



Unpicking Coronavirus Regulations and Guidance to enable a safe return to outdoor events – a briefing note for stakeholders

Introduction

Since the start of the pandemic and unprecedented business restrictions, the cultural and events industry has been particularly hard hit. Recent welcome news has confirmed that the Government has put in place a £1.57 billion rescue package to support the arts, cultural and heritage industries. The money, which represents the biggest ever one-off investment in the sector, will provide a lifeline to vital cultural and heritage organisations across the country hit hard by the pandemic. It remains to be seen how this funding will work its way down to the roots of the industry, particularly the smaller event organisers, including many freelancers working in these sectors.

As the Licensing Authority for Newham we have been closely monitoring the Regulations in relation to events, as we have a history in Newham of working collaboratively with event organisers and using the Safety Advisory Group process to ensure that event organisers are informed and empowered to run safe events – we recognise the value that events add to the community, both culturally and economically.

Until the last few days it has been illegal to hold mass gathering/events due to a limit of six people meeting outdoors and events being banned due to the risk of transmission of Covid19. The latest change to the Regulations, The Health Protection (Coronavirus, Restrictions) (No. 2) (England) Regulations 2020 have changed the picture in terms of events and this briefing note aims to unpick a safe and compliant path through often conflicting Regulations and Guidance allowing event organisers to understand the Legal picture, the responsibilities they have when making decisions and what they can expect from us as the Local Authority in terms of support. It is important to state this is guidance and our interpretation only.

We are currently cautiously optimistic about the Regulatory picture for the remaining 2020 season, however also feel the need to give a wider context on the pandemic, particularly how it has impacted the local population, current trends in data and rates of infection, the support that can be expected from the blue-light services, the situation around essential travel and public transport, and lastly the reality of ensuring a proper risk assessed approach to Covid19 and what socially distanced events may look like. Although we can advise and support event organisers, it is imperative that organisers are aware that as ever the legal responsibility for holding a safe event falls on them under the relevant Legislation,

specifically the Health & Safety at Work Act and relevant Regulations. With the risk of localised outbreaks associated with mass gathering/events this responsibility is arguably greater than ever before – in terms of the public, employees, volunteers and more importantly in the current context the wider community.

The Legal perspective- are mass gatherings/events permitted?

The recently published The Health Protection (Coronavirus, Restrictions) (No. 2) (England) Regulations 2020, have delivered some clarity around mass gathering/events. Event organisers and those owning the land events will be held on should familiarise themselves with Section 5 of the Regulations – Restrictions on gatherings.

To summarise this as succinctly as possible, gatherings of more than thirty people are not permitted in private dwellings or land/public outdoor places which are not operated by a responsible person/body. We believe the aim of this is to prevent large house gatherings and UMEs (unlicensed music events) which have been a particular problem nationally, with noticeable examples in London and Manchester which have resulted in crime, disorder, nuisance to local communities and a great deal of Police resources being allocated with a significant number of injuries to Police officers. Also, importantly, they may act as the perfect environment for transmission of Covid19 potentially causing localised outbreaks. Since the beginning of the pandemic numerous mass gatherings/events have been statistically associated with localised outbreaks, including major sporting events. This is possibly why internationally and at a European level mass gatherings/events are still tightly controlled.

Event organisers appear now to be able to hold events for more than thirty people on land/public outdoor places operated by/part of premises used for the operation of a business, charitable, benevolent or philanthropic institution or a public body. The gathering has to be organised by a business, a charitable, benevolent or philanthropic institution, a public body, or a political body, and the following must apply:

- The person responsible for organising the gathering (“the gathering organiser”) has carried out a **risk assessment** which would **satisfy the requirements of regulation 3 of the Management of Health and Safety at Work Regulations 1999**, whether or not the gathering organiser is subject to those Regulations, and
- The **gathering organiser has taken all reasonable measures to limit the risk of transmission of the coronavirus**, taking into account the risk assessment carried out.

