

Guidance Specific to Hospitality Businesses concerning The Health Protection (Coronavirus, Restrictions) (Entry to Venues and Events) (England) Regulations 2021

This guidance produced by Liverpool City Council, has been shared with local authorities across the Liverpool City Region and is intended to provide a general overview of the new legal duties arising from the above Regulations in force from Wednesday 15 December 2021 until 26 January 2022. It is not intended to be exhaustive and further information can be found in Government Guidance at <https://www.gov.uk/guidance/carrying-out-mandatory-covid-19-statuschecks-at-your-venue-or-event>

1. Which hospitality venues fall within the scope of the Regulations?

The legal duty to carry out mandatory vaccine-or-test checks of attendees applies to the following venues **regardless of whether they are hosting an event or how many people are attending:**

- all nightclubs, dance halls and discotheques (but if they close their dancefloor, or cease to provide music, mandatory vaccine-or-test checks will not be required)
- other “late night dance venues”, where **all** of the following apply:
 - (a) the venue is open between 1am and 5am, and
 - (b) it serves alcohol after 1am, and
 - (c) it has a dancefloor (or space for dancing), and
 - (d) it provides music, whether live or recorded, for dancing, and

Such “late night dance venues” when operating outside of the hours of 1am to 5am, or which close their dancefloor, or cease to provide music, or cease serving alcohol between the hours of 1am and 5am will not require mandatory vaccine-or-test checks of attendees.

2. How can “late night dance venues” comply with the Regulations?

“Late night dance venues” which are in-scope because all the four criteria (a) – (d) apply can choose what measures to put in place, and whether checks should begin from either:

- the time the venue opens, or
- the time the rules apply (from 1am)

Whichever option is chosen, you must make sure you’ve taken reasonable steps to make sure that all visitors who are in the venue between the hours of 1am and 5am have the NHS COVID Pass (or other accepted evidence), even if they entered the premises before that time.

For example, a bar is open throughout the day and stays open later than 1am. It meets the criteria for mandatory use of the NHS COVID Pass (because it provides music and a dancefloor, serves alcohol, and stays open later than 1am). The manager is not required to check the COVID-19 status of anyone who leaves the venue before 1am but must take reasonable measures to ensure that everyone who remains in, or enters, the premises after 1am has the NHS COVID Pass (or other accepted evidence).

The venue may choose to either:

- *check all visitors for the entire time it is open, both before and after 1am*
- *check all visitors who remain in the venue immediately before 1am, and begin to use door checks on new entrants from this time onwards*

3. What other hospitality venues fall within the scope of the Regulations?

Activities in other hospitality venues, including restaurants, cafes, bars and pubs, do not have to use COVID-19 status checks as a condition of entry unless either of the following apply:

- someone rents the venue (or part of the venue) to host an indoor event with 500 or more attendees where those attendees are likely to stand or move around during the event, such as large receptions

- the venue hosts an indoor event with 500 or more attendees where those attendees are likely to stand or move around during the event and which is ticketed or paid for

For example, you are the responsible person for a pub which has music, but no dancefloor or space for dancing. You are not required to use the NHS COVID Pass as a condition of entry, as long as you do not hold a specific event that meets the attendance threshold of 500 or more people who are standing, such as a ticketed gig.

There are some events that are exempt from requirements to use certification, even if they meet the 500+ attendance criteria. These include communal worship, wedding ceremonies, funerals and other commemorative events (except those taking place in a nightclub or other late night dance venue). Free, un-ticketed events in private dwellings are exempt, as are free, un-ticketed outdoor events in public spaces, including street parties, protests and mass participation sporting events.

4. Who is responsible for ensuring compliance with the Regulations?

A venue or event's 'responsible person' is legally responsible for making sure the rules set out below are followed and organisations meet their legal responsibilities. You are the responsible person for a nightclub, dancehall, or discotheque, or other venue open after 1am with alcohol, music and dancing, if you are the venue manager.

An event organiser is the responsible person for indoor events with 500 or more attendees expected to stand or move around.

If you are hiring out your venue for an event, you should discuss proof of vaccination or test requirements with the event organiser. If there is no event organiser, compliance with mandatory proof of vaccination or test requirements is the responsibility of the manager of the premises where the event is held.

5. How should you carry out checks at your venue or event if it falls within the scope of the Regulations?

Venue and event operators are expected to determine whether the venue they manage, or the event they are organising, falls in scope (see notes 1 and 3 above). Where a venue or event does fall into one of the in-scope categories, certification checks must be put in place. This means you are required to take **reasonable measures** to ensure that all attendees aged 18 or above have the NHS COVID Pass (or approved international equivalent) or have valid proof that they have completed a negative PCR test or negative rapid lateral flow test within the past 48 hours.

