

# Use of Outside Areas for the Hospitality Trade

## Guidance for Step 2

This guidance is intended on providing useful information to ensure that when businesses can re-open you are able to welcome customers safely and in accordance with relevant legislation.

### The Health Protection (Coronavirus, Restrictions) (Steps) (England) Regulations 2021

Under Step 2 (taking place no sooner than 12 April 2021) a restricted business which serves alcohol for consumption ON the premises may sell food or drink for consumption if, the food or drink is ordered by, and served to, a customer who is seated outdoors on the premises. All reasonable steps must be taken to ensure the customer remains seated whilst consuming the food or drink.

A restricted business which does not serve alcohol for consumption ON the premises may sell food or drink for consumption, if all reasonable steps are taken to ensure the customer remains seated outdoors whilst consuming the food or drink.

All indoor areas of a premises must be closed except for toilets, baby changing rooms and/or breast-feeding rooms, and to access outdoor areas. A place is classed indoors if it would be considered 'enclosed' or 'substantially enclosed' under the Smoke-free (Premises and Enforcement) Regulations 2006.

### Definition of 'enclosed'

A premises is considered '**enclosed**' if it has a roof or ceiling and it has walls which wholly enclose it on either a permanent or temporary basis (windows and doors are not considered openings and must be included as part of the enclosed area). This can include tents or marquees as well as solid structures. Examples below;



A premises is considered '**substantially enclosed**' if it has a roof or ceiling and there are permanent openings in the walls which are less than half of the total wall area (windows and doors are not considered permanent openings and must be included as part of the enclosed area). Other structures can serve the purpose of walls and if in proximity would constitute the perimeter of the premises. Examples below;



A premises is considered '**partially enclosed**' if it has a roof or ceiling and there are permanent openings in the walls which are more than half of the total wall area (windows and doors are not considered permanent openings and must be included as part of the enclosed area). Other structures can serve the purpose of walls and if in proximity would constitute the perimeter of the premises.

A premises is **not** considered enclosed if it has no roof or ceiling and is unobstructed by adjoining structures of up to a distance of 1.5m so as to not restrict air movement.



A roof includes both fixed or moveable structures or devices that have the capability of covering all or part of a premises, regardless of material. Retractable canvas awnings can therefore be considered a roof.

### Positioning of a structure

In order to ensure proper airflow, the structure should not be positioned too close to sheltering walls, fences or other structures, as this could make it substantially enclosed. Wiltshire Council requires the 'open sides' of any structure to be positioned a minimum of 1.5m away from anything that could act to enclose the side.



You must look at the wider impact of positioning shelters/structures to ensure they do not cause a nuisance to your neighbours. You must consider:

- Could the noise from people using the structure cause a disturbance for people in neighbouring properties?
- If the structure is lit at night will this adversely affect your neighbours?
- Could its location and design mean that it will be misused by customers and or passers-by during or after closing time?
- Is it safely located? For example, how will you manage pedestrian vehicle conflict with shelters being sited in car parks?

### Other considerations

Planning permission for the temporary use of land and the associated provision of any moveable structure has doubled from 28 days to 56 days up until 2022.

Your structure may require planning permission, to find out you will need to contact Wiltshire Council's Planning Department.

#### Calculating a structure to ensure it is at least 50% open

Calculate the area of the whole of the perimeter (excluding the roof and floor) to work out the TOTAL area of the four walls.

Calculate the area of all the ENCLOSED parts of the four walls, this should also include other structures that serve the purpose of walls, doors and windows are also considered enclosed parts (again, exclude the roof and floor).

Divide the ENCLOSED area (E) by the TOTAL perimeter area (T) and times by 100 as shown below:

$$\frac{E}{T} \times 100 = \% \text{ ENCLOSED}$$

If the percentage calculated is more than 50% then the structure cannot be used for smoking nor can it be used by drinkers and diners.

#### Licensing

You will need to check that the outside areas you are intending on using for your customers are covered on your Premises Licence or Club Premises Certificate plan for either alcohol sales or consumption. If it is not you may need to amend your licence to permit sales and consumption.

You will also need to consider the conditions on your Premises Licence and Club Premises Certificate, these still need to be adhered to.

If you wish to have a bar in your outside area this will need to be covered on your Licence. Wiltshire Council is currently permitting businesses to apply for a minor variation to allow for an outside bar on a temporary basis until 30 September 2021.

