

# REOPENING AND OPERATING YOUR HOSPITALITY BUSINESS

A Practical Guide  
August 2021



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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Significant changes added on 12 August 2021 are shown in red text.

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### Introduction

In early June of 2020, we published the first version of this booklet in order to assist the hospitality industry in reopening and operating their businesses amidst the global COVID-19 pandemic and the related public health measures. Little did we know that a year later there would be a necessity and demand to re-issue an updated version of the booklet for 2021.

Since the very beginning of the COVID-19 pandemic, we have seen tremendous resourcefulness with many of our favourite restaurants 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 31 December 2021 it will be necessary to have the exemption extended. Simon Clear, planning expert, in his piece at Section 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 Section 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.

The landscape has once again 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 there are a number of challenges to reopening and operating your hospitality business in 2021, we hope that the information provided in this publication will be helpful to you in making plans to reopen and operate your business and gives you some clarity in respect of what your business may look like going forward.

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

We have tried to cover as much as we can for the various types of hospitality businesses in this publication. However, if there is an area of concern which you would like us to cover in the next edition, please let us know. We would welcome your input for future updates.

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

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### 1. Financial Considerations – When Should You Open?

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. Restaurants and pubs are permitted to open with social distancing measures applied for outdoor serving as of 7<sup>th</sup> June 2021. **From July 26<sup>th</sup>, indoor hospitality can reopen subject to the [Guidance on Indoor Hospitality](#). Government regulations in relation to evidence of COVID-19 vaccination or immunity following recovery should be implemented.**

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. Some such supports include:

#### **Measures currently being provided while your business is either closed or severely affected include:**

- **Commercial Rates:** The current commercial rates waiver will continue until 30<sup>th</sup> September 2021.
- **EWSS:** The Temporary Wage Subsidy Scheme (TWSS) was replaced with an Employment Wage Subsidy Scheme (EWSS) on 31st August 2020. The EWSS is offering a flat rate €203 for each employee (who's 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 Jul 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. From October 2020, EWSS subsidy rates changed to a sliding scale from €350 if gross weekly wage was €1,462 to €203 if weekly wage was €151.50 to €203. See rates below:
- **EWSS:** Rates are as follows:
  - Gross weekly salary
  - < €151.50 no Subsidy
  - €151.50 to €202.99 – €203 subsidy
  - €203 to €299.99 – €250 subsidy
  - €300 to €399.99 – €300 subsidy
  - €400 to €1,462 – €350 subsidy
  - > €1,462 – No subsidy

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- **EWSS:** The EWSS is to continue at present until 31<sup>st</sup> December 2021, with an expected weaning off of the system at that point.
- **EWSS:** You are now required to submit a monthly return confirming that your actual turnover per month is cumulatively within the agreed guidelines of 70% of turnover in 2019 (new businesses have slightly different monthly return based on their criteria should they be eligible).
- **VAT and PAYE Warehousing:** 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. This is to continue until 31st December 2021, should you continue to be eligible for the scheme (i.e. turnover reduced by 25% compared with 2019).
- **VAT and PAYE Warehousing:** 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.
- **VAT:** Reduced VAT rate for hospitality to continue at 9 % until 1st September 2022.
- **Corporation Tax & Losses:** Early Allowance of 50% of current Corporation tax losses to be carried back against previous year's profits.
- **Loss Relief for Self-Employed Individuals:** 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.
- **CRSS:** Covid Restrictions Support Scheme (CRSS) to continue until 31st December 2021, should you continue to be eligible for the scheme.
- **CRSS:** Three double weeks of CRSS (up to the max of €10,000 per week) to help with opening costs.
- **CRSS:** From 26 July 2021, businesses in the hospitality sector, including restaurants, bars and cafés, may reopen for indoor hospitality services, which can be provided to individuals who are fully vaccinated, or have recovered from COVID-19 in the past six months, as well as to children under eighteen in their care. A business in the hospitality sector who was not in a position to provide outdoor services from 7 June 2021, or which could only do so to a limited extent, such that it continued to be significantly restricted from operating up to 26 July 2021, will, on the easing of restrictions from 26 July 2021, no longer be regarded as being significantly restricted from operating and may make a claim for the triple restart week where the business activity is recommenced.
- **COVID-19 Credit Guarantee Scheme:** Government-backed scheme which is facilitating up to €2 billion in lending to eligible businesses that have been negatively impacted by the effects of COVID-19 in Ireland. Loans under the scheme range from €10,000 to €1 million.
- **COVID-19 Business Loans:** Available via Microfinance Ireland to eligible microbusinesses that have been impacted by the effects of COVID-19 in Ireland. Loans of €5,000 to €25,000 are available with zero interest and zero repayments for the first six months, with the equivalent of a further 6 months' interest-free period (subject to T&Cs).
- **SCBI Working Capital Scheme:** See below.
- See the Department of Enterprise's webpage on [Government supports for COVID-19 impacted businesses](#) for a comprehensive list of supports.

Last year when lockdown measures were relaxed, there was a surprising initial upsurge in businesses in certain locations. As predicted the main beneficiaries of this were premises in suburban areas. Premises in the city centres may decide not to open 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 EWSS & CRSS scheme. The upsurge of the first 2 or so weeks has relented and will continue to do so as the economy shrinks and the markets floods more and more with pubs and restaurants

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reopening. The above stimulus has been put forward to both stimulate the economy and to support business. It is difficult to predict where the jump start will be and what exactly may happen, especially in light of how the EWSS criteria are set out. Some businesses who will be eligible will limp along, while others who are not eligible will be financially worse off if their turnover is say 72% or 75% of previous year.

### 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%.

## 2. 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.
- Costs of reviving alcohol and entertainment licences if they have been allowed to lapse. Please refer to Section 8 for further details.

These are general costs, but there will be specific further costs that your individual business may incur.

There have been significant movement of staff during the pandemic and this continues to be the case on reopening. Many staff have left the industry. Due to these shortages, the emergence of staff who are 'guns for hire' has become prevalent across the industry upon reopening. These are highly skilled staff that have been moving around the various establishments for short periods of time, following the



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tip plate while holding employers to ransom. The support of the EWSS has exasperated this, whereby some employers have used the EWSS as a negotiation tool to offer staff higher wages to move to them. This is a perfect storm and come 1<sup>st</sup> January 2022, when supports are taken away and tax warehousing will cease, there could be a very different market on the jobs front.

### 3. 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, 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.

### 4. 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. 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 (table service only, more outdoor seating to ensure social distancing can apply).

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.

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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 above, covered by the Revenue warehousing scheme.

As the economy reopens and supports are removed, it is only then when the real impact of the pandemic will be revealed. Where will hospitality lie? Will overseas visitors come back? There will be increased costs of products (muted increases in the costs of the breweries are coming in October), increases in commercial rates, increases in taxes to include new sick leave pay, will all impact on the gross profit and the net profits of businesses. The banks will continue to lend for now and with the supports and guarantee of security from government, the interest rates will remain low. We look forward to fully reopening the economy and await what the post pandemic period is like.

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## 5. Refinancing/Reorganising Your Business

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

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?

## 6. 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 2019, which built

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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](#).

### 7. 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](#).

### 8. 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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## 2. Your Business Premises – Legal Issues

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.

A voluntary [code of conduct between Landlords and Tenants for commercial rent](#) was introduced by the Department of Business, Enterprise and Innovation in October 2020. The code was introduced in light of the increasing financial pressure faced by many commercial tenants as a result of COVID-19. The code was agreed between Landlords and business representatives to provide rent “concessions” where possible for tenants unable to meet their financial obligations. The code’s objective is to facilitate early engagement between Landlords and Tenants affected by the pandemic and come to an agreement which works for both parties. The code shall remain in place until the 31 July 2021. This is a voluntary code with no statutory basis and as such the rules governing your obligations to your landlord are within the four walls of your lease and any concessions you may have agreed in writing.

As put succinctly by the Tánaiste and Minister for Enterprise, Trade and Employment, Leo Varadkar “Landlords should be willing to do what they can to help their tenants to continue to operate rather than facing the risk of a vacant premises and inability to obtain new tenants.”

This is to be balanced with the reality that some Landlords will have their own financial commitments to Lending institutions which may restrict their ability to help their tenants.

During the various lockdown periods 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 terms of your Lease, the potential risks of forfeiture and other Landlord remedies which you could be exposed to if you cannot reach an agreement with your Landlord. The High Court recently dismissed an [application](#) by a tenant for an injunction seeking relief against forfeiture for non-payment of rent claiming no notice had been served by the Landlord before re-entering and forfeiting the Lease. However, the terms of the Lease provided that the rent was to be paid “*whether formally demanded or not*” and therefore it was determined there was no requirement for the Landlord to issue a formal demand or serve a forfeiture notice.

### 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.

## 2. Your Business Premises – Legal Issues

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.

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 Section 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. 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

In light of the global pandemic due to COVID-19 the Government made a decision in March of 2020 to put rates for businesses on hold.

Under the [Economic Recovery Plan 2021](#), launched on 1 June 2021, the commercial rates waiver will be extended to end-September 2021 in its current form. The 2021 commercial rates waiver is targeted at supporting those businesses worst affected by the restrictions. The following sectors have been given automatic eligibility:

- Retail
- Hospitality including hotels, pubs and restaurants, leisure and entertainment
- Health services
- Various other categories

The waiver will be administered by local authorities and details were issued to local authorities on the 27 January.

