

# ADMIRAL COVID-COMPLIANCE LICENSEE GUIDANCE



**Updated April 12<sup>th</sup> 2021**

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# ADMIRAL COVID-COMPLIANCE LICENSEE GUIDANCE

## **PREPARATIONS TO MAKE NOW: ALL UK**

*(see also Government trading requirements, and NHS QR Code detail, for ENGLAND below)*

1. Review and update your Covid **RISK ASSESSMENT** (especially for outdoor trading)
2. Prepare for re-engaging with **NHS Track & Trace (NHS QR Code)** and potential manual guest details collection *(full details below, page 3 & 9)*
3. Plan **physical distancing between tables/groups** and strong Covid-related signage and messaging
4. Ensure strong **ventilation** *(see below)*

## **STEP SYSTEM – ENGLAND**

### **GUIDANCE & FAQs**

**Introduction** *(updated March 31<sup>st</sup> 2021)*

On **Monday 8 March 2021**, England entered a new system of ‘steps’ – with differing levels of business operation and restrictions at each step. For reopening systems in Scotland, Wales and Northern Ireland please refer to the relevant guidance.

The regulations for the Step system can be found here:

[The Health Protection \(Coronavirus, Restrictions\) \(Steps\) \(England\) Regulations 2021 \(legislation.gov.uk\)](https://www.legislation.gov.uk/uk/2021/0000/england/regulations/2021/0000)

The Government has published updated workplace guidance for pubs (the full guidance is available [here](#)).

This FAQ is the shared view of UKHospitality, BBPA and BII on how aspects of the step system could be applied to different practical situations. **This FAQ will be kept under constant review. Please note not all of the information is currently available and may be subject to change.** This will be kept updated and revised as new information emerges. This note does not constitute legal advice.

*Note - the Government has stated around four weeks is required to see the impact of the previous step in the data, and has committed to provide a further week's notice to businesses, thereby creating at least a five-week period between each step. Steps will therefore take place no earlier than the dates shown below, subject to an assessment of the data against the Government's four tests. If a step is delayed, subsequent steps will need to be pushed back in order to maintain the necessary five-week period to assess the impact of each step and provide notice.*

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## **STEP 2 – 12 April**

### *Test and Trace – a reminder from DHSC of requirements for hospitality venues*

Ahead of Step 2, DHSC have asked us to share a reminder of the Test & Trace Regulations plus copies of a range of assets for businesses to use. A copy of their full message is attached plus copies of the posters.

Latest Test & Trace guidance <https://www.gov.uk/guidance/maintaining-records-of-staff-customers-and-visitors-to-support-nhs-test-and-trace>

Test and Trace FULL GUIDANCE incl. QR posters – [click here](#)

Hospitality Fact Sheet – [click here](#)

Hospitality Check-in Regulations – [click here](#)

The Benefits of using the NHS App to Check-in – [click here](#)

Venue Covid Alerts Process for Businesses – [click here](#)

Of particular note, we would highlight their **request to print out and use new NHS QR code posters**. New official NHS QR code posters for the hospitality sector have been sent to venues on or after 30<sup>th</sup> March. DHSC asks that **you replace your existing official NHS QR code posters with the new hospitality specific posters**. If you did not receive your new hospitality poster, or you need to download another poster for any reason, you can generate a new one using this link: <https://www.gov.uk/create-coronavirus-qr-poster> :

- The new posters are distinct and stand out from the posters at venues where it is not mandatory to check in to enter, so that customers understand where they will be refused entry if they choose not to scan the official NHS QR code or provide their contact details.
- The new posters specify that every customer must check in either by scanning the official NHS QR code or by giving their contact details. This will help customers know what is expected of them and will support your staff, who can refer to the poster to support conversations with customers.

## **Checklist for 12 April**

- Review **your COVID-19 risk assessment** to ensure that all relevant mitigations are in place and that staff are aware of their responsibilities.
- You must have an **NHS QR Code poster accessible to all customers as well as an alternative method for recording customer contact details**. Customers details must be collected, via the app or otherwise, before they place an order.
- All customers (16+) must provide their details for Test and Trace. You must take reasonable steps to refuse entry to those who refuse to check in or provide false details.