It appears that event organisers can make their own capacity calculations based on social distancing, available space and any other limiting factors, for example the maximum number allowed under a TEN if using this route being less than 500 people.

The Regulations place a clear emphasis on complying with the relevant Health and Safety Legislation, being the Health and Safety at Work Act 1974 and associated Regulations – specifically the Management of Health and Safety at Work Regulations 1999, Regulation 3. This is common practice for the events industry and safety professionals, but we would strongly recommend reviewing this area of the Regulations and ensure that the relevant risk

assessments are carried out by a competent and experienced person and arguably a multi-disciplinary team taking into account the current context and the need for a stronger public health steer.

In summary, Regulation 3 requires the event organiser to make a **suitable** and **sufficient** assessment of the risks to the health and safety of his employees to which they are exposed whilst they are at work; and the risks to the health and safety of persons not in his employment arising out of or in connection with the conduct by him of his undertaking, for example contractors, volunteers and the public. Where the employer employs five or more employees, he shall record the significant findings of the assessment; and any group of his employees identified by it as being especially at risk. We would advise event organisers strongly that whilst Covid19 is a real and severe threat, we believe that other traditional risks should not be overlooked therefore a generic risk based approach should be taken supplemented with Covid19 controls rather than the risk assessment being purely dominated and led by Covid19 or existing risks relevant to the industry may be overlooked.

A steer from The Department for Digital, Culture, Media & Sport (DCMS)

Due to the complexity of the current situation, we approached the DCMS for a central steer on their interpretation for the events industry as the Department is leading on producing specific industry guidance. We have seen a draft of this titled '**Working safely during COVID-19 In the Outdoor Event Industry**' and would expect this to be published shortly on the DCMS website. This will be a key document for event planners and we would expect them to cover all areas of the guidance as part of their event planning. We have become familiar with the draft guidance and would be happy to have discussions with event organisers to ensure they have a full understanding – we could not see how a suitable risk assessment could be completed without mirroring the guidance therefore unless it is consulted and followed we could not see how event organisers could take all reasonable measures to limit the risk of transmission of Covid19 without following it to the letter.

A reply we received from the DCMS would seem to support the events industry making a comeback – *“premises or locations which are Covid19 secure will be able to hold more than 30 people, subject to their own capacity limits, although any individual groups should not interact with anyone outside of the group they are attending the venue with - so in a group no larger than two households or six people if outdoors”*. The legal team at DCMS were quoted as saying *“(we) have advised that the Government intends for as many events as possible to be allowed, subject to appropriate social distancing measures being in place”*.

A word of caution for event organisers as they return to business

Looking at the Regulations, specifically Regulation 5(3)(c), it reads that to hold an event the gathering must be '*reasonably necessary*'. We feel that an event organiser may wish to get a proper legal interpretation of this definition to ensure they are comfortable they know where they stand in terms of compliance. We find this ambiguous and unclear, although the steer from DCMS is that events are welcomed and encouraged.

As previously stated we fully support the safe running of events in Newham through our Safety Advisory Group process and through granting of relevant Licences that are required, most likely Temporary Event Notices (TENs). Where applying for a TEN we strongly advise prompt contact well in advance of events with the Licensing team at Newham, and also our noise nuisance team and the Licensing Police. The latter two parties can object to a TEN if they have concerns that the licensing objectives may be breached, the four objectives being the prevention of crime and disorder, public safety, the prevention of public nuisance, and the protection of children from harm. Although in England public health isn't built into this process we would scrutinise closely in relation to public safety specifically around Covid19 controls, appropriate, practical and realistic social distancing measures and for example implementing the track and trace guidance to allow contact tracing post event if required. At this stage we would expect all TENs being submitted at sites holding an appropriate premises licence to be scrutinised from a public health perspective with the proposal of adding the premises licence conditions to the TEN. Our main aim being to balance the successful safe running of events, with our other Local Authority hat on, specifically protecting our local community and residents from any associated risk of Covid19 transmission post a mass gathering/event. Therefore, as part of our oversight we propose to also take a steer from our public health experts.

