

TITLE: Guidance for Opening Motor Auctions During Covid-19 Restrictions

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1. Introduction

1.1 Aim

This guidance aims to reflect government guidelines as at 30 April 2020. It is intended to clarify, where possible, the current requirements and restrictions relating to selling, transportation and distribution of vehicles by NAMA members operating vehicle auctions.

It is provided by NAMA as general guidance only. **It is not specific legal advice and should not be relied on as such.** Some aspects of the government's recent regulation and guidance about COVID-19 are ambiguous (not least because of a lack of precedent) and as a result, may be open to interpretation by enforcement authorities.

Members must make their own assessment of their activities and the risks and responsibilities associated to them and, where appropriate, obtain their own legal or other specialist advice. Members should also note that competition law remains in force during the COVID-19 crisis. A summary of how this may affect members is set out at Section 7: Competition law compliance.

2. Opening auction premises

The law at [DATE GUIDANCE IS ISSUED] April 2020, states that auction houses should be closed for the time being. This means that auction premises should not be open for physical auctions and – importantly – must not allow customers onto the premises during the lockdown to view vehicles or participate in auction related activities.

All members will have concerns about staff safety. However, in many cases it will be necessary to have some staff on site and safety precautions must be observed.

Site security will be a common concern and will often require the presence of staff on site. In some cases, an auction site could also function as a location for other, non-restricted, business activities. In such circumstances, it may be necessary to have staff in attendance during the lockdown period in order to facilitate these activities.

The presence of staff at a site is not in itself prohibited **provided that** the relevant government advice is followed. This is summarised in Section 6: Suggested hygiene and social distancing measures. Members will need to be able explain why staff are required on site and be able to demonstrate the steps taken to ensure compliance with the relevant government guidance and regulations.

3. Online Auctions

While there is no current explicit guidance from the government relating to online auctions, there is nothing to prohibit on-line auction activity.

The reason given in the government guidance for the closure of certain business (including auction houses) is that these businesses involve prolonged close social contact, which increases the chances of spreading infection. Online auctions remove the need for close social contact. The government

guidance is that online retail is open, therefore, logically, this guidance can be applied to other online sales.

Storage and distribution facilities are specifically excluded from temporary closure where necessary to support remote sales.

In the absence of further specific regulation or government guidance, NAMA considers that online auctions should be able to operate in the same way as online retail, provided that the operation of such auctions follows the government guidance regarding the protection of staff and customers, including the delivery and collection vehicles.

In addition to general guidance on employees attending a workplace during the COVID-19 crisis, guidance has been issued by the Secretary of State for Business, Energy and Industrial Strategy - https://assets.publishing.service.gov.uk/government/uploads/system/uploads/attachment_data/file/878689/Letter_from_Secretary_of_State_Alok_Sharma_MP_to_the_Retail_Sector.pdf.

4. Delivery of vehicles

There is no legal restriction on members storing any sold vehicles until the current constraints are lifted.

In keeping with the government guidance about online sales, there is no restriction on the delivery of vehicles sold online provided that the delivery process follows the general government guidance about safety for workers and social distancing (see Section 6: Suggested hygiene and social distancing measures). It is anticipated that authorities will continue to investigate those people travelling on the roads (which include employees making deliveries). Members should consider providing employees with a letter of authority from the organisation explaining that travel is essential for the execution of their duties.

Guidance on vehicle movement published jointly by the BVRLA and the FLA is available <https://www.bvrla.co.uk/uploads/assets/6cbaf46b-ab21-46e2-ae76203a88cef4a6/a005f1fc-cf59-4f24-9c5a0dd6ba22e882/COVID-19-Vehicle-Movement-