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- Customers are only allowed indoors to: walk to the outdoor area, use the toilet, baby change and breast feeding facilities or make payment at the bar as a last resort. **Customers must wear face coverings indoors** and not loiter or congregate.
- **Staff must wear face coverings in indoor areas**, unless they are separated from customers by a screen or similar. Face coverings do not need to be worn outdoors by staff or customers.
- Outdoor seating and tables should be reconfigured to maintain social distancing guidelines (**2m, or 1m+ with risk mitigation** where 2m is not viable) between groups of customers. Government have confirmed that **social distancing applies between tables**, not within groups sitting at tables.
- **Customers must be seated** at a table to order, be served and consume their food and/or drink in venues serving alcohol. Ideally payment should also be taken at table, however as a last resort (and only if not possible outdoors) **payment can be taken indoors**.
- It is no longer the case that a substantial meal has to be ordered with alcohol.
- Groups must be **a maximum of 6 people or two households** (unlimited number).
- Government guidance has been updated to state: 'Closed premises can continue to provide food and drinks, including alcohol, on **a takeaway basis**. This means that customers can enter the premises to place and collect their order. Food and drinks can also be provided via drive through, as well as click-and-collect (where goods are pre-ordered by phone, online, via a mobile app or post, and collected without entering the premises) and delivery.'
- **Outdoor structures must follow the same rules as smoking shelters** – 50% or more of the sides must be open – in order to be classed as "outdoors".
- You can offer **background music and television outside**, if it is kept at a reasonable volume and shouting/singing/chanting is prevented. Incidental live music is permitted.
- Customers making takeaway purchases are exempt from both Test and Trace and the requirement to be seated whilst ordering but their purchase must be consumed off-premise (including outside of adjacent areas)

An Admiral Taverns **LICENSING checklist** is also available by [clicking here](#)

## **FAQs – Step 2**

**Q. Can I allow customers into the indoor elements of my venue, for reasons connected with their use of the outside space?**

A: Yes, indoor toilets, baby changing rooms or breast-feeding rooms are allowed to be used by customers. Customers can also walk through the venue to access outdoor spaces such as gardens and roof terraces.

You should take payment at the table or at another outdoor location. If it's not possible to take payment outdoors, for example due to a technical issue, **you can take payment indoors as a last resort**. If you need to take payment indoors the customer should wear a face covering unless exempt, you should ensure only one customer is indoors at any time for the purpose of making payment, and you should operate a tab system to ensure that customers do not need to make multiple indoor payments during their time at the venue. Bar tabs are legally allowed to be used in licensed premises under the Licensing Act 2003.

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## Q. Will table service be required for food and drink consumed in outdoor areas of hospitality?

Yes. At premises serving alcohol, customers will be required to order, be served and eat/drink whilst seated. You must ensure that all reasonable steps are taken to ensure that customers remain seated outdoors whilst consuming food and drink. As noted above, we continue to seek clarity from Government regarding situations where payment cannot be taken outdoors.

## Q. Will a substantial meal have to be served as a condition of serving alcohol?

No. Alcohol can be served and consumed outdoors without food. Table service will apply as above.

## Q. Who is allowed to meet outdoors?

A group of up to 6 from mixed households, or two households. The Government Working Safely guidance states that you should: *'reconfigure outdoor seating and tables to maintain social distancing guidelines (2m, or 1m+ with risk mitigation where 2m is not viable) between groups of customers. For example, increasing the distance between tables.'* **Government have confirmed that social distancing applies between tables, not within groups sitting at tables.**

## Q. What entertainment can I offer outside?

A. Background music and TV screenings (e.g. sport) will be allowed outside, provided volume is kept low.

Live music:

On the question of live music performances within hospitality settings, Government have now confirmed that **live music events are allowed under Step 2 of the Roadmap, subject to caveats** set out in BEIS and DCMS guidance. For example:

- Businesses **cannot charge for admission**, or admit an audience in addition to seated food and/or drink customers, as this would be considered a live event, which can only take place at Step 3.
- Any live music at Step 2 should be incidental to the consumption of food or drink, and **not the main purpose of the gathering**.
- Businesses should adhere to safer working guidelines for pubs and restaurants, which includes the need to ensure **noise is kept at a low volume** and that customers should remain seated, ensuring social distancing is maintained.
- Controls on noise disturbance in accordance with Environmental Health legislation would still apply.