Looking at the wider political context, we feel that its important event organisers are aware of the local context within Newham. As of 3rd July 2020 the Mayor Rokhsana Fiaz gave an update on the situation within Newham that event organisers should be aware of. *“This pandemic isn't over. England's deputy chief medical adviser has already repeated that a second wave of the coronavirus epidemic in England is 'quite a possibility' and can't be ruled out. The threat remains substantial. Look at Leicester, which has been forced back into lockdown following a renewed spike in infection rates and the city recording ten per cent of all new cases in the country”*. She goes on to say that *“Government data tells us that up to yesterday Newham has had 1,257 confirmed cases of coronavirus in hospitals and the wider community, from a population of 353,134 – that's 357 cases per 100,000 people. Sadly, until 19 June there had been 304 coronavirus-related deaths. Significantly, of all deaths reported between 29 February and 16 June, almost four in ten involved the deadly virus. I offer sympathy and condolences to all families affected”*. We believe it is important that event organisers are aware of the context they are operating in and the fact locally Newham has been hard hit, and at a wider London level a number of our neighbouring Boroughs are seeing cases increase, and nationally Leicester is an example of a localised lockdown which organisers should expect may happen given the current situation we are in. This is why we would argue it is important to be dynamic with the risk assessment and planning process, as it may be that events would need to be pulled last minute due to circumstances outside of the event organisers control.

Lastly, key barriers that require further clarity moving forwards

As previously mentioned we are awaiting publication of the event guidance from the DCMS. Until this is in public circulation we feel that event organisers won't be in a position to thoroughly plan and risk assess to make informed decisions. We anticipate that this

guidance should be imminent, certainly within the following two weeks. The Regulations specify in Regulation 5(5) – *“In determining whether all reasonable measures have been taken to limit the risk of transmission of the coronavirus for the purposes of paragraph, any guidance issued by the government relevant to the gathering in question must be taken into account”*.

As well as waiting for the guidance we see two more potential barriers at this moment in time, being the use of public transport and essential travel, and support from blue-light services. Firstly, as we are aware travel on public transport is still for ‘essential’ journeys so cycling, walking and private transport is encouraged. This will have an impact on event planning, transport plans and the ability of the public to safely and legally reach the proposed site. And secondly, we are concerned that the blue-light services are still heavily overstretched therefore may not be able to support events as they would have traditionally done. We are reaching out to partners in the Metropolitan Police, the London Ambulance Service and the London Fire Brigade to clarify where they currently stand regarding events. Our current steer to event organisers is to go above and beyond current industry standards, for example the purple guide, to ensure you have extra capacity and ownership of first aid arrangements, fire arrangements and security being aware that you may have limited, if any support from the Police. We also strongly recommend reviewing your insurance arrangements to make sure you are covered appropriately for holding an event at the time of a pandemic.

Some other issues we are aware of that require clarification are that in the Government sector guidance for the ‘visitor economy’, it is specifically stated that *“Local Authorities should avoid issuing licenses for events that could lead to larger gatherings forming and provide advice to businesses on how to manage events of this type”*. We assume that the current Regulations update this and that we can now issue licences, but we are seeking clarification. Some event organisers have asked for a definition of indoors verses outdoors in terms of planning their event – for clarity on this, 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, under the Smoke-Free (Premises and Enforcement) Regulations 2006. We can simply summarise this as the following- if an area has no roof, provided that adjoining walls, structures etc. do not restrict air movement it can be classed as ‘outdoors’. If it does have a roof then if 50% of the walls or more are missing then it is still suitable to use, if more than 50% are present it is not. This applies to permanent or temporary structures.

We hope this briefing note is useful to all those working in the event industry, we strongly advise that everyone remains up to date with the changing local and national picture, and the evolving Regulations and Guidance. Please feel free to contact us if you have any questions regarding events in Newham and we will do our best to assist.