The [COVID Restrictions Support Scheme \(CRSS\)](#) was introduced from the 13 October 2020 and has recently been extended under the [Economic Recovery Plan 2021](#) to the end of 2021. The CRSS allows qualifying businesses to apply to Revenue for a cash payment of up to €5,000 a week. From the 10 May 2021 businesses were permitted to claim for a double restart payment for 2 weeks to assist with the cost of reopening as the restrictions are eased and businesses exit the scheme. This has been now increased under the Economic Recovery Plan 2021 so that the enhanced restart payment at the double rate can be claimed for three weeks.

We will be monitoring the progress of the Revenue CRSS scheme for any updates and developments.

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### 3. Business Interruption Insurance Claims – An Update

#### 1. An Update on Business Interruption Claims

Since the initial publication, matters have progressed on the Business Interruption front both in the UK and in Ireland. There have been various Test Cases in both jurisdictions which have assisted in confirming the correct interpretation of certain clauses in certain policies.

#### 2. What has Changed in the UK?

The UK High Court decision in *The Financial Conduct Authority v Arch and Others (the UK Test Case)* was the first case which brought some clarity to the area. It commenced in May 2020 and was brought by The Financial Conduct Authority (**FCA**) with the aim of speeding up the resolution of approximately 400,000 claims in the UK. In order to provide some guidance to the industry the FCA selected 21 policy wordings from 8 insurers on the basis that these wordings were representative of the policies in the market.

The hearing commenced on 9 July 2020, ran for 8 days and judgment was delivered on 15 September 2020. The High Court found in favour of the FCA on the majority of the issues before it. The High Court emphasised that the central issue was the proper interpretation of the policies and once this was determined all other issues would fall into place.

However, the decision of the UK High Court was subsequently appealed to the UK Supreme Court. The decision of the Supreme Court was delivered on 15 January 2021. The UK Supreme Court decision was also very positive for insureds where their policies potentially cover the effects of Covid-19. The case did **not** however consider policies that required an occurrence of a notifiable disease “*at the premises*”. It remains to be tested whether there is cover in respect of these policies but based on commentary in the UK Supreme Court decision, this remains a difficult argument.

For those policies which are not “*at the premises*” and require an occurrence of a notifiable disease within a geographical limit (e.g., 1 or 25 miles) or where no geographical limit is specified, the UK Supreme Court case represents a big step forward for the successful resolution such claims in the UK.

#### 3. How Have Things Progressed in Ireland?

The UK Supreme Court decision provided clarity in the UK and paved the way for the settlement of qualifying claims in the UK. While UK decisions are persuasive in Irish Courts, the matter still needed to be clarified by the Courts in Ireland. In Ireland, a Test Case was commenced in the High Court against FBD (**FBD Case**) which consisted of four individual cases being run concurrently before the Commercial Court.

In the FBD Case, FBD advanced several legal arguments similar to those raised in the UK, as well as disputing the meaning of the relevant clauses before the Court. In short, the Court rejected FBD’s arguments on the applicable legal principles. It also rejected FBD’s interpretation of the policy, but the Court agreed with FBD as to the duration of cover. Similar to the position in the UK, the FBD Case did **not** consider the “*at the premises*” type policies, which are likely to be limited to occurrences / outbreaks on the premises. It has not been suggested that these types of policies cover all the effects of Covid-19, and such an argument may prove difficult in this area.

The decision in the FBD Case was a welcome one for policy holders, but in practice, the judgment was limited to specific policy and clauses that arose in that case. As such, although the Court

### 3. Business Interruption Insurance Claims – An Update

confirmed the legal principles in question, the outcome of the case has been limited only to the specific FBD policies in that case, as the wording of other policies and their clauses can be vastly different. Therefore, while the FDB case was helpful in providing clarity in the area, the benefits from this judgment are limited to the policy in question.

In Ireland, a further Test Case was brought in relation to the AXA Enterprise policy (**AXA Test Case**). The Commercial Court heard this matter over a number of days where it considered various clauses in this AXA policy. Judgment was delivered by the High Court on 19 April 2021.

The High Court in the AXA Test Case found in favour of AXA and did not accept the arguments put forward by the plaintiff. The result of that case means that there is no cover under this specific policy unless the matter is appealed. There is no formal confirmation on an appeal at the time of writing, but due to the strength of the Court's Judgment, it appears unlikely that there will be an appeal.

There are other Test Cases before the Court for certain policies, but the details of such cases have yet to be fully disclosed as the matters are still ongoing. It remains to be seen what will happen in those cases.

#### 4. What Does This Mean?

While most of you have Business Interruption cover in your insurance policies, the result of the Test Cases which have been positive in the main, have limited impact across the board. This is due to the vast differences in the policy wordings in the insurance industry and for this reason the FBD Case has not translated into success with other policies.

We have reviewed a wide range of policies in this area and unfortunately for policy holders the vast, vast majority of policies have had no cover under Business Interruption.

**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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### 4. 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.

- 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.

It is recommended the social distancing requirements as outlined in the current version of [HSE COVID-19: Guidance for Food Service Businesses v.1.4 28.05.2021](#) are followed.

## 4. Turning the Lights Back On – Reopening Your Premises

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.

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 that can be done in accordance with the [Government's Roadmap](#).

### 2. What You Can Do From June 7 2021

From 7 June 2021 the following hospitality services are permitted to reopen:

Activity	Guidance
Restaurants and bars	Outdoor services can reopen
Weddings	25 people can attend a wedding celebration or reception
Organised outdoor events	Maximum of 100 attendees for the majority of venues. Maximum of 200 for outdoor venues with a minimum accredited capacity of 5,000
Live events	Pilot events to take place

Organisations are to develop plans for the return of employees onsite, such as social distancing, hygiene and cleaning measures, compliance in higher risk areas and plans for medically vulnerable/pregnant etc staff members. It is recommended these plans are in accordance with government and HSE guidelines.



## 4. Turning the Lights Back On – Reopening Your Premises

### Recommendations Prior to Reopening

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 [Work Safely Protocol](#) which highlights 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](#).

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 NSAI COVID-19 Workplace Protection and Improvement Guide. 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. For more information on this topic please see [NSAI COVID-19 Workplace Protection and Improvement Guide](#).

## 4. Turning the Lights Back On – Reopening Your Premises

### 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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### 5. Health & Safety Requirements

As businesses prepare to reopen after a prolonged lockdown, it is vital that businesses 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 initially produced the Return to Work Safety Protocol which was applicable to all workplaces. This document provided steps that employers and workers shall take in order to reduce the risk of the spread of COVID-19 in the workplace and is considered to be the minimum standard that all workplaces must comply with.

The Return to Work Safety Protocol was supplemented, in November 2020, by the Government's [Work-Safely-Protocol](#).

In September 2020, the Government applied restrictions in line with the Framework for Restrictive Measures contained in the [Resilience and Recovery 2020-2021: Plan for Living with COVID-19](#). The Framework has five levels and each of these levels sets out what must be done to reduce the spread of COVID-19.

In February 2021, a revised [Resilience and Recovery 2021 Plan: The Path Ahead](#) was published. This revised Plan outlines how COVID-19 will be managed over the next 6-9 months.

Hospitality businesses should also refer to the relevant [Fáilte Ireland Guidelines](#) for guidance on reopening and operating their business.

It is vital that employers continue to engage with employees in relation to COVID, particularly in communicating recent Government updates/guidance in relation to COVID 19.

Particular cognisance must be given to vaccines in the workplace. This is another area of uncharted territory and an area which must be treated within caution. The following issues are swiftly coming to the fore:

- Antigen Testing in the workplace.
- Employees refusing to take vaccinations. Employers are entitled to **ask** employees to secure a vaccine, in light of employers' general duties under section 8 of the Safety, Health and Welfare at Work Act, 2005 (as amended).
- Vaccines are under Conditional Marketing Authorisation (CMA) and therefore it is vital that employers do not coerce or enforce the requirement for an employee to take a vaccine.
- Vaccination data may be subject to GDPR – guidance in relation to this is expected to be issued by the Data Commissioner shortly.
- Employees working with non-vaccinated employees.

In consideration of vaccines, both employers & employees are urged to adopt & incorporate the following approach:

- Practical
- Reasonable
- Proportionate approach & response

## 5. Health & Safety Requirements

The Government has provided the following business supports via the Health & Safety Authority website ([www.hsa.ie](http://www.hsa.ie)):

- COVID business plans
- Checklists
- Posters
- On-line training courses

The pandemic has proved and continues to prove to be an ever-changing, uncharted landscape and guidance may change over the coming weeks and months, particularly in relation to vaccines. 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 [Work Safely Protocol](#). Businesses 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 [Work Safely 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 and updating the COVID 19 business-specific plans, procedures for the management of COVID-19 and integration into your existing safety documentation (safety statement, risk assessments, etc.).

Note: risk assessments must be regularly updated, particularly in light of the changing nature of the pandemic, the advice and instructions provided by Government and the introduction of vaccines.