## Q. Can takeaway alcohol be served?

Yes, Government has confirmed that takeaway alcohol can be provided from Step 2 Further guidelines are expected on the detail. However, our current interpretation is that you will need to differentiate

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between sales of alcohol that will genuinely be taken away from the premises, and alcohol that will be consumed in the outdoor area. If it is the latter, then the table service rules apply.

## **Q. What are the test and Trace requirements?**

As before, Test and Trace details must be taken for customers eating and drinking seated at the premises – this includes outdoor areas. Please see the appendix for detail on the NHS Test and Trace system and app. Customers for takeaway only are exempt.

**NOTE: A new requirement has been included in the new legislation – all customers must now check in via the NHS app or provide their details by other means. Advice here from Government: – “one person can no longer be nominated as a party lead and to give their contact details on behalf of the rest of the group. A party of four, for example, can either all check in with the NHS app via the QR code or any of them who do not would be required to give their details to the venue. This is for people aged 16 and over.”**

Businesses should take steps to satisfy themselves that customers have provided contact details (e.g. **asking customers if they have checked-in i.e. scanned the code**, or ask to view the person’s screen to show the venue check-in screen if you still have reason to believe they haven’t done so. Check-in/collection of contact details doesn’t have to happen at the front door (i.e. before entry) but does have to happen before an order is taken.

## **Q. Do customers legally have to pre book tables outside from 12 April?**

No.

## **Q. Do staff have to wear face coverings when serving in outside areas?**

No. Previous and current reading of the law has been that, for employees and customers, face coverings only apply to indoor areas of the premises (exception being if an employee is behind a screen or similar inside). Practically of course, for example if staff have picked up a tray of drinks/food inside (where a covering is required) to deliver to an outdoor table (where a covering is not required) they will likely keep the covering on for practical reasons. Further Government guidance can be found here: [Face coverings: when to wear one, exemptions, and how to make your own - GOV.UK \(www.gov.uk\)](https://www.gov.uk/government/guidance/face-coverings-when-to-wear-one-exemptions-and-how-to-make-your-own)

## **Q. Weddings and wakes locations**

A: Weddings and civil partnership ceremonies are permitted for up to 15 people in COVID-19 Secure venues that are permitted to open or where a broader exemption applies.

## **Q. What is the definition of “outdoor”, for the purposes of shelters/pods/igloos that I may have?**

The definition of an indoor area is as set out in the Smoking Ban regulations, namely:

*(4) A place is indoors if it would be considered to be enclosed, or substantially enclosed, for the purposes of section 2 of the Health Act 2006(37), under the Smoke-free (Premises and Enforcement) Regulations 2006(38).*

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Therefore, a marquee or any similar structure must not be wholly enclosed, or substantially enclosed to be 'outdoors'. **In practice this means it must not have sides (including doors, windows or other fittings that can be opened or shut) that enclose more than 50% of the shelter, if you want to use it as an outdoor space.** Basically, if a marquee is a square but two of the sides are open to the air – then it can be used as an outside space.

If the same marquee has three or four sides enclosing it – it counts as an indoor space.

## **Q: What is the easiest way to open up outdoor areas from 12 April?**

A: If you wish to use outdoor areas (for example a pavement area or car park you don't normally use), ensure you have the relevant permissions. **The easiest and cheapest option to use for 12 April is the fast track pavement licensing system.** Your local authority will have details as to how this can be applied for. Do not confuse this with previous (pre-summer 2020) outdoor area licensing processes – the new version is designed to allow you to use outdoor spaces in a much more cost-effective and faster way.