You should communicate these requirements clearly with your customers, so they know what to expect when visiting your venue. This could include notifying customers of the requirement to show their NHS COVID Pass on your promotional materials and website, informing those who make telephone enquiries or adding the information to tickets, as well as providing information on the steps required to comply with entry requirements.

The NHS COVID Pass (accessible via the NHS App and NHS.UK and letter via NHS.UK or by calling 119) is available as a tool that organisations in England can use to help limit the risk of transmission in their venues and events. The NHS COVID Pass will show COVID status on the basis of vaccination, a negative test result from an LFD or PCR test received within 48 hours, a medical exemption from vaccination or participation in a clinical trial.

Those who are medically exempt, either through participation in a clinical trial or on medical grounds, can obtain a domestic NHS COVID Pass that is indistinguishable from the domestic NHS COVID Pass that is already available to those who are fully vaccinated. This means that the person checking the NHS COVID Pass is not required to identify whether an individual was fully vaccinated or exempt from vaccination, just that they were certified through the NHS COVID Pass.

All visitors aged 18 and over to places where certification is required must have their COVID-19 status checked, and persons can demonstrate their status using the NHS COVID Pass or overseas equivalents, or a notification of a valid test result from NHS Test & Trace.

The NHS COVID Pass no longer gives details of natural immunity for entering certain venues and events. Proof of natural immunity cannot be accepted as an alternative to proof of vaccination or a recent test. You should check for proof of COVID-19 status through use of the free NHS COVID Pass Verifier App wherever possible to ensure passes are valid and have not expired and reduce the possibility of fraud. This provides the most secure verification of an NHS COVID Pass and passes from the rest of the UK and 62 countries that are part of the EU gateway, by scanning the 2D barcodes. The NHS COVID Pass can also be visually checked, but to reduce fraud we recommend the use of the NHS COVID Pass Verifier App. Text or email proofs of a recent test should be visually checked.

Further information about the NHS COVID Pass Verifier App can be found at <https://www.nhs.uk/covid-19-response/nhs-covid-pass-verifier-app/domestic-covid-pass-verifier-app-user-guide/>

If you use the NHS COVID Pass Verifier App to scan an attendee's NHS COVID Pass, as recommended, you will be processing personal data and therefore you will have obligations as a data controller under data protection legislation. A limited visual check of an NHS COVID Pass is not subject to the Data Protection Act 2018.

If your venue or event requires mandatory use of the NHS COVID Pass, you should communicate clearly with your customers, so they know what to expect when visiting your venue. This also includes how their data will be handled.

6. What if the in scope venue / event does not wish to use the NHS COVID Pass Verifier app?

The NHS COVID Pass Verifier app is recommended to check the NHS COVID Pass. If you choose to not use the Verifier App, you'll need to ensure that attendees' NHS COVID Passes are checked visually for an expiry date and a shimmer animation that confirms a Pass is live and not screenshotted. You should check the online NHS COVID Pass where possible but can also check the wallet (which does not have a shimmer animation).

7. How does an in-scope venue / event check proof of a recent negative test result?

Those attendees of in scope venues / events not using the NHS COVID Pass and accessing settings by showing alternative proof of a negative PCR test or negative rapid lateral flow test taken within the past 48 hours must have reported their test result to NHS Test and Trace.

They will then have received a text or email notification which should be checked as a condition of entry. A valid notification of a test result from NHS Test and Trace should include all of the following:

- the name of the person who took the test
- their age or date of birth
- the date the test sample was collected or received by the test provider
- confirmation that the test was either a polymerase chain reaction test or a lateral flow test
- confirmation that the result of the test was negative

8. What about International attendees?

Where attendees to your venue or event are international residents, you should accept certain vaccination proofs from other countries. If the vaccination proof is accepted at the UK border, you should accept it at your venue or event. For more information

<https://www.gov.uk/guidance/countries-with-approved-covid-19-vaccination-programmes-and-proof-of-vaccination>

9. Who is exempt from having to prove their Covid certification status for in-scope venues / events?

There are a small number of individuals that do not have to demonstrate COVID status to enter places where certification applies, although they may be asked for proof of identification. They are:

- (a) a person under the age of 18;

- (b) any person providing services (fully defined by Regulation 2(2)(e)) - such as a worker, volunteer, person selling goods at the event etc;
- (c) any Constable, Emergency Responder or Local Authority Officer who is attending the venue or event as part of their official duties;
- (d) any person who is attending the venue or event to participate in organised sport or in an organised fitness activity

10. What if attendees cannot demonstrate their COVID-19 certification status?

If any of your adult attendees fails to produce adequate proof of their COVID-19 status you must not allow them to enter your event or venue. If anyone tries to breach entry to your event, without having proof of COVID-19 status, you should take the appropriate action to ensure the safety and security of all at the event.