- b) In the first instance, where an employee can work from home, they should continue to do so. Where an employee is working from home, an ergonomic assessment/Work from home assessment must be carried out and documented for each employee and appropriate assistance provided, where required.
- c) Ensuring that an assessment has been carried out on sources of COVID-19 within the workplace. Keep a record of such assessments.
- d) Deciding on what controls are needed to eliminate or reduce the spread, such as:

- Re-designing spacings on the premises, such as table spacings.
- Queuing systems, including for toilet facilities, to allow for social distancing.
- Erecting physical barriers & signage.
- Splitting of breaks/shifts.
- Limiting personnel to certain areas.
- Covering of food utensils and other touch points.
- Removal of communal, non-essential equipment.
- Creating of one-way systems using signage to assist.
- Installation of barriers & floor markings.

## 5. Health & Safety Requirements

- e) 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.).

Note: PPE is considered a last resort in terms of control measures, the preference being elimination, engineering, procedure controls in the first instance. Employees must receive training in the use, handling, maintenance, storage and safe disposal (waste treatment) of PPE used in relation to COVID 19.

- f) Assess your workforce before returning. Carry out a return to work risk assessment/declaration, 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. Assistance, and associated templates in relation to completing a return-to-work assessment, including on-line training are available on the [Health & Safety Authority website](#).
- g) 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.

Note: the data protection commissioner is expected to issue revised guidelines shortly, particularly in relation to vaccines.

- h) Implementing temperature testing in line with Public Health advice. For staff, consider that they take their temperature prior to attending work. Please see the [Work Safely Protocol](#) for more information on temperature checks.
- i) Under the Work Safely Protocol, the business must appoint at least one person who will be responsible for ensuring that the control measures associated with COVID are implemented within the workplace. The HSA has developed and provides the following courses free of charge on its website:

- Lead Worker Representative
- Work Safely Induction

- j) Continued implementation of Hazard Analysis and Critical Control Point system (HACCP) and any other food/safety management systems
- k) Implementing a regular disinfectant regime throughout the premises, recording when and where this has been done. Employees should be trained to wipe down their workstations before and after each shift with disinfectant.
- l) Consider redesigning/repositioning your workstations and workflow processes and removal of unnecessary fixtures and fittings/furniture and equipment.
- m) Restricting personnel to certain work areas where possible.
- n) 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.



## 5. Health & Safety Requirements

- o) Consider reducing the number of items on your food and/or drinks menu to simplify work processes.
- p) 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.
- q) Removing access to public self-service machines, such as vending machines.
- r) Extended your businesses working hours to accommodate scheduled staggered lunch breaks/splitting shifts or new working hours.
- s) Consider your waste streams and how these are handled safely by your staff and contractors.
- t) 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.
- u) Erect signage, floor markings and barriers in prominent locations and areas where it is possible that congregation may occur.
- v) 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.

## 2. Life Safety Systems

Aside from COVID 19 duties, responsibilities, implementation and maintenance of appropriate measures, the business must ensure that the following life safety systems are maintained, as per the standards/regulations:

- FDAS – Fire Detection & Alarm System, where installed, must be maintained as per IS 3218. Considering that systems may have not received the appropriate maintenance over the last lock-down period, it would be prudent to ensure that the system receives the appropriate maintenance, particularly where the FDAS is linked to another premises.
- Emergency Lighting System – The EL must be maintained as per IS 3217 with the appropriate records of maintenance being available.
- Portable Fire Extinguishers (PFE's) – PFE's are subject to annual maintenance at a minimum and must be maintained to IS 291:2015.
- Fire Suppression Systems – suppression systems are subject to bi-annual maintenance and must be maintained to a standard such as BS EN 16282.

**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.

## 5. Health & Safety Requirements

For further reading in relation to the above, please refer to the following:

- Department of Health
- Health Protection Surveillance Centre
- Health Service Executive
- Health & Safety Authority

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## 6. 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 Work Safely Protocol such as the employee [Pre-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?

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. However, in the Work Safely Protocol there is an expectation that employers will "implement temperature testing as advised by Public Health" and that employees will "complete any temperature testing implemented by their employer on foot of public health advice" 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."

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.

## 6. HR Matters

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 or in Mandatory Hotel Quarantine in line with Government recommendations following a trip abroad?

As of 19 July 2021, the Government has [permitted non-essential international travel](#).

Currently, 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. You must also have [valid proof of vaccination or recovery, or present evidence of a negative RT-PCR test](#) taken within 72 hours prior to arrival into Ireland.

Valid proof of vaccination includes:

- EU Digital COVID Certificate
- A non-Digital COVID Certificate proof of vaccination which is evidence containing the following:
  - ✓ confirmation that the person is a vaccinated person;
  - ✓ the date or dates on which the person was vaccinated; and
  - ✓ the body in the state concerned implementing the vaccination programme on behalf of the state that administered the vaccination to the person concerned.
- The HSE Vaccination Card is an example of acceptable non-Digital COVID Certificate proof of vaccination.

Valid proof of recovery includes:

- A Digital COVID Certificate of Recovery which you can request [here](#).
- A non-Digital COVID Certificate 'proof of recovery' which is evidence containing the following:
  - name;
  - date of birth;
  - disease from which the holder has recovered from;
  - date of holder's first positive NAAT test result;
  - Member State or third country in which test was carried out;
  - certificate issuer; and
  - dates the certificate is valid from and valid until.

### Arriving in Ireland from inside EU + Iceland, Lichtenstein, Norway, Switzerland

Ireland is now a part of the [EU Digital COVID Certificate](#) for travel originating within the EU/EEA.

- If you have valid proof of vaccination (as set out above), no travel-related testing or quarantine will be necessary.
- If you have valid proof that you have recovered from COVID-19 in the past 180 days (as set out above), no travel-related testing or quarantine will be necessary.
- If you do not have valid proof of vaccination or recovery, you will need to present evidence of a negative RT-PCR result from a test taken within 72 hours prior to arrival into the country. No further travel-related testing or quarantine will be necessary.



### Arriving in Ireland from outside EU + Iceland, Lichtenstein, Norway, Switzerland

Please note: This **includes** those arriving from Great Britain

- If you have valid proof of vaccination (as set out above), no travel-related testing or quarantine will be necessary.
- If you have valid proof of recovery from COVID-19 in the past 180 days (as set out above), no travel-related testing or quarantine will be necessary.
- If you do not have valid proof of vaccination or recovery, you will need to:
  - ✓ present evidence of a negative result from a RT-PCR test taken within 72 hours prior to arrival into the country,
  - ✓ [self-quarantine](#) for 14 days.
- If you receive a negative result from a RT-PCR test taken from day 5 onwards after arrival into Ireland, you will be able to leave quarantine.

### If your journey originates in a country which is a designated State

- If you have valid proof of vaccination or recovery (as set out above), you will need to:
  - ✓ present evidence of a negative result from a RT-PCR test taken no more than 72 hours before arrival,
  - ✓ undergo self-quarantine.
- If you receive a negative result from a RT-PCR test taken from day 5 onwards after arrival into Ireland, you will be able to leave quarantine.
- If you do not have valid proof of vaccination or recovery, you will need to:
  - ✓ present evidence of a negative RT-PCR test result taken in previous 72 hours before arrival,
  - ✓ undergo [mandatory hotel quarantine](#).
- If you receive a negative result from a RT-PCR test taken from day 10 onwards after arrival into Ireland, you will be able to leave quarantine.
- The [current list of designated states may be found here](#), but please note that this list is subject to change at short notice.

If an employee can work remotely from self-quarantine or mandatory hotel quarantine, they will be entitled to their pay.

If an employee is not able to work remotely, their pay entitlements during this period will be dependent on the terms of their contract of employment.

#### e) What is the position on Mandatory Vaccination?

While there is no specific legislation in place to deal with Mandatory Vaccination, there are some existing statutory instruments which business owners should be aware of and can be referred to for some guidance on this area such as Safety, Health and Welfare at Work Act 2005-2014 and Safety, Health and Welfare at Work (Biological Agents) Regulations 2003-2020. These Acts and Regulations place obligations on business owners to carry out a risk assessment to identify any hazard in the workplace (whether that is at home or in the office) and where there may be a risk to

## 6. HR Matters

the health and safety of employees due to a biological agent. There are also some obligations placed on employees such as:

- to take reasonable care to protect their own safety, health and welfare.
- to take reasonable care to protect the safety, health and welfare of their co-workers.
- to work with their employer to comply with the above.

As part of the risk assessment, asking Employees to get vaccinated once they are eligible might be considered reasonable in line with both the Business Owner and the Employees obligations under the Safety, Health and Welfare at Work Acts and Regulations. However, this must be balanced with other legislative protections in place for employees which must be considered to allow scope for an Employee's grounds for refusing to get vaccinated.