## **Q: What furniture can be permitted by a such a licence?**

- counters or stalls for selling or serving food or drink;
- tables, counters or shelves on which food or drink can be placed
- chairs, benches or other forms of seating; and
- umbrellas, barriers, heaters and other articles used in connection with the outdoor consumption of food or drink.
- **This furniture is required to be removable.** Local authorities should be pragmatic when determining what is 'removable' but in principle this means it is not a permanent fixed structure, and is able to be moved easily, and stored away of an evening.

## **Q. How much do applications cost?**

A. Fees will be set locally, but are capped at a maximum of £100.

## **Q. I applied for an outdoor licence, as above, last year, but the local authority would only grant it for a limited period (e.g. three months). This has now 'lapsed', what is the status of this given the recent announcement?**

A: Our view is that any licence granted last year should be automatically reinstated, based on the recent Ministerial announcement, coupled with the stated aim of Government to facilitate reopening outdoors from 12 April. Further details expected.

## **Q. Can pool tables, darts, fruit machines etc. be used?**

A: These will not be permitted to be used indoors.

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## **STEP 3 – 17 May**

### **Hospitality**

Indoor areas of hospitality venues (cafes, restaurants, bars, pubs, social clubs, including in members' clubs) can reopen. As outdoors, table service will be required. Unless seated to eat or drink, customers will be required to wear face coverings whilst indoors.

## **FAQs – Step 3**

### **Q. Will table service be required for food and drink consumed in indoor areas of hospitality?**

Yes. At premises serving alcohol customers will be required to order, be served and eat/drink whilst seated.

### **Q. Will a table/substantial meal have to be served as a condition of serving alcohol?**

No. Alcohol can be served outdoors without food. Table service will apply as above.

### **Q. Who is allowed to meet indoors at my venue at Step 3?**

A group of up to 6 from mixed households, or two households.

### **Q. Who is allowed to meet outdoors at my venue at Step 3?**

Groups of up to 30 from mixed households.

### **Q. What are the rules around larger scale events?**

A. Controlled indoor events of up to 1,000 people or 50% of a venue's capacity, whichever is lower, will be permitted, as will outdoor events with a capacity of either 50% or 4,000 people, whichever is lower. The Government will also make a special provision for large, outdoor, seated venues where crowds can be safely distributed, allowing up to 10,000 people or 25% of total seated capacity, whichever is lower. In addition, pilots will run as part of the Events Research Programme to examine how such events can take place without the need for social distancing using other mitigations such as testing.

### **Q. What are the wedding/life event rules?**

A. At this step, weddings, receptions, funerals, and commemorative events including wakes can proceed with up to 30 attendees. A broader range of stand-alone life events will also be permitted at this step, including bar mitzvahs and christenings.

## **STEP 4 - 21 June**

Remaining businesses to open including:

- nightclubs and adult entertainment venues
- lifting the restrictions on large events



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## QR CODES

There is a FAQ regarding the NHS QR codes and app available for England on the NHS website here <https://faq.covid19.nhs.uk/category/?id=CAT-01043&parentid=CAT-01027>

To summarise legal requirements re Test and Trace from 18 September 2020 (these are compulsory):

- from 12 April, pubs, bars, cafes, restaurants and other leisure venues in England need to advise customers of their obligation to take bookings of no more than 6 people or two households, and ensure there is sufficient social distancing space between tables and that tables do not mingle
- it is also mandatory for businesses and organisations, including hospitality, close contact services and leisure venues to collect customer, visitor and staff contact detail logs. If the whole group uses the official NHS app and QR code there is no further requirement for data collection. If customers choose to use the NHS QR code to check-in, the guidance is that staff should check the customer's phone screen to ensure that the check-in has been successful.
- businesses should refuse entry to customers that do not provide their details or provide details that are believed to be inaccurate
- businesses need to display the official NHS QR code posters to make it easier for people to check-in at different premises. If the whole group choose to check-in using the NHS QR code poster they do not need to log in via any other route
- the aim of the law is to enable an individual (16 and over) who seeks to enter the relevant premises and has a smartphone in their possession to scan the NHS QR code with that smartphone as, or immediately after, they enter the premises

