and with the emergence of delivery firms and e-commerce, the provision of services in the food and drinks sections of the industry has significantly changed. Many more public houses serve food to a good standard and many more restaurants provide a wider range of drinks. Pub premises increasingly hold restaurant licences provided by the Courts and many restaurants hold 7-day publicans licences.

During the emergency, any facility providing prepared food for delivery has become an essential service. Any catering kitchen capable of providing prepared food should be considered in the same light for the current duration, through the recovery and beyond and all food service facilities should be treated the same in planning terms.

Guidelines for interior spaces for reopening service facilities to the public have resulted in more extensive areas for service and food preparation, less intensive occupation indoors, alterations to premises (including to Protected Structures subject to [Architectural Heritage Guidelines](#)) and more operations moved to the outdoor areas.

4. Need to Modernise Planning Law via Regulations

As a result, there is a need to modernise planning regulation relating to the food/drinks services industry in general.

There is a case to be made by the Hospitality Industry that the planning system has not kept pace with developments in the catering industry, which is now recognised as an essential provider of hot food off premises.

12. Planning Considerations

There is a need to consider a permanent planning situation relating to the Hospitality Industry, whereby:

- Planning conditions flexibility – Extend beyond 9 November 2020.
- Outdoor eating should be better facilitated and tolerated
- Significantly reduced density of customer occupation should be recognised by eliminating car parking requirements and making the resulting space available for dining
- External smoking areas should be regarded as ancillary space to any service premises
- Street Furniture Licences should be more extensively available on more fully pedestrianised streets in cities and towns
- Premises should be regulated by strengthened nuisance legislation not via planning legislation
- Operators should have a reciprocal responsibility to respect neighbours – Gardai policing responsible behaviour by operators and customers
- Pub, Restaurant/Cafe and Hotel food and drink service facilities should be in the same land use category – as business premises
- Guidelines should caution against the attachment of restrictive planning conditions relating to food and drink services premises in this category
- Flexible arrangements for purveying food to customers – Serving to street via windows etc. should be accommodated as exempted development, with associated elevation changes in non-protected structures

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Contributors Profile

Compton Solicitors

We are a full service law firm with particular emphasis on the retail, leisure, hospitality and licensed trade sectors. We work with a wide range of clients, private companies and individuals and we are well known for providing practical and effective legal advice tailored to our client's needs, and against a background of sectoral knowledge to include:

- **Leases and Property Transactions:**
We negotiate lease terms on behalf of our clients and the head of our commercial property team, formerly of Matheson and McCann Fitzgerald, is very experienced in complex property transactions.
- **Company Law and Contracts:**
The head of our commercial department has recently completed a two-year term as the head of the Business Law Committee of the Law Society and is a recognised expert in the area of commercial acquisitions, banking and finance.
- **Liquor Licensing:**
Our award winning liquor licensing team has offered a one stop shop to the retail and hospitality sectors for the last 32 years, providing advice on all aspects of the project from its first inception through to the opening date.

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Simon Clear & Associates, Planning and Development Consultants, was established in 1999. The practice is registered with the Irish Planning Institute and is engaged in a very wide range of planning and development consultancy services to private clients and public bodies. Development advice is provided in relation to hotel and hospitality, residential, retail, industrial, commercial and renewable energy including generation and storage, which includes experience in the preparation, administration and management of all aspects of EIA/EIAR, AA and Strategic Developments throughout Ireland. SCA provided strategic advices, planning context and guidance for this document.

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Overview

While there are a number of challenges to reopening we hope that the information provided in this publication has been helpful to you in making plans to reopen your business and when you might reopen.

This will be a living guide which we will be updating as new information emerges from the government, the HSE and HSA.

If there is an area of concern which you would like us to cover in the next publication please let us know. We would welcome your input for future updates.

For further information and advice we would invite you to contact us directly.