As a guide Business Owners should consider the following when updating their risk assessment:

- Vaccination should be factored in as a consideration when carrying out an updated risks assessment of the workplace in line with the HAS guidelines and the Safety, Health and Welfare Acts and Regulations whether the workplace is at home or in the office.
- If an Employee has any concerns or difficulties with getting vaccinated, once a vaccine is offered, they should be asked to notify their Employer which should be kept on a strictly confidential basis to protect the Employees right.
- Consider the public health guidance currently in place to see if this can be implemented to mitigate the risk (such as maintaining a policy of social distancing, hand and respiratory hygiene and wearing PPE).
- Assess whether unvaccinated Employees can be reasonably accommodated by working from home, reassigning specific tasks on consent or such other options available depending on the business needs.
- Seek legal advice before taking any steps which might affect an Employee's rights or position due to an Employee's objection to getting vaccinated.

The risk assessment and its implementation will depend on the specific business and the safety risks involved.

## 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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### 7. 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:**

- Permitted to sell **ALL** types of alcohol as part of the takeaway offer for consumption off the premises.

##### **Wine Retailer's On Licence and Restaurant Certificate:**

- Permitted to sell **wine** as part of the takeaway offer for consumption off the premises.
- Beer **cannot** be sold for consumption off the premises.

##### **Special Restaurant Licence:**

- **NOT** permitted to sell any alcohol as part of the takeaway offer.

If you are offering 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.

Compton Solicitors have recently developed a methodology for licencing offices/ and warehouse business to allow for the online sale (only) of spirits, beers and wine for consumption off the premises without the necessity of applying for a specific planning permission for off licence use. For more information on how this can be achieved please do not hesitate to contact a member of the licensing team (details below).

##### 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.

A Restaurant is said to be guilty of an offence, if they supply alcohol in a closed container and consent or have knowledge of it being consumed within 100m of their premises.

A container in relation to alcohol is defined in law as a bottle or other container.

Restaurants need to take the appropriate measures to ensure that if alcohol is being sold in a closed container it is not consumed within 100m of the premises. Over the last few months, there has been much discussion over what constitutes a 'closed container'. The type of container has

## 7. Your Alcohol Licence – What You Need to Know

not been the subject of a Court debate, however, it may be difficult to argue that a plastic glass with a lid is not a closed container.

### c) Can you deliver pints to your customer?

The holder of a Publican's Licence delivering alcohol from their premises is not in contravention of the liquor licensing laws, 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.

### 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 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.

## 7. Your Alcohol Licence – What You Need to Know

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.

### 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 Section 2 on Financial Considerations above for more information on obtaining a Tax Clearance Certificate if you have warehoused your PRSI/VAT.

#### 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	<p>The Restaurant Certificate expires each September. 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).</p> <p>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.</p>
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## 7. Your Alcohol Licence – What You Need to Know

<b>Music and Singing Licence</b>	The Music and Singing Licence expires each year at the Annual Licensing Court. An application must be made to the Annual Licensing Court for the renewal of your annual Music and Singing Licence. The notice of application must be served on An Garda Síochána (14 days' notice), the Fire Officer (1 months' notice) and the local District Court Clerk (4 days).
<b>Dance Licence</b>	The Dance Licence expires each year at the Annual Licensing Court. An application must be made to the Annual Licensing Court for the renewal of your annual Dance Licence. The notice of application must be served on An Garda Síochána (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.



### d) Waiver of Fees for Renewal of Licences

On 21 July 2021, the Minister for Justice and Minister for Finance confirmed that the Government had approved to waive court fees and excise duties for 2021.

This is the second year in a row that this waiver has been applied in an effort to support the hospitality industry in light of the ongoing Covid-19 pandemic and related public health restrictions.

According to the announcement, the 2021 waiver will apply to the following:-

#### **Renewals through Customs & Excise:**

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

- Publican's Licence (Seven Day Ordinary)
- Publican's Licence (Hotel with a Public Bar)
- Publican's Licence (Hotel without a Public Bar)
- Special Restaurant Licence
- Wine Retailer's On Licence

Please note, all Holders of the above Licences will still be required to make their renewal applications through Customs and confirm that they have obtained tax clearance. The renewal process will continue as normal however the excise duty payable will be marked as €0. Pub Licences and Hotel Licences whose excise duty is established based on annual turnover, must declare their turnover to Revenue, even though the duty applicable will be €0.

#### **Renewals at the Annual Licensing Court:**

Other licences such as Restaurant Certificates, Music and Singing Licence and Dance 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.

The Government confirmed that regulations will have to be enacted to implement the waiver of stamp duty fees for this year. However, the Finance Unit of the Court Services confirmed that they have no indication of whether this will be in place before applications need to be lodged by the deadline of late August. If the statutory instrument is not in place by the lodging deadline, the Court Services will not be able to accept renewal applications without the payment of the applicable stamp duty. In these circumstances (as was the case last year), the stamp duty will have to be paid and an application for a refund will have to be made thereafter. Licensees should check with their local Court Office to ascertain what the procedure is locally.

### e) **The Importance of Renewing Your Licence for the Licensing Year 1 October 2020 Through 30 September 2021 If You Have Not Already Done So**

In the current climate, you may be slower off the mark to renew your licence as you have not been trading, however please note, you are at risk of prosecution for trading without a licence after the existing licence expires. Please note, the carrying out of any takeaway/ online sales of alcohol will also constitute trading.

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 2020/2021 before 30 September 2021, 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.

## 7. Your Alcohol Licence – What You Need to Know

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.

### f) 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.

<b>Publican's Licence (Seven Day Ordinary)</b>	If you fail to renew your licence during the course of a licensing year and the licence lapses, a Circuit Court application can 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.
<b>Special Restaurant Licence</b>	If you fail to renew your licence during the course of a licensing year, a Circuit Court application can be made to restore 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.
<b>Restaurant Certificate</b>	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.
<b>Wine Retailer's On Licence</b>	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.

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?

## 7. Your Alcohol Licence – What You Need to Know

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 any 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 & Excise for a new licence which can take approximately 8 weeks. Once the Wine Retailer's On Licence has issued from Customs & 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.

## 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.

**We offer a Free Alcohol Licensing Helpline to all our clients operating in the hospitality sector as we are very well aware that your business may need on the spot advice concerning any issues arising from the operation of your licensed premises.**

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### 8. What effect has the Public Health (Alcohol) Act 2018 had on the Licensing Industry?

It has been over two years since the landmark piece of legislation, the Public Health (Alcohol) Act was enacted, which continues to drastically change the landscape for how alcohol can be sold and offered for sale.

The legislation has far reaching effects for both the on licence and off licence trade and will significantly change how society is exposed to alcohol. The Act includes measures, such as, a ban on certain promotional offers and loyalty schemes, minimum unit pricing, structural separation of alcohol in retail shops, restrictions on alcohol advertising and mandatory health warning on labels.

The Minister for Health has already signed a number of sections of the legislation into law which include but are not limited to:

- Prohibition of advertising in certain places;
- Separation of alcohol in supermarkets;
- Prohibition of certain promotional offers which supply alcohol at a reduced price or free of charge;
- Prohibition of alcohol as part of loyalty schemes;
- Minimum unit pricing due to commence in January 2022.

Some of the most significant aspects of the Act for the hospitality industry are the promotional offers, loyalty schemes and minimum unit pricing, which we have outlined below:-

#### 1. What Promotional Offers are Now Prohibited for On Sales?

The new restrictions ban the sale of alcohol at a reduced price or free of charge on the basis of purchasing a service or product whether it be accommodation, dinner, spa treatments or any other service provided.

**The following examples will hopefully aid the hospitality industry in ascertaining which offers are permitted or prohibited:**

**1. Dinner Package to include Dinner with a bottle of wine for €50.00**

This package is permitted provided the wine is not offered at a reduced price or free of charge as a result of purchasing the package i.e. that bottle of wine cannot be available to purchase by itself, at a higher price.

**2. Dinner Package to include 2 starters, mains & dessert for €50.00**

**- Option to add a bottle of prosecco for additional €20.00**

This Package is permitted provided the prosecco is not offered at a reduced price as a result of purchasing the package i.e. if that bottle of prosecco is available on its own, it must cost €20.00. It cannot be more expensive when bought by itself.

**3. Afternoon Tea for two people for €50.00**

**- Option to add Two Glasses of Prosecco for additional €10.00**

This Afternoon Tea Package is permitted provided the glass of prosecco is not offered at a reduced price as a result of purchasing the Afternoon Tea package i.e. if the glass of prosecco is available to purchase by itself, it must cost €5.00 per glass. It cannot be more expensive when bought by itself.

## 8. What effect has the Public Health (Alcohol) Act 2018 had on the Licensing Industry?

### 4. Offer of €35 for Brunch and limitless prosecco

Offers such as bottomless brunch are no longer permitted. The Act prohibits any action that is likely to encourage the consumption of alcohol in a harmful way. In the HSE guidance for the hospitality industry it is confirmed that the intention is to prohibit any alcohol offers that encourage individuals to purchase or drink more than they intended or to drink faster than they intended.

### 5. Promotional offers which provide alcohol for free or at a reduced price

Promotional nights such as '2 for 1' or '5 bottles for €20' (when bought singly they cost €5) or 'student nights' are no longer permitted.

Alcohol cannot be offered at a reduced price or free when sold with another. In addition, any promotions which reduce the price of alcohol for 3 days or less and then resume to its regular price are banned.

### 6. Complimentary/ Free alcoholic drink on arrival

If the alcohol is provided free or at a reduced price on the purchase of any product or service i.e. a dinner or an overnight stay, then this is not permitted.