To generate and download the official NHS QR Code for an individual site visit <https://covid19.nhs.uk/venue-check-in-businesses.html>

However please note that **the requirements for Test and Trace and rule of 6 are different in England than in Wales or Scotland. If you are operating in these areas, please consult the respective national guidance. Please read the FAQ above in full, some key points are outlined below:**

### **WHICH VENUES IN ENGLAND SHOULD DISPLAY THE OFFICIAL NHS QR CODE POSTER?**

If your business or venue falls into one of the sectors or categories that should provide a customer log, then you must display an NHS QR code poster at your venue. This applies if you provide:

- hospitality services, including pubs, bars, restaurants and cafés

### **IF I CREATE AN OFFICIAL NHS QR CODE POSTER FOR MY VENUE IN ENGLAND, DOES THIS REMOVE MY RESPONSIBILITY TO COLLECT CONTACT DETAILS BY OTHER ROUTES?**

If your business or venue falls into one of the sectors or categories that must provide a customer log, and a visitor chooses to check-in using the official NHS QR code, they will not need to provide their

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contact details by any other route. However, you will still need to have an option for recording visitors' contact details for people who do not have a smartphone or do not want to use the NHS COVID-19 app.

**I AM CURRENTLY USING MY OWN QR CODE CHECK-IN SYSTEM AT MY VENUE IN ENGLAND. CAN I CONTINUE TO USE THIS INSTEAD OF THE OFFICIAL NHS QR CODE POSTERS, OR INTEGRATE THE TWO?**

The NHS COVID-19 app is only able to scan official NHS QR code posters. This is for security reasons and because the NHS QR technology means that venue check-in history remains on the user's device.

In England, even if you're currently using your own QR code or other system to collect records of your staff, visitors or customers, you must have a NHS QR poster on site.

If you use any other QR code system at your venue, you must ensure that it does not show any NHS or NHS Test and Trace logos. You should also explain to your customers that you are using more than one QR code system in your venue. Unofficial QR codes will not work with the NHS COVID-19 app.

## **WHAT INFORMATION MUST I COLLECT?**

It is now the law that venues must request this information from at least one member of the party. These records must be retained for 21 days. Please see section above for recent developments regarding the national test and trace app.

The law states you must collect:

- the name of the individual
- a telephone number on which the individual may be contacted;
- an e-mail address if the individual is unable to provide a telephone number;
- a postal address if the individual is unable to provide an email address;
- the date and time that the individual entered the relevant premises;

**One person can no longer be nominated as a party lead and to give their contact details on behalf of the rest of the group. A party of four, for example, can either all check in with the NHS app via the QR code or any of them who do not would be required to give their details to the venue. This is for people aged 16 and over.** If a customer uses the NHS QR Code and app, this discharges the obligation for the venue to collect their details.

## **DO I HAVE TO REFUSE SERVICE TO THOSE WHO DO NOT PROVIDE DETAILS?**

Yes. The law states that where a business is aware that a customer has not provided details, or has reason to believe that the details provided are inaccurate, they must take all reasonable steps to prevent entry by an individual to the relevant premises that they occupy or operate.

