

Can sports facilities be re-opened yet?

Correct as of 15 May 2020

This week we have seen a number of COVID-19 restrictions being lifted in England, which included the re-opening of certain facilities associated with outdoor sports and physical activities. The UK Government explained that in England outdoor sports facilities, such as basketball courts, tennis courts, golf courses, playing fields and water sports could re-open on 13 May where “those responsible for them feel ready to do so and if they can do so safely”.

This will be a welcome relief for many of those involved in the running of sports facilities and those who participate in outdoor sports in England. There are a number of restrictions still in force and all activities must comply with the UK Government’s guidance regarding health social distancing and hygiene, together with the various guides penned by the Department for Culture, Media and Sport applicable to sport in England.

What is the position in Scotland?

There has been no change in Scotland.

As many SGBs will be aware, the approach taken by in England and by the Scottish Government regarding COVID-19 restrictions has differed because health is a devolved matter. Therefore, the participation in sport and re-opening of outdoor sports facilities remains a matter for Scottish Government, in relation to Scottish activities.

In Scotland, the Health Protection (Coronavirus) (Restrictions) (Scotland) Regulations 2020 (the “Regulations”) set down restrictions for people, businesses and premises during the “emergency period”. The Regulations have been made under the Coronavirus Act 2020 and only apply in Scotland.

Under Regulation 3(4) of the Regulations, anyone who is responsible for a business or service listed in Part 2 of Schedule 1 to the Regulations “must cease to carry on that business or to provide that service during the emergency period”.

Part 2 of Schedule 1 to the Regulations contains the following definitions regarding sports facilities:

- Paragraph 18 – “Indoor fitness studios, gyms, swimming pools, bowling alleys, amusement arcades or soft play areas or other indoor leisure centres or facilities.”; and
- Paragraph 20 – “Playgrounds, sports courts and outdoor gyms”.

People must have a reasonable excuse for leaving their homes. As discussed further below, leaving to open an outdoor sports facility that could fall into paragraph 20 above would not present a reasonable excuse.

At the time of writing there have been no amendments to the Regulations regarding the above provisions and, accordingly, SGBs who have responsibility for any of the above sports facilities must keep them closed.

This broad language has been used in Scotland and England, but it is notable that the new position in England further develops the language, by explaining what may now re-open. This suggests that UK Government would have the Regulations read as if they apply to the facilities that may now re-open, particularly if they follow new guidance.

UK Government guidance, which applies in relation to England only at this stage, reads as follows:

Using sport facilities

Sports Courts including basketball and tennis courts, bowling greens and playing spaces like golf courses (public and private) can re-open. Other outdoor sports facilities such as angling can also resume.

All forms of water sports practised on open waterways, including sailing, windsurfing, canoeing, rowing, kayaking, surfing, paddle-boarding and the use of privately owned

motorised craft (in line with the guidance issued by the relevant navigation authority) are allowed.

All of these activities must only be undertaken alone, with members of your household or, providing you are following social distancing guidelines, with just 1 other person from outside your household. For example it would not be possible to form a double or Canadienne canoe, kayak or rowing boat with someone outside your household as it would not be possible to abide by the social distancing guidelines.

Outdoor gyms, playgrounds and outdoor swimming pools will remain closed due to the higher risk of close contact and touching surfaces.

This has to be taken to explain that the Regulations (both in Scotland and England) have to be read with the guidance published, which further explains the restrictions.

What happens if people access sports facilities during the lockdown in Scotland?

There are certain sports facilities, particularly outdoor sports facilities, that could be argued as falling out with the definitions provided by the Regulations in paragraphs 18 and 20 above.

However, this does not necessarily mean that SGBs with responsibility for these facilities should rush to re-open if they have been closed as the Scottish Government's guidance remains that "outdoor sports facilities (for example: pitches and tennis courts)" must remain closed.

Further, the Scottish Government's guidance stipulates that no water sports are advised as they "expose participants to danger and increase the potential risk of requiring emergency services support".

The Regulations also set down restrictions on movement where individuals must not leave the place where they are living unless a specific "defence" applies. While one of the applicable defences is to take exercise "either alone or with other members of their household", the Scottish Government's guidance lists types of exercise permitted as including walking, cycling (on road or low-risk paths), jogging and running.

Accordingly, any facilities offering other forms of exercise,

particularly high risk exercise, may fall foul of the Regulations and SGBs could be liable to pressure to close, albeit a fine is unlikely, it may remain a possibility if the authorities were minded to attempt to apply the Regulations to the applicable scenario.

Even if the SGB determined that their facilities were not covered by the Regulations, it is difficult to see how anyone could have a reasonable excuse to leave their home to either open such facilities or take advantage of those facilities.

Further, SGBs also run the risk of not being insured for any activities that take place on their premises during the current restrictions, if their insurance requires observance with the guidance published.

We will all be hopeful that life will start returning to 'normal' at some point soon and the easing of restrictions in England will be watched closely in order to see if Scotland might follow suit in due course. While SGBs in Scotland may not be able to re-open, now is the time to start thinking about what social distancing and safety measures can be put in place in preparation for sports facilities being fully permitted to re-open at some point in the future. [More information on workplace restrictions can be found here.](#)

Get in touch

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