### 7. Loyalty Schemes and Alcohol

Many of the hospitality industry have loyalty schemes in place which grant benefits to their customers for repeat custom. The Act prohibits the use of any loyalty schemes for the purchase of alcohol. A guest cannot gain loyalty points from purchasing alcoholic beverages nor can their loyalty points be redeemed against alcoholic beverages.

Licensed premises will need to update their systems and loyalty schemes to exclude alcohol and ensure that rewards cannot be given for the sale of alcohol or used when buying alcohol.

## 2. What Promotional Offers are Now Prohibited for Off Sales?

Any promotions offering the sale of alcohol for a reduced price, such as:

1. Buy 2 bottles for a reduced price of €50.00 or
2. Buy 6 bottles for the price of 5 or
3. Offer reducing the price of alcohol for 3 days or less.

will no longer be permitted.

## 3. Do the Restrictions Apply to Online Sales?

Yes, licence holders will no longer be permitted to carry out reduced price promotions online. For the purpose of the regulations, the remote sale of alcohol is deemed to take place where the agreement for sale takes place. However, if the agreement for sale takes place outside of Ireland but the alcohol is dispatched in Ireland, the sale is deemed to take place at premises where the alcohol is dispatched from.

## 4. What are the Penalties for Breaching the Regulations?

If a licence holder is found guilty of an offence, they will be liable to the following substantial fines and/or at risk of a custodial sentence:

## 8. What effect has the Public Health (Alcohol) Act 2018 had on the Licensing Industry?

1. on summary conviction, to a fine not exceeding €5,000.00, or imprisonment for a term not exceeding 6 months, or both, or;
2. on conviction on indictment, to a fine not exceeding €250,000.00 or imprisonment for a term not exceeding 3 years, or both, or;
3. Temporary closure order which is an order on conviction to close the premise for not more than 7 days for a first offence, and not less than 7 days but not more than 30 days for a second or subsequent offence.

The regulations also state that the directors/officers of the company are liable to prosecution for any breach of the regulations by the licence holder.

The licence holder is also liable to pay the costs and expenses incurred by the prosecution in relation to the investigation, detection and prosecution of the offence.

## 5. What is Minimum Unit Pricing?

The Minimum Unit Pricing of alcohol ("MUP") was officially launched by Minister for Health in April and is intended to commence in **January 2022**. MUP sets a minimum price under which alcohol cannot be legally sold. This price is based on how many grams of alcohol a product contains i.e. the higher the alcoholic strength the more expensive the alcohol will be.

The minimum price is calculated using the following formula:

$$A \times B = C$$

where—

**A** is the minimum price per gram of alcohol,

**B** is the quantity in grams of alcohol contained in the alcohol product, and

**C** is the minimum price of the alcohol product expressed in euro and cent.

The below chart gives an example of the floor price for a range of alcohol products.

**MUP of products after commencement.**



Beverage	Volume (mls)	ABV %	MUP €
Whiskey	700	40	22.09
Gin	700	40	22.09
Vodka	700	37.5	20.71
Wine	750	12.5	7.40
Larger (Bottle)	330	4.3	1.12
Cider (Can)	500	4.5	1.78
Lager (Can)	500	4.3	1.70
Stout (Can)	500	4.2	1.66
Spirits (Pub measure)	35.5	40	1.12
Wine (Glass)	175	12.5	1.72
Stout (Pint)	568	4.2	1.88
Lager (Pint)	568	4.3	1.93
Cider (Pint)	568	4.5	2.02





## 8. What effect has the Public Health (Alcohol) Act 2018 had on the Licensing Industry?

### 6. What Impact will MUP have on the Hospitality Industry?

MUP will have the most impact on the off licence trade as the majority of hotels, pubs and restaurants sell spirits, wine and pints above the proposed minimum unit price and for those premises their prices will largely not be affected.

However, special care should be taken when carrying out any off sales to ensure the transaction is above the minimum unit price and also when mixing cocktails which contain a number of alcoholic drinks. The price of the cocktail must be calculated using the above formula.

There are many aspects of the Act that are yet to commence, such as, notice to HSE for licence applications; the contents of advertising; the labelling of alcohol products; and a broadcast watershed.

**Compton Solicitors website will continue to provide guidance on each of the sections as they are signed into law.**

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### 9. Reopening Your Pub, Restaurant or Café

#### 1. What is the Current Position on the Reopening of Pubs, Restaurants and Cafés?

As of 26 July 2021, [pubs, restaurants and cafés may reopen for indoor service](#) for those who have been fully vaccinated or have recovered from COVID-19 in the last six months, as well as accompanying children (even if unvaccinated). Outdoor service is permitted for all customers.

According to the latest [Fáilte Ireland Guidelines for Pubs](#) and [Fáilte Ireland Guidelines for Restaurants and Cafés](#) (together the “Guidelines”), 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.

In this Section, Compton Solicitors examine the main considerations for such businesses that wish to reopen and operate under the current guidelines.

#### Main Considerations for Pubs, Restaurants and Cafés seeking to Reopen

- Indoor Food and Beverage Service
- Outdoor Food and Beverage Service.
- Physical Distancing.
- Ventilation.
- Consequences of Adding or Altering Food Facilities, Food Equipment or Internal Layout.
- COVID-19 Training.
- Contact Tracing.
- Payment Facilities.

#### 2. Indoor Food and Beverage Service

Businesses such as restaurants, cafés and pubs are now permitted to reopen for indoor service, subject to compliance with the relevant legislation, regulations and guidelines.

At present, only certain “**permitted persons**”, may access indoor hospitality services. Permitted persons are:

- People who have been fully vaccinated;
- People who have recovered from COVID-19 in the last 6 months; and
- Accompanying children (whether vaccinated or not).

Those who are unable to demonstrate that they have been fully vaccinated or have recovered from COVID-19 in the last 6 months will still be permitted to access outdoor hospitality services.

##### a) Do customers have to prove their vaccination or immunity status?

Yes, customers will have to prove that they are fully vaccinated or have recovered from COVID-19 within the last 6 months. This will be done primarily via the EU Digital COVID Certificate. However, other proofs of immunity such as equivalent COVID-19 certificates issued by non-EU Member States, HSE COVID-19 Vaccination Records (or another country’s equivalent) and written

## 9. Reopening Your Pub, Restaurant or Café

records/confirmations from an authorised body to administer the vaccine on behalf of a State (provided that it contains certain required information such as the date of vaccination and the body implementing the vaccination programme on behalf of the State) will also be accepted.

It is important to note that customers may also be asked to show photo ID (such as driving licences or passports) in order to demonstrate that the proof of immunity or recovery that they have presented is theirs.

Accompanying children may also be asked for photo ID in order to prove that they are under 18 and so are excepted from the requirement to be fully vaccinated or have recovered from COVID-19 in the last 6 months.

### b) Can customers be refused entry?

The [Government's guidance on the Reopening of Hospitality](#) as well as [Fáilte Ireland's Guidance for Indoor Hospitality](#) note that businesses may refuse entry to customers who cannot offer proof of immunity or recovery, or cannot demonstrate that their proof of immunity or recovery relates to them. Both guidance notes state that if businesses do not operate on this basis, they themselves may be liable for fines or closure.

Under [section 31AL of the Health \(Amendment\) \(No. 2\) Act 2021](#), personal data contained in a proof of immunity must only be processed for the purpose of accessing/verifying the information in the proof itself. Moreover, an indoor operator may only process such information for this very purpose and may not retain the data for any longer than is strictly necessary to carry out the procedure and comply with the verification conditions, as set out in the legislation.

### c) How do Businesses Check Digital COVID Certificates?

The Government has developed a Digital COVID Certificate Checker tool for businesses to use which may be accessed [here](#), together with details for its use.

The checker tool scans the QR code contained within the paper or electronic copy EU Digital Covid Certificate and will determine whether or not the certificate is valid for indoor dining and hospitality.

### d) What are the other key points measures for Indoor Hospitality?

Fáilte Ireland's [Guidelines](#) as well as its [Guidance for Indoor Hospitality](#) set out several key points regarding **indoor food and beverage service**. It is important to note that guidelines differ to outdoor dining in some respects. Some of the key points for indoor dining include:

- **Managed Entry Point:** A managed and supervised entry point with an appropriate queue management system must be put in place at the entrance to the premises or the point of entry to the seating area(s). This must be controlled by staff who have been instructed in the process and there must be measures put in place to ensure that a person cannot gain access without being checked. Before a customer is granted access to the indoor seating area, they must have had their proof of immunity checked for validity and cross checked against their presented form of photo ID, to ensure that the indoor operator has fully complied with their duty.
- **Table Limits:** A maximum of 6 persons aged over 13 years permitted per table, subject to a total combined capacity of 15 overall (when including those aged 12 and under).
- **Service Type:** Only table service permitted.
- **Face Masks:** Customers must wear face masks at all times where they are not seated at their table. Employees must wear face masks at all times.
- **Entertainment:** Live music and dancing is not allowed on the premises.
- **Closing Time:** The premises must be clear of all customers by 11:30 pm.

### 3. Outdoor Food and Beverage Service

There is **no restriction** on who may access outdoor food and beverage services.

