

Flintshire County Council

The Health Protection (Coronavirus Restrictions) (No. 4) (Wales) Regulations 2020 as amended

IMPROVEMENT NOTICE

Part A

To: Dale McCarthy

At: The Swan, 41 Main Road, Higher Kinnerton, CH4 9AJ

Trading as: The Swan

This Improvement Notice is served under paragraph 1 of Schedule 3 Regulation 26 of The Health Protection (Coronavirus Restrictions) (No. 4) (Wales) Regulations 2020 (the Regulations).

The Regulations impose certain restrictions to protect against the risks to public health arising from coronavirus. Failure to comply with the requirements of the Regulations, without reasonable excuse, is a criminal offence.

I, David Edwards, **Trading Standards Officer**, designated by Flintshire County Council as a relevant person for the purposes of the Regulations, have reasonable grounds to believe that you, as the person responsible for the premises stated above which is

a regulated premises as defined by regulation 21(1)

have failed to take reasonable measures, which are set out in Part B below, to minimise risk of exposure to coronavirus. In order to secure compliance it is necessary and proportionate to issue this Improvement Notice to prevent continued contravention of the requirements.

Part B. Contravention of the requirements imposed by Regulation 21(2)

You have failed to take the following reasonable measure(s) to ensure

(a)(i) that a distance of 2 metres is maintained between any persons on the premises (except between two members of the same household, or a carer and the person assisted by the carer)

and

You have failed to take the following *other* reasonable measures:

- Limiting close face to face interaction
- Maintaining hygiene
- Minimising the risk of exposure to coronavirus at the premises
- Minimising the spread of coronavirus by those who have been at the premises

(b)(vi) providing or requiring use of personal protective equipment by:

- not requiring a member of staff to wear appropriate PPE whilst on duty,
- not requiring customers to wear a face covering when not seated to consume food or drink.

and / or

(c) provide information to those entering or working at the premises about how to minimise the risk of exposure to coronavirus, by:

- failing to advise customers of their responsibility when in attendance at the premises.

and / or under Regulation 21 (4)

Where the premises is authorised for the sale or supply of alcohol for consumption on the premises, failed to take the following reasonable measures under Regulation 21(5)

- (a) ensuring there is a person controlling entry to the premises and allocating a limited time period during which customers may stay in the premises
- (b) ensuring customers are seated in the premises anywhere other than at a bar,
 - (i) when ordering food or drink
 - (ii) when being served with food or drink, and
 - (iii) when consuming food or drink

Specifically you are required to:

- Ensure that customers are seated in the premises anywhere other than at the bar.
- Provide table service only.
- Ensure that face coverings are only removed when customers are seated to consume food or drink.
- Ensure that the person controlling access to the premises informs customers of the maximum time they may stay at the premises, and explain to the customer what is required of them.
- Carry out all necessary track and trace / ID checks for all customers in line with the Regulations.
- Do not permit groups of over 4 people unless they can prove that they live in the same household.
- Offer suitable seating to allow groups of up to 4 people to adequately physically distance.
- Ensure that all staff wear appropriate PPE at all times.
- Sanitise pool cues between users, ensure PPE is worn by customers playing pool, and do not allow food or drink to be consumed by them unless they are seated at a table.

Part C. Action required by you

This Improvement Notice requires you to take steps to address the contravention(s) set out in Part B above by the date and time stated at the end of this notice which will be no sooner than 48 hours after it has been served.

When you have complied with the terms of this notice you should contact the issuing officer and they will arrange to carry out a visit to assess compliance. When the officer is satisfied that you have complied they will issue you with a written termination notice.

PART D. Publicising premises improvement and closure notices

When a premises improvement notice or a premises closure notice is issued the regulations require, as soon as reasonably practicable after issuing the notice, the enforcement officer to

- (a) display a copy of the notice, and a sign in the form set out in Schedule 4 of the regulations, in a prominent place near every entrance to the premises **and**
- (b) arrange for the notice to be published on the website of the local authority for the area in which the premises are located.

A copy/copies of the notice and sign required to be displayed on the premises and published on the local authority website must continue to be displayed and published for as long as the notice has effect.

Please note that without a reasonable excuse it is a criminal offence to remove, obscure or damage a notice or sign required to be displayed by the regulations.

Part E. Consequences of non-compliance

Failure to comply with this Improvement Notice, without reasonable excuse, is an offence. The consequences of failing to comply may result in you being issued with a Closure Notice which will stop you from operating until you have put in reasonable measure to control the spread of Coronavirus.

The Local Authority may, at their discretion, offer you the opportunity to pay a Fixed Penalty Notice (FPN) as an alternative to prosecuting you for non-compliance. If you fail to pay a FPN or if the Authority chooses to prosecute you instead of issuing you a FPN on summary conviction a Magistrates' Court can impose a fine on you.

If further non-compliances are found in future you may be subject to further enforcement action to secure compliance.

Please note that if your premises forms part of critical infrastructure (for example, premises used to generate electricity or supply water) or which are used to provide essential public services you will not be issued with a Closure Notice.

Part F. Your rights to challenge this notice

(1) A person to whom a premises improvement notice or premises closure notice is issued may appeal to a magistrates' court against the notice.

(2) An appeal must be made— (a) by way of complaint for an order, and in accordance with the Magistrates' Courts Act 1980(37), and (b) within 7 days after the day the notice is issued.

(3) But a magistrates' court may allow an appeal to be made after the expiry of the period mentioned in sub-paragraph (2)(b) if satisfied that there is a good reason for the failure to appeal before the expiry of that period (and for any delay in applying for permission to appeal out of time).

(4) A magistrates' court may suspend the effect of a premises improvement notice or premises closure notice pending the determination of an appeal.

(5) On an appeal against a premises improvement notice or premises closure notice, a magistrates' court may— (a) confirm the decision to issue the notice; (b) direct that the notice is to cease to have effect; (c) modify the notice; (d) make such other order as the court considers appropriate.

(6) If the magistrates' court directs that a notice is to cease to have effect or modifies a notice, it may order the local authority for the area in which the premises in question are situated to compensate the person responsible for the premises for loss suffered as the result of the issue of the notice.

(7) An appeal by either party against the decision of a magistrates' court on an appeal under this section may be brought to the Crown Court.

(8) On an appeal to the Crown Court, the Court may— (a) confirm, vary or reverse the decision of the magistrates' court; (b) remit the case to the magistrates' court to dispose of in accordance with directions given by the Crown Court.

This Notice remains in force until either a notice of termination is issued or any appeal you lodge is determined.

Signed:	Date and time notice served: 11 th November 2020 16:00
Name in Capitals: DAVID EDWARDS	This notice must be complied with by: 13 th November 2020 16:01
Name and Address of Local Authority:	Flintshire County Council County Hall Mold Flintshire CH7 6NR
Telephone: 01352 703399	Email: covidbusinesscomplinance@flintshire.gov.uk

If you are not sure of your rights or the implications of this Notice, you may want to seek independent legal advice

IECHYD Y CYHOEDD
Y CORONAFEIRWS

Gofyniad i leihau'r risg
o ddod i gysylltiad â'r
coronafeirws mewn mangre:

PUBLIC HEALTH
CORONAVIRUS

Requirement to minimise
risk of exposure to
coronavirus on premises:

**ANGEN
GWELLA**

**IMPROVEMENT
NEEDED**

**Diogelu Cymru
gyda'n gilydd**

**Together we'll
keep Wales safe**