11. In what lawful circumstances can required checks of all attendees not in fact be carried out at in scope premises?

In scope venue managers / event organisers should conduct 100% checks on attendees. However, while certification is a legal requirement, designed to protect public health, the immediate safety of visitors will always come first. Therefore, in some very limited circumstances, it may be lawful not to carry out the required checks at in scope venues / events as follows:

Firstly, the need to take **reasonable measures** will **not** apply where a person is being admitted to a venue solely to enable that person to avoid injury or escape a risk of harm (for example to address or avoid a medical emergency).

Secondly, the need to take **reasonable measures** will **also not** apply where the strict criteria in Regulation 6(1) apply, but Regulation 6(1) is limited to indoor live music venues, theatres, concert halls, exhibition halls, conference centres and other public halls venues with 500+ attendees expected to be standing and/or moving around, or an outdoors event with 4,000+ attendees expected to be standing and/or moving around, or 10,000+ attendees are expected. If you believe your event may fall within these criteria you should contact the local authority for further information about the Regulation 6(1) procedure.

12. What are the records you must keep for an in scope venue / event?

As a responsible person, you must produce, and keep up to date, a statement setting out the measures you will introduce to ensure that you are meeting the requirements of carrying out mandatory COVID-19 status checks, and that you are making the public aware of these measures. This should explain, where applicable, your spot check approach, if you have prior agreement from the local authority.

You must also retain records containing the following information on implementing the requirements of carrying out mandatory COVID-19 status checks:

- the date of the event, or the date the records refer to for a venue
- the number of people that attended the venue or event
- where you have departed from your general policy statement of measures to meet certification requirements:
- the reasons for adopting different measures
- what measures were adopted
- how an individual's eligibility to enter the venue was checked
- the number of occasions on which the reasonable measures you were taking to check COVID-19 status of attendees were varied from 100% checks by agreement with the local authority, and the number of people who were admitted on each such occasion
- the number of occasions on which people were admitted to avoid injury or harm

If you are holding an event in a venue that has a capacity greater than the thresholds, but you do not use the NHS COVID Pass because you are not anticipating the number of attendees to meet or exceed them, you will need to produce a statement explaining how you intend to stay under the thresholds.

13. How long must you keep records for?

You must maintain these records for 3 months from the date of the event or, for a venue, 3 months from the date to which the records refer. You

must retain records of your general policy statement of measures to meet certification requirements for as long as the legislation on mandatory certification applies, and a further 3 months after it ceases to apply. Local authorities have powers to request these records or policy statements within 3 working days or as part of an inspection.

14. What may happen if you fail to carry out your legal obligations?

If you do not comply with your legal obligations in relation to carrying out mandatory COVID-19 status checks at your venue or event, the local authority can take enforcement action, including prosecution or issue of a fixed penalty notice (FPN).

There are various other enforcement tools that the local authority can use to ensure compliance. This includes issuing a Coronavirus Improvement Notice (CIN). This is often the first step that local authority enforcement officers use to require businesses to remedy unsafe practices.

A CIN requires compliance by a date specified on the notice, which will be a minimum of 48 hours after issue. The date for compliance is determined by the local authority enforcement officer.

If you fail to comply with the CIN, your local authority can issue a Coronavirus Restriction Notice (CRN), which enables it to close all or part of your business, venue or event. This could also be used to restrict the number of attendees at your event. The notice will apply for 7 days.

Following the 7 day period of application, the CRN can be withdrawn or allowed to expire if you've taken the necessary steps to remedy the unsafe practices identified. If the necessary steps have not been taken then a new CRN can be issued against the same business, venue or event.

The local authority can alternatively use Coronavirus Immediate Restriction Notices (CIRN). This enables it to close the venue for an initial period of 48 hours. The local authority will be required to review the CIRN before it ends. It can be withdrawn or allowed to expire if you have taken the necessary remedial steps.

If necessary, a local authority could issue you with a CRN at the end of the 48 hours to close the venue for a further 7-day period. Alternatively, where it is concerned that the premises is causing a serious and imminent threat to public health, a direction can be issued under the Health Protection

(Coronavirus, Restrictions) (England) (No. 3) Regulations 2020, provided that the legal tests are met.

If you fail to comply with any notice it is an offence and can result in a prosecution or issue of a fixed penalty notice (FPN).

The fixed penalty for a first offence would be £1,000 (if paid within 14 days of the date of the notice, this can be reduced to £500), £2,000 for a second offence, £4,000 for a third offence and £10,000 for the fourth and any subsequent offences.

You can appeal a CIN, CRN or CIRN to the magistrates' court. Your appeal must be made in accordance with the Magistrates' Courts Act 1980 and be made within the period of 28 days from the day on which the notice was issued or the review date. You cannot appeal an FPN, but can challenge it by way of judicial review in the administrative court.

15. Recording personal data

You must not retain information from within the NHS COVID Pass, such as an individual's name or COVID-19 status for members of the public who attend your venue or event.

For further advice contact etscontact@sefton.gov.uk

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