The [Guidelines](#) define outdoor space as “an outdoor place or premises that is covered by a roof, so long as not more than 50% of the perimeter (outside) is covered by a wall, windows, gate or similar”.

Importantly, the Guidelines also state that **consideration should be given to the location of the outdoor area in question**, giving the example that while a tent with a roof only would be considered an outdoor area, this may not be the case if such a tent were to be placed in “a courtyard area with four surrounding walls within close proximity”.

The Guidelines set out several key points regarding **outdoor food and beverage service**, which include:

- **Table Limits:** A maximum of 6 persons aged over 13 years permitted per table, subject to a total combined capacity of 15 overall (when including those aged 12 and under).
- **Service Type:** Only table service permitted.
- **Face Masks:** Customers must wear face masks when moving around the outdoor area or using indoor facilities. Employees must wear face masks at all times.
- **Multiple tables** can be booked in an outdoor area.
- **Closing Time:** The premises, including the outdoor area, must be clear of all customers by 11:30 pm.

### 5. Physical Distancing

#### a) Physical distancing for customers

The [Guidelines](#) state that physical distancing of 2 metres should be kept between tables. However, as pubs and other food businesses are considered “**controlled environments**”, they are permitted to reduce physical distancing between tables to 1 metre provided that all of the “risk mitigation requirements” that are set out in Appendix 1 of the Guidelines have been met.

There is no longer a requirement to have 105-minute time limits in place for customers. Pre-booking is also not required, though businesses may choose to put such a system in place.

#### b) Physical 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 organising working groups to facilitate reduced interaction, the provision of PPE, staggered workstations and so on.

### 5. Ventilation

The [Guidelines](#) note that it is important to maximise ventilation in areas where people are in close contact, as the COVID-19 virus is more likely to spread in “crowded and poorly ventilated spaces where infected people spend long periods of time together in close proximity”.

## 9. Reopening Your Pub, Restaurant or Café

As a result, the Guidelines state that operational practices should factor in the importance of ensuring sufficient fresh outside air circulation. In particular, windows and doors should be opened, where possible, to facilitate and allow for proper air flow.

The Guidelines also recommend that businesses consider using a ventilation assessment of the premises and the use of CO<sub>2</sub> monitors.

More detailed considerations regarding proper ventilation are set out in Appendix 2 of the Guidelines and should be taken into account.

### 6. 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 food law requirements that applied prior to COVID-19 still apply. The Guidelines highlight that any changes to the nature or the extent of the business must be reflected in both the food safety management system and [HACCP](#) procedures and documentation.

Additionally, Pubs, Restaurants, Cafés and similar businesses should be conscious that any additions or layout changes to a premises may give rise to planning or fire safety issues. The appropriate advice should be sought from an architect or engineer in this regard.

### 7. 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 “customer facing areas”, Operations and Security teams as examples of those in frequent customer contact.

### 8. Contact Tracing

The [Guidelines](#) state that businesses must keep a record of the time and date of arrival of a group or sole customer. The name and telephone number of the sole customer or “lead person” in the group must also be recorded. **This applies in respect of both prior bookings and walk-ins.**

Details must be securely kept by businesses for 28 days in a manner compliant with GDPR.

### 9. 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 observe the Public Health advice on hand hygiene measures.

**\*\*Important: This Section presents a summary of some of the main considerations when seeking to reopen a pub, restaurant or café under the relevant [Fáilte Ireland Guidelines](#) and, where applicable, the [Health \(Amendment\) \(No. 2\) Act 2021](#) and any regulations made under it. It is important that you read the full Guidelines, legislation or regulations that are applicable to your business prior to taking any action and, if necessary, seek appropriate advices.**

## 9. Reopening Your Pub, Restaurant or Café

**\*\*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. Outdoor Seating Areas for your Business

Outdoor seating areas have been considerably valuable to restaurants, cafés and bars and often play a key role in attracting customers. However, the importance of outdoor seating areas for such businesses has increased dramatically over the past year in light of the public health measures resulting from the ongoing COVID-19 pandemic, and it is clear that they will be playing a key role in the hospitality sector's offering over the upcoming months.

When considering placing an outdoor seating area outside your business, it is important to first note that depending on the ownership of the land on which the outdoor seating area is to be placed, **a licence from the relevant city or county council may be required**. These are generally known as "Street Furniture Licences".

Compton Solicitors have prepared the following section on outdoor seating areas which has been updated to take account of the latest developments and related measures. This guide sets out the relevant considerations for outdoor seating areas as required by **Dublin City Council** ("DCC"). However, such licences are available countrywide and you should make enquiries with your Local Authority to ascertain what the relevant application process is for your premises.

The first part will examine the [new legislation](#) on outdoor seating areas and the sale of alcohol. The second and third part will then look at Street Furniture Licences and Temporary Covid Street Furniture Permits ("Temporary Permits") respectively. Finally, the fourth part of this section will highlight the Outdoor Seating and Accessories for Tourism and Hospitality Business Scheme which aims to support tourism and hospitality businesses by providing funding for equipment purchased to provide additional outdoor dining facilities.

#### Part A – The New Legislation on Sale of Alcohol & Outdoor Seating Areas

The [Civil Law \(Miscellaneous Provisions\) Act 2021](#) (the "2021 Act") was recently brought into effect in order to consolidate the sale or supply of alcohol within outdoor seating areas during this time.

##### 1. Sale and Supply of Alcohol in Outdoor Seating Areas

Under the 2021 Act, for a period up until **30 November 2021**, outdoor seating areas of pubs, restaurants and hotels shall be deemed to be part of the premises and the Licensing laws shall apply to the outdoor seating areas as they apply to the premises itself. As a result, pubs, restaurants and hotels no longer have to insist a customer enters on to the licensed premises to complete payment of the alcohol, they are permitted to sell and supply alcohol in the outdoor seating area on the same basis that it is lawful to sell or supply alcohol under their licence.

Under the 2021 Act, "outdoor seating area" includes both public and private land. In respect of **public land**, there must be an authorisation in place. An "authorisation" is defined as:

- an authorisation (being an authorisation by a statutory authority by way of a licence, permit, consent, approval or permission or any other form, including under section 254 of the Planning and Development Act 2000 or section 71 of the Roads Act 1993). An example of this would be a Street Furniture Licence or a Temporary Covid Street Furniture Permit offered by Dublin City Council.

In the case of **private land**, "outdoor seating area" is defined as one on private land abutting the premises where:



## 10. Outdoor Seating Areas for your Business

- the land is either owned or occupied under a lease or licence by the licensee of the premises;
- a licence (or certificate of registration for clubs) is not in force for it;
- the number of seated patrons who can be accommodated within the area doesn't exceed the number who may be permitted in the licensed premises (and the area contains sufficient seating for this);
- the area does not contain a bar counter which is a counter or barrier across which alcohol may be served to the public; and
- the sale or supply of alcohol by the licensee to the patrons in the area is an ancillary part of the normal business of the premises.

Importantly, any failure to operate the outdoor seating area in accordance with the provisions of the 2021 Act or the Licensing Acts shall be grounds for an objection to the renewal of the licence (or certificate of registration for clubs).

### 2. "Directions" by members of An Garda Síochána

The 2021 Act allows members of An Garda Síochána who suspect with reasonable cause that the licensee, occupier, manager or any other person for the time being in charge of the premises is not complying with a relevant "provision" or "authorisation" to direct that person to take such steps as are necessary to comply with the provision or authorisation in question.

Under the 2021 Act, a "provision" and an "authorisation" are defined as follows:

- a **provision** of the Licensing Acts, the Registration of Clubs Acts or the provisions of the 2021 Act; or
- an **authorisation** (defined as above).

Failure to comply with such a direction by a member of An Garda Síochána without reasonable excuse constitutes an offence.

A member of An Garda Síochána may request a licensee to provide the authorisation or proof of authorisation for the outdoor seating area in question. Where the outdoor seating area in question is located on private land, proof that the area in question is owned or occupied under a lease or licence by the licensee may be requested. Again, failure to produce such proof without reasonable excuse constitutes an offence.

Where a person commits one of the above offences, they are liable on summary conviction to a €2,500 fine or a maximum of 6 months' imprisonment, or both.

### 3. Applicability of the Criminal Justice (Public Order) Act 1994

The 2021 Act clarifies that an outdoor seating area that is located on private land will be considered a "public place" for the purposes of the Criminal Justice (Public Order) Act 1994 (the "**1994 Act**").

As a result, certain public order offences under the 1994 Act (such as the offence of intoxication in a public place or disorderly conduct in a public place) can now be committed by persons within outdoor

## 10. Outdoor Seating Areas for your Business

seating areas regardless of whether or not the seating area in question is located on public or private land.

### 4. Extending of Regulations and Duration

Under the 2021 Act, the Minister for Justice is able to make subsequent regulations to restrict the time during which alcohol may be sold or supplied within outdoor seating areas. Such regulations may also contain supplementary provisions that the Minister considers to be necessary or expedient.

**The 2021 Act will continue in effect until 30 November 2021.** However, its duration may be extended by periods of up to 6 months by a resolution passed by both Houses of the Oireachtas.