If you wish to have a bar outside permanently or you need to amend or remove any conditions, you will need to apply for a variation of your Premises Licence or Club Premises Certificate.

The link to the application forms is <https://www.wiltshire.gov.uk/licences-permits-premises>

#### Pavement Licence

A pavement licence allows the licence holder to place removable furniture over certain highways adjacent to the premises. It is recognised that tables and chairs outside your premises on paved or pedestrianised areas that are public highway may assist you with accommodating customers while following social distancing guidelines.

For more information and the application form <https://www.wiltshire.gov.uk/licences-permits-temporary-pavement-licences>

### Noise nuisance

It is important that your business does not cause a noise nuisance, you must therefore consider the impact the use of your outside area has on nearby properties. Where possible you will need to ensure that shelters and other structures used by your customers are directed away from domestic dwellings to limit noise nuisance.

It is the responsibility of the Business Owner, Premises Licence Holder, Designated Premises Supervisor and staff to ensure that the noise from external areas is kept to a minimum.

### Litter

The increased use of outside areas for consumption and smoking will result in an increase in litter. Extra bins may be required to meet the demand which will need to be emptied regularly to avoid attracting pests.

All smoking shelters must be provided with metal (or other fire-retardant material) ashtrays suitable for outdoor use designed to restrict oxygen flow and discourage fires. Free standing ash trays (such as floor ash bins, sand buckets and general rubbish bins) will need to be fixed to either the floor or the structure.

### Lighting

It may be necessary to install additional artificial lighting in the outside areas for safe access and egress. The lighting must be suitable for outdoor use. All installations must be checked by a suitably qualified and competent person.

For more information please see <https://www.wiltshire.gov.uk/env-health-light>

### Heating

Any means of heating provided should be suitable for the environment in which it is used. It is advised that gas heaters should not be used, as these can be easily tampered with and pose an additional fire hazard due to the gas cylinder supply. However, in all cases the duty holder must complete a risk assessment in accordance with current legal requirements.

Portable LPG Gas Heater Safety [Portable LPG Gas Heater Safety | LPG Heater | Calor](#)

### Health and Safety

It is essential that a risk assessment for the use of your outside area is completed, you will need to consider the following (this list is not exhaustive);

- COVID safety measures,
- how customers will safely access and exit,
- fire safety arrangements,
- stability of the structures/shelters including ensuring the stakes and ropes used to support the structure do not present a tripping hazard,
- consider the impact of adverse weather for example high winds, heavy rain fall and extreme heat,
- staff safety.

HSE - Managing risks and risk assessment at work  
<https://www.hse.gov.uk/simple-health-safety/risk/index.htm>

HSE – Risk assessment during the coronavirus (COVID-19) pandemic  
<https://www.hse.gov.uk/coronavirus/working-safely/risk-assessment.htm>

Coronavirus (COVID-19): working safely (including amendment to the collection of contact details regulations)  
<https://www.hse.gov.uk/coronavirus/index.htm>

#### Food safety

If you are providing food such as a BBQ, pizza oven or a more substantial kitchen you must ensure you comply with the relevant food safety legislation. For further information please see <https://www.food.gov.uk/business-guidance/reopening-checklist-for-food-businesses-during-covid-19>

#### Fire safety

A suitable and sufficient fire risk assessment will need to be completed in accordance with Regulatory Reform (Fire Safety) Order 2005, particular attention should be given to the means of escape, means of detecting fire and alerting persons along with emergency lighting.

Further guidance can be found in the “Fire Safety – Risk Assessment” publication for this premises type, available as a free download from [www.gov.uk](http://www.gov.uk) (fire safety law and guidance documents for business).

#### Useful Contacts

**Public Protection North** (Licensing)

Tel: 01249 706 555

Email: [publicprotectionnorth@wiltshire.gov.uk](mailto:publicprotectionnorth@wiltshire.gov.uk)

**Public Protection West** (incorporating, Food safety, Health and Safety, and Noise)

Email: [publicprotectionwest@wiltshire.gov.uk](mailto:publicprotectionwest@wiltshire.gov.uk)

**Planning and Building Enforcement**

Email: [developmentmanagement@wiltshire.gov.uk](mailto:developmentmanagement@wiltshire.gov.uk)

**Street Trading**

Email: [streettrading@wiltshire.gov.uk](mailto:streettrading@wiltshire.gov.uk)

#### Acknowledgements

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