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## **SPRING ROADMAP FOR SCOTLAND - GUIDANCE TO REOPENING**

In summary:

For Hospitality businesses;

- From 26 April 2021
  - Move from Level 4 to new Level 3
  - Indoors: 8pm close (No alcohol – maximum 4 people from 2 households)
  - Outdoors: 10pm close (Alcohol allowed – maximum 6 people from 3 households)
  - Weddings and funerals for up to 50 (including wakes and receptions with no alcohol permitted)
- From 17 May 2021
  - Move from new Level 3 to new Level 2
  - Indoors: 1030pm close (Alcohol allowed – 2-hour dwell time – 4 from 2 households).
  - Outdoors: 10pm close (Alcohol allowed – 6 from 3 households)

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## Ventilation as a mitigation of COVID-19 transmission – guidance for pubs

*New ventilation guidance* ([here](#))

Ventilation of enclosed spaces is identified as an important measure for keeping customers and staff safe. The guidance confirms that:

- There are different ways of providing ventilation, including mechanical ventilation using fans and ducts, natural ventilation which relies on passive flow through openings (doors, windows, vents) or a combination of the two.
- HSE guidance on ventilation and air conditioning explains how to identify those spaces and steps to take to improve ventilation. [Read advice on air conditioning and ventilation from HSE.](#)

### **Key points**

- It is well-accepted that improving ventilation for an indoors space can reduce the risk of transmission of the virus carried in aerosol particles, alongside other mitigation measures.
- There are practical, no-cost means of improving natural ventilation as set out in guidance from the Health and Safety Executive (HSE).
- Current government guidance to the hospitality sector refers directly to the HSE guidance and does not specify any prescribed standard of ventilation or specific equipment.

### **Tips for better ventilation (per HSE guidance)**

#### [Why ventilation is important](#)

- Good ventilation reduces the concentration of the virus in the air and therefore reduces the risks from airborne transmission. This happens when people breathe in small particles (aerosols) in the air after someone with the virus has occupied an enclosed area. However, ventilation will have little or no impact on droplet or contact transmission routes.

#### [Balancing ventilation with keeping people warm](#)

- Good ventilation is a balance between making sure premises are warm but keeping a flow of air going through an area. Simple steps, such as partially opening windows, can be taken to ensure ventilation is maintained. [Natural ventilation](#) can be used with heating systems to maintain a reasonable temperature.

#### [Identifying poorly ventilated areas](#)

- Look for areas where there is no [mechanical ventilation](#) or no natural ventilation, such as opening windows and vents etc, unless doors are opened very frequently
- Check that mechanical systems provide outdoor air, temperature control or both. If a system (e.g. a local air conditioner) is recirculating only and doesn't have an outdoor air supply, or a separate source of outdoor air, the area is likely to be poorly ventilated
- Identify areas that feel stuffy or smell badly

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- Use carbon dioxide (CO<sub>2</sub>) monitors to identify the CO<sub>2</sub> levels to help decide if ventilation is poor. CO<sub>2</sub> monitors are most effective for areas that are regularly attended by the same group of people. They are less effective in areas with low numbers of people

## [How to improve ventilation](#)

- The more people occupying an area that is poorly ventilated, and the longer they remain in it, the greater the risk of transmission. Singing, shouting and aerobic activities generate higher levels of aerosol and increase the risk further, so consider these factors when ensuring you have adequate ventilation.

## [Natural ventilation](#)

- Natural ventilation can be provided through open windows, or through other means such as vents. However, fire doors should not be propped open.
- Do not to completely close windows and doors when the area is occupied as this can result in very low levels of ventilation.
- Lower temperatures and likely windy weather conditions in the winter months will increase the natural ventilation through openings. This means you don't need to open windows and doors as wide, so partially opening them can still provide adequate ventilation while maintaining a comfortable temperature. Opening higher-level windows is likely to generate fewer draughts.
- Airing rooms as frequently as you can will help improve ventilation. This involves opening all doors and windows wide to maximise the ventilation in the room. It may be easier to do this when the room is unoccupied or between uses.

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## *Covid staff TESTING*

### **Free rapid tests for all businesses for regular workplace testing**

Workplace testing is now available to all businesses, including those with fewer than 50 employees. Businesses are encouraged to **register interest by 31 March** to access free workplace testing. Further details can be found from the [press release](#). The portal to register interest is [here](#).

### **Workplace testing programme to offer free home testing**

The Government is making rapid home testing available for all businesses with over 10 employees who cannot offer on-site testing. Businesses must **register interest by 12<sup>th</sup> April** to access free tests.