Once the amnesty has expired, operators may wish to make these outdoor seating areas a permanent feature. Compton Solicitors can provide advice on what steps would need to be taken if it were possible to have the licence extended.

## Part B – Street Furniture Licences

### 1. What is a Street Furniture Licence

A Street Furniture Licence grants permission to put certain types of street furniture such as 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?

Please note that DCC is advising that applications for Street Furniture Licences should be made **as early as possible** as they can take months to process due to the volume of applications received. By contrast, Temporary Permits are processed a lot quicker. See the following section for more information on Temporary Permits.

Prior to submitting an application, you will first need to contact DCC's Street Furniture Unit to arrange an on-site consultation meeting. Please note that this meeting is only for consultation purposes and does **not** bind DCC to issuing a licence. Following this, 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 together with any additional documentation requested which will then be considered by DCC.

Applications must be accompanied by four 1/100 scale drawings of the proposed licenced area which indicate:

1. All utilities and services in the area and all "in situ" items of street furniture within 10m of the proposed area.
2. The dimensions of the proposed area together with the dimensions of the items of furniture to be placed within the area.
3. A site location map and photograph of the premises (with the site notice showing).

Evidence of Public Liability Insurance Cover to the satisfaction of DCC that provides cover to a minimum value of €6.5m and indemnifies DCC against all third-party claims must also be provided.

## 10. Outdoor Seating Areas for your Business

The Street Furniture Licence is subject to multiple general conditions which are all important to note. These include:

- The licenced area must be enclosed by screens which have been approved by DCC.
- The colour, type and size of any logos, lettering or names applied to screens or ancillary equipment must be approved by DCC.
- Holes in the public road/footpath are not permitted and no furniture or screens are to be bolted or fixed to the public road/footpath.
- All costs incurred by DCC for the repair of roads or services resulting from the operation of the licence will be at the expense of the licence holder.
- Certain Fire Regulations must be adhered to which are set out in the application form.

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.

### 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 change in light of the ongoing COVID-19 pandemic. You should therefore contact your Local Authority to confirm if there are any such changes to the application process.

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 DCC is one such example (see following part).

### 4. Recent Developments

On 30 April 2021, the Minister for Housing Mr. Darragh O'Brien introduced two sets of regulations which affect Street Furniture Licences and are aimed at assisting the hospitality industry.

The first set of regulations, [S.I. No. 209 of 2021](#), waives the statutory licence fee of €125 per table for tables within outdoor seating areas subject to Street Furniture Licences for 2021 and so will reduce the cost of obtaining a Street Furniture Licence for businesses. Additionally, some local authorities have waived street furniture fees for varying periods. See below for more information on fees.

The second set of regulations, [S.I. No. 210 of 2021](#), allows permission for awnings, windbreakers, heaters, and other similar structures to be granted by way of a licence from the relevant Local Authority (previously such structures required a grant of planning permission). This means that permission for the placement of such structures can now be granted by a Local Authority as part of, or in conjunction with, an application for an outdoor seating area by way of Street Furniture Licence. You should contact your Local Authority for more information.

Please see Simon Clear's Section on Planning Considerations for more information on these new measures.

### 5. What Permissions Do I Need for Outdoor Seating Areas?

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

Regardless of whether the land in question is **public or private**, 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.

### 6. Fees for Street Furniture Licences?

Under normal circumstances, fees are payable when applying for a street furniture licence. For example, DCC would normally charge an application fee of €100 together with an annual space rental charge which varies from €200 to €500 depending on the zoning and size of the outdoor area. There is also a statutory fee of €125 per table placed within the outdoor seating area.

However, as noted above, recent regulations have waived the statutory fee of €125 per table.

In addition to this, many Local Authorities have also waived street furniture fees for varying periods. DCC recently [announced that it had decided to waive all street furniture fees until the end of 2022](#), in an effort to assist hospitality businesses offering outdoor dining facilities.

As a result, it is very important that you check with your Local Authority to determine the fees (if any) that are currently payable when obtaining a Street Furniture Licence.

### 7. Can I Serve Alcohol in the Outdoor Seating Area?

Under the 2021 Act (see Part A above), outdoor seating areas of pubs, restaurants and hotels shall be deemed to be part of the licensed premises and the Licensing laws shall apply to the outdoor seating areas as they apply to the premises itself. As a result, pubs, restaurants and hotels no longer have to insist a customer enters on to the licensed premises to complete payment of the alcohol, they are permitted to sell and supply alcohol in the outdoor seating area on the same basis that it is lawful to sell or supply alcohol under their licence.

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2021 Act will continue in effect until 30 November 2021. However, its duration may be extended by periods of up to 6 months by a resolution passed by both Houses of the Oireachtas.

For more information on the sale of alcohol in outdoor seating areas and the 2021 Act, please see Part A above.

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.

### 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. DCC's Temporary Permits are an example of this (see below for more information).

### Part C – Temporary Covid Street Furniture Permits

#### 1. What is a Temporary Covid Street Furniture Permit?

A 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 above) in that it grants permission to place certain types of street furniture such as 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:

- The Temporary Permit will only be granted for a 6-month period.
- Successive Temporary Permits will only be granted if a premises has to close due to COVID-19 restrictions (i.e. following the grant of the initial Temporary Permit). Otherwise, a business should apply for a Street Furniture Licence on expiry of the Temporary Permit.
- The Temporary Permit is issued free of charge.

It is also important to note that DCC have previously indicated that, depending on street capacity, it would be possible for the holder of an existing Street Furniture Licence to apply for a Temporary

## 10. Outdoor Seating Areas for your Business

Permit in order to expand their current outdoor seating area, provided the requisite conditions have been met.

### 2. DCC's Street Furniture Guidelines

DCC has recently published a helpful brochure on [Street Furniture Guidelines](#) (the "Guidelines"), containing further information on Temporary Permits. The Guidelines outline some frequently asked questions, the application procedure for Temporary Permits, the general conditions applicable to Temporary Permits and the Dublin Fire Brigade Fire Safety and Operational Requirements.

The Guidelines highlight several key points that will be of interest to any business that is considering an application for a Temporary Permit:

- It is DCC's policy to assist hospitality businesses seeking to operate in public spaces adjacent to their premises.
- In some cases, the use of parking spaces and/or loading bays in front of businesses for street furniture may be permitted. However, each application will be assessed individually to see if the particular parking space(s) and/or loading bay can be suspended and agreement with adjoining businesses may also be required for such applications.
- While in most cases, the use of the public road in front of a business will not be permitted to be used for outdoor furniture, enquiries may still be made to the Street Furniture Unit.
- DCC will support **combined applications by neighbouring businesses** in appropriate locations and subject to additional requirements.

### 3. How to Apply for the Temporary Permit

To apply for the Temporary Permit, you will first need to contact the DCC Street Furniture Unit and provide the following information:

- The exact location of the proposed street furniture.
- A sketch/measurement of the proposed area that indicates the width of the footpath in question and any relevant public features (e.g., signposts).

The proposal will then be assessed by DCC to see if the pavement in question can accommodate the proposal. It is important to note that Temporary Permits will not be issued for certain streets as a result of insufficient footpath widths or high levels of footfall.

If it is possible to accommodate the proposal, the applicant will be invited to complete the application form which should then be filled out in full and returned to DCC together with any additional documentation requested and drawings that include:

- The dimensions of the proposed area together with the dimensions of the items of furniture to be placed within the area;
- The dimensions and locations of fire exits;
- The dimensions of clear space that provide the necessary widths for vehicles and pedestrians;
- All utilities and services in the area and all "in situ" items of street furniture within 10m of the proposed area; and
- A photograph of the premises.

Evidence of Public Liability Insurance Cover to the satisfaction of DCC that provides cover to a minimum value of €6.5m and indemnifies DCC against all third-party claims must also be provided.

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

- The licenced area must be enclosed by screens which have been approved by DCC;
- The colour, type and size of any logos, lettering or names applied to screens or ancillary equipment must be approved by DCC;
- Holes in the public road/footpath are not permitted;
- All costs incurred by DCC for the repair of roads or services resulting from the operation of the permit will be at the expense of the licence holder;
- Certain Fire Regulations must be adhered to which are set out in the application form.

### 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 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.

### 5. Can I Serve Alcohol in the Area Covered by the Temporary Permit?

Under the 2021 Act (see Part A above), outdoor seating areas of pubs, restaurants and hotels shall be deemed to be part of the premises and the Licensing laws shall apply to the outdoor seating areas as they apply to the premises itself. As a result, pubs, restaurants and hotels no longer have to insist a customer enters into the licensed premises to complete payment of the alcohol, they are permitted to sell and supply alcohol in the outdoor seating area on the same basis that it is lawful to sell or supply alcohol under their licence.

2021 Act will continue in effect until 30 November 2021. However, its duration may be extended by periods of up to 6 months by a resolution passed by both Houses of the Oireachtas.

For more information on the sale of alcohol in outdoor seating areas and the 2021 Act, please see Part A above.

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.



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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.

### Part D – The Outdoor Seating and Accessories for Tourism and Hospitality Business Scheme

The Outdoor Seating and Accessories for Tourism and Hospitality Business Scheme (the “Scheme”) was announced earlier this year as part of the wider €17m Outdoor Dining Enhancement Scheme to provide support for hospitality and tourism businesses that are seeking to provide additional outdoor seating facilities for summer 2021.

The Scheme will be administered by the relevant Local Authority for each area.

Under the Scheme, applicant businesses can apply for a grant for up to 75% of the ex-VAT cost of certain equipment that has been purchased or installed for the purposes of outdoor seating facilities, to a maximum of €4,000. The expenditure must have been incurred by an applicant between 1 April 2020 and 30 September 2021 and applications under the Scheme have been open since 12 April 2021 via Local Authority Websites.

You should check with your Local Authority to ascertain the correct application process and requirements for you. The [Scheme requirements under DCC](#) are set out below.

#### 1. What Businesses are Eligible Under the Scheme?

The Scheme is open to tourism and hospitality businesses where food is sold for consumption on the premises. DCC give the following other eligibility requirements:

- Applicants under the Scheme must first have been granted either a Street Furniture Licence **or** a Temporary Permit by DCC (see previous sections);
- Applicants must be in compliance with all planning codes and any other legislative or compliance requirements;
- If a business makes an application under the Scheme seeking to extend their business outdoors **on their own private space**, then their current planning permission must permit this. If the current planning permission does not permit this, an application for permission should be obtained first;
- Applicants must submit an up-to-date Tax Clearance Number;
- The Scheme is only open to existing businesses.

#### 2. What Types of Equipment are Eligible for Funding Under the Scheme?

DCC gives the following list of eligible items for the purposes of the Scheme:

- Tables, chairs, and umbrellas
- Electric heaters
- Screens/windbreaks
- Plant stands and wooden platforms

**\*Note: Tables and chairs or other furniture must be of “robust and stable construction” so as to prevent movement in poor weather conditions.**

### 3. Receiving Funding Under the Scheme

In order to receive payment under the Scheme, DCC states that applicants must:

- Provide receipts for the items purchased together with a photograph.
- Confirm that the placement of furniture is in compliance with the terms of the Street Furniture Licence or Temporary Permits (in order to ensure that public walkways are not impeded).

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### 11. Outdoor Events

#### 1. What is the Current Position on Organised Outdoor Events?

As of 6 August 2021, the [Fáilte Ireland Guidelines for Re-opening Restaurants and Cafés](#) confirmed that up to 200 people can gather at organised outdoor events. For the duration of the event, however, customers should remain seated at their tables, except when availing of the food counter service, using toilet facilities, making payment or upon entry and exit.

#### 2. What is an Outdoor Space?

In order for an outdoor space to be considered so, it must either have no roof OR if it has a roof, two or more of the surrounding walls must be removed and open to the external air. It must not have sides (including windows, doors, gates, or other fittings that can be opened or shut) that enclose more than 50% of the perimeter of that area. A tent or gazebo with a roof and four sides is not considered an outdoor space, as this encloses more than 50% of the perimeter.

#### 3. What is the Maximum Capacity at an Outdoor Event?

The overall capacity will depend on the size of the outdoor area but must not exceed a maximum of 200 customers with appropriate protective measures in place.

#### 4. What are the Rules regarding the operation of an Outdoor event?

The [Fáilte Ireland Guidelines for Re-opening Restaurants and Cafés](#) set out several key points regarding **the operation of outdoor events**, which include:

- A **maximum of 6 persons** aged over 13 years are permitted per table, subject to a total combined capacity of **15 overall** (when including those aged 12 and under).
- Physical distancing of at least **1 metre** must be maintained between tables i.e. the back of one chair must be 1 metre apart from the back of the next chair.
- Customers cannot sit at a bar or order drinks from the **bar counter**.
- **Customers should remain seated at their tables**, except when availing of the food counter service, using the toilet, paying, arriving, and departing.
- **Customers must wear face masks** when moving around the outdoor area or using indoor facilities. **Employees must wear face masks at all times.**
- **Live music and performances are permitted in outdoor hospitality settings.** The performance area must be a minimum of 2 metres from the customer.
- **Multiple tables** can be booked in an outdoor area.
- **Intermingling between tables is not permitted.**
- The premises must be clear of all customers by **11:30 pm.**

#### 5. Is Dancing Permitted at Outdoor Events?

The [Fáilte Ireland Guidelines for Re-opening Restaurants and Cafés](#) are silent as to whether dancing is permitted at outdoor events and do not strictly prohibit dancing. However, given that customers must remain seated at their tables, it would suggest that dancing is not permitted.

### 6. Can I Operate a Food Counter Service/ Buffet at my Outdoor Event?

Yes, BBQ, buffet and self-service is permitted when the [necessary risk mitigation measures](#) and an appropriate queueing system can be put in place. Otherwise, table service must be employed.

The queueing system must be supervised and access to areas where customers collect their own food must be “staggered”.

### 7. What is the Current Position on Weddings?

Restrictions on the number of people permitted to attend a wedding service and reception remain in place, with [100 people being the maximum allowed](#) to include both indoor and outdoor.

The reception continues to be for sit-down meal only and expressly states that dancing is prohibited.

However, live music and other performances are permitted outdoors, not indoors. Additionally, music is permitted at a wedding ceremony or service, [subject to HPSC guidance](#).

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### 12. Planning Considerations

This note refers to the Services Industry in general and the future operation of facilities in the sector. The industry includes hotels, public houses, restaurants and cafes which have been very significantly affected by the consequences of the emergency provisions. Current Government guidance and flexibility refers only to restaurants and cafés within this overall sector and is for a temporary period.

#### 1. Current Planning Guidelines and Regulations – COVID-19

On 29<sup>th</sup> March 2020 the Minister for Housing, Planning and Local Government introduced amended [Regulations](#) and [Guidelines](#) 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 the 9<sup>th</sup> November 2020, unless a resolution approving of 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.

Businesses 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.

On 30<sup>th</sup> April 2021, the Minister for Housing, Planning and Local Government introduced amended Regulations ([S.I. No. 208 of 2021](#), [S.I. No. 209 of 2021](#), [S.I. No. 210 of 2021](#)), to extend the time periods for sale for consumption off the premises until 31 December 2021.

Under S.I. No.208 of 2021, where a premises is used during the relevant period for the sale of food for consumption off the premises in accordance with this provision, then, upon the expiration of the relevant period –

- a) the premises may be used for the sale of food for consumption on the premises in accordance with the permission that applied in respect of that premises immediately before the commencement of the relevant period, and
- b) the use of the premises for the sale of food for consumption off the premises shall not be exempted development.

## 12. Planning Considerations

Under S.I. No. 209 of 2012, for the period up to and including 31 December 2021, Part 1 of Schedule 12 of the Planning and Development Regulations 2001 (S.I. No. 600 of 2001) is amended by the substitution of a Licence Fee of “€0 per table” instead of “€125 per table”. for tables and chairs outside a hotel, restaurant, public house or other establishment where food is sold for consumption on the premises”.

The above extensions in S.I.s Nos. 208 of 2021 and 209 of 2021 are limited by time to 31<sup>st</sup> December 2021.

Under S.I. No.210 of 2021, the Planning and Development Regulations 2001 (S.I. No 600 of 2001) are amended in article 201 by inserting after paragraph (b) (tables, chairs etc outside hotels, restaurants, pubs etc. where food is sold for consumption on the premises) the following paragraph:

*“(ba) Awnings, coverings, canopies, parasols, shades, windbreakers, heaters or other similar structure for the purpose of facilitating outdoor dining where tables and chairs are being provided under paragraph (b),”.*

The above addition of awnings etc. to appliances, apparatus and structures suitable for being licensed (Article 201) is not subject to time limits and in future such structures will be licensed, not authorised by planning permission.

### 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. In addition in 2021, “*Awnings, coverings, canopies, parasols, shades, windbreakers, heaters or other similar structure for the purpose of facilitating outdoor dining*” have been added to the list of licenced furniture and fixtures.

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 and this restriction will return on 1<sup>st</sup> January 2022.

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 restricting conditions to ensure they do not become a barrier 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 Services 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 licenses.

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. Modernise Planning Law via Regulations

As Minister Varadkar has indicated, it is a tragedy that people in their mid-30s have endured two major economic shocks to their careers. This applies to young service industry entrepreneurs and employees more so than any other sector.

The predominant way of getting food to customers has changed radically. As a result, there is a need to modernise planning regulation relating to the food/drinks services industry in general and for the long term.

There is a strong case to be made by the service industry that:

- The planning system has not kept pace with developments in the industry, which is now recognised as an essential provider of essential food for consumption outdoors or off the premises;
- Modern technology and delivery providers (corporate and individuals) have mitigated concerns about off premises food and drink consumption.



## 12. Planning Considerations

There is a need to consider a permanent planning situation relating to the service industry, whereby:

- Planning conditions flexibility - Extend beyond 2021;
- 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 – not extension or material intensification;
- Street furniture licences should be more extensively available on more fully pedestrianised streets in cities and towns;
- Premises should be regulated by strengthened operation of nuisance legislation not via planning legislation;
- Operators should have a reciprocal responsibility to respect neighbours – Gardai policing responsible behaviour by operators & punters;
- Pub, Restaurant/Café, Hotel and Take-away food and drink service facilities should be defined 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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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.
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