

NEXSTART

Group Size, Gatherings and Covid-19 Safe Capacity

NOTE

On 23 June 2020, the Government published the latest version of the COVID-19 Secure Guidance for England on “Meeting people from outside your household from 4 July: How you can see people that you do not live with while protecting yourself and others from coronavirus (COVID-19) from 4 July 2020”¹ (“Meeting People Guidance”).

On 23 June, the Government also published COVID-19 Secure Guidelines on “Keeping workers and customers safe during COVID-19 in restaurants, pubs, bars and takeaway services” (“the Restaurant, Pubs, etc Guidance”).

There are particular parts in both sets of Guidance, relating to groups sizes and gatherings which impact on the question of capacity which are causing confusion and consternation, in anticipation of the re-opening of licensed premises from the 4th July, 2020.

It seems to us that the concern principally arises because the Guidance is based upon anticipated legislative changes in respect of Regulation 7 of the Health Protection (Coronavirus, Restrictions) (England) Regulations 2020/350 which have yet to be promulgated (and are still awaited at the time of writing).

Page 11 of the “Restaurant, Pub etc.” Guidance states:

“Indoor gatherings should only be occurring in groups of up to two households (including support bubbles) while outdoor gatherings should only be occurring in groups of up to two households (or support bubbles), or a group of at most six people from any number of households. It is against the law to gather in groups of more than 30 people, except for the limited circumstances as set out in law. In these specific cases, those operating venues should take additional steps to ensure the safety of the public and prevent large gatherings or mass events from taking place.”

The Meeting People Guidance states:

“From 4 July, you should:

- only gather indoors in groups of no more than two households (including your support bubble) – this includes when dining out or going to the pub.

¹ <https://www.gov.uk/guidance/meeting-people-from-outside-your-household-from-4-july#staying-alert-when-meeting-people-you-do-not-live-with>

- only gather outdoors in either a group of up to 6 people from different households or up to two households (including your support bubble)
- only gather in slightly larger groups of up to 30 for major life events, such as weddings
- not hold or attend celebrations of any size (such as parties) where it is difficult to maintain social distancing
- not stay overnight away from your home with members of more than 2 households (including your support bubble)
- limit social interaction with anyone outside the group you are attending a place with, even if you see other people you know, for example, in a restaurant, community centre or place of worship
- try to limit the number of people you see, especially over short periods of time, to keep you and them safe, and save lives. The more people with whom you interact, the more chances we give the virus to spread

Gatherings of more than 30 people will be banned, apart from some limited circumstances to be set out in law.”

These Guidance notes provide for a number of key connected concepts, these are:

- Groups & Gatherings
- Size of Group Gathering
- Location of Group Gathering
- Covid Secure Venue Capacity

Groups & Gatherings

The Guidance uses the terms “groups” and “gatherings”, which appear to be interchangeable. It is a group which gathers together (indoors or outdoors), in either private or public places including bars, pubs, restaurants and similar.

Size of Group Gathering

The size of a group gathering is important, and will be measured in three ways:

(a) Indoors and outdoors: Up to two households (a household can consist of an exclusive support bubble). There is currently no legislation or guidance as to the maximum number of persons in a household;²

² The Government has not given any specific number of individuals that can comprise a household, nor have they defined the meaning of “household”. Common sense would indicate that households comprise the number of people that habitually live together within a dwelling.

- (b) Outdoors only: Up to six individuals from any combination of households;
- (c) A ‘major life event group’ of up to 30 people (presumably indoors and outdoors).
- (d) Gatherings of 30 persons or more are to be permitted in some limited circumstances that will be set out in law that is eagerly awaited.

Location of Group Gathering

The location where groups gather is obviously key, to reiterate:

- (a) A group of 2 households (including your support bubble) may meet in any location: public or private, indoors or outdoors. This does not need to be the same households each time.
- (b) A group of up to 6 people from different households may meet in any outdoor space, but not indoors.
- (c) Larger groups of up to 30 people may meet together in any location, public or private; indoors or outdoors, but only for “major life events”. This term has not been defined, and the only two examples that have been given so far are weddings and funerals.
- (d) Groups of more than 30 people are to be permitted in some limited circumstances that will be set out in law at a future date. We do not currently know anything about what those circumstances will be.

Covid Secure Venue Capacity

Managing these different combinations of groups will be a significant challenge for licensed premises operators. The key to achieving this will be the risk assessments that all premises will now need to undertake in order to comply with the Government’s COVID-19 Secure Guidelines. Those risk assessments will have to address the new Covid safe capacity for each premises, which will not be the same as the premises capacity identified for licensing and fire safety purposes prior to the emergency period lockdown.

The new capacity figures will need to be specific for each individual premises, and will need to be identified using all the space available to a premises, both indoor and outdoor, including new opportunities to use the public realm, such as pavements. Different capacities should be allocated to each space and area, based upon the ability to achieve a combination of physical distancing and other mitigation measures in accordance with the risk assessment.

The Restaurant, Pubs, etc Guidance at page 12 sets out the importance of risk assessing a Covid safe capacity:

“2.1 Keeping customers and visitors safe (continued)

12 Calculating the maximum number of customers that can reasonably follow social distancing guidelines (2m, or 1m with risk mitigation where 2m is not viable, is acceptable) at the venue. Taking into account total indoor and outdoor space, specific venue characteristics such as furniture as well as likely pinch points and busy areas. Reconfiguring indoor and outdoor seating and tables to maintain social distancing guidelines (2m, or 1m with risk mitigation where 2m is not viable, is acceptable) between customers of different households or support bubbles. For example, increasing the distance between tables.”

Physical and social distancing remains a key priority even as we come out of strict lock down. The Restaurant, Pubs, etc Guidance has further advice in relation to limiting social interaction with anyone outside the group with which an individual is involved for the duration of their social visit; even if they see people in another group that they know. The Guidance also advises limiting the numbers of people getting together as much as possible, to protect health and safety, and limiting opportunities for the virus to spread. These are matters for individual responsibility more than operator intervention, as it will be almost impossible for operators to enforce.

There is very little that premises operators can do to enforce the composition of any group visiting their premises, other than to publish on their websites and digital platforms the rules about groups, and to ask questions at the time of bookings and arrivals. Operators are largely dependent upon the honesty of the answers that they are given, and could only be expected to challenge very obvious breaches of the rules.

The overall capacity of premises, indoors and outdoors will dictate how many multiples of groups premises could accommodate. Very large outdoor areas, for example, might be able to accommodate multiple groups which comprise two households, each group appropriately distanced from the next. It seems less likely that multiple groups of up to 30 people would be legitimately on the same premises at the same time, celebrating a major life event.

This is intended to be a helpful interpretation of the law and Guidance as it is currently understood, but this Note cannot be taken to be a definitive position on the law as we still await further clarification.

Sarah Clover

Leo Charalambides

Kings Chambers

26th June, 2020