Employers will be able to offer their employees free, rapid and regular testing that can be taken at home. From 6<sup>th</sup> April, the workplace testing programme will supply home test kits to companies with over 10 workers where it is not possible to set up testing on-site, due to a lack of space or because companies operate across multiple sites.

Businesses will be eligible to order the home test kits online to distribute to their employees. These self-test kits will be picked up by staff from their employer with clear instructions about how to take the test. Staff will then complete the home test in the normal way, before reporting their results to the NHS using the provided gov.uk address.

The workplace testing programme uses lateral flow tests to rapidly detect the virus in 30 minutes meaning that those who test positive can isolate immediately and, in doing so, break chains of transmission and suppress the virus.

As well as reporting their result directly to the NHS, employees should advise their employer of a positive result and take a confirmatory PCR test. Employers will retain an important role in encouraging their employees to take and report the results of their test.

Employers with fewer than 10 people can alternatively access regular testing through the community testing programme, which is now offered by all local authorities in England. Work is also underway to allow staff of small businesses to order tests online to be sent to their home.

Businesses who wish to sign up for workplace testing should visit: <https://www.gov.uk/get-workplace-coronavirus-tests>.

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## *To wear or not to wear? The great mask debate!*

Face coverings have been a focus of controversy throughout the pandemic. Should we wear them? Shouldn't we wear them? Where should we wear them? And do they make a difference? Is wearing a mask a political statement, evidence of blind obedience or just common sense? Or is it, quite simply, the law?

In broad terms the law states that you must wear a mask in most indoor settings unless you are exempt. But since the start of the third lockdown there has been something of a hardening of attitudes by some retailers about mask use. The **"no mask – no entry" sign** has become a regular sight in many shop windows. Arguably this robust interpretation of the rules is leading to people becoming ever more entrenched in their attitudes to mask use – and to those who don't wear one. The Equality and Human Rights Commission has reportedly written to supermarket CEO's warning that **such actions mean they could be breaking the law if they discriminate against people who are exempt due to a disability.**

Exemptions can apply to individuals who cannot put on, wear, or remove a face covering "because of a physical or mental illness or impairment, or disability". They can also apply where putting on, wearing or removing a face covering will cause the individual severe distress. Businesses are expected to take reasonable steps to encourage customers to follow the law but ultimately the use or otherwise of a mask is the responsibility of the individual.

But what are the risks to businesses who try to navigate the minefield between keeping customers safe, reminding people of the rules, contending with the belligerent or the mischievous and yet all the while not discriminating against customers who have a legitimate exemption?

The rules state that **a person who has an exemption does not routinely need to show any written evidence of it.** Whilst an exemption card, badge or "hidden disabilities" lanyard can be used, there is no obligation on the individual to do so. In response to a reminder to wear a face covering, an individual is entitled to explain that they have an exemption and, it would appear, the owner of the premises or their employee must take that at, if you'll pardon the pun, face value. To press the point further, perhaps in seeking evidence of the right to an exemption or refusing the individual access to the premises risks an allegation of disability discrimination!

Disability discrimination is, quite rightly, specifically outlawed in the Equality Act and should never be allowed. People with substantial and long term conditions have, sadly, suffered significantly from the impact of the coronavirus and many retailers have gone the extra mile to protect and support their most vulnerable customers and those who support them.

To ensure that they provide the requisite protection to staff and customers whilst not exposing themselves to claims, **businesses (and their insurers) need to ensure that there are appropriate, compliant and non-discriminatory procedures and processes in place.** It will also be important to be able to show that staff have been trained how to respond and deal with customers who refuse to wear, or remove, their mask whilst in their pubs.

If you are unsure whether your systems are compliant or if you are unsure how to respond to an Equality Act claim received, please don't hesitate to contact Stephen Robb, Partner on +44 (0)116 242 8943 or at [stephen.robb@weightmans.com](mailto:stephen.robb@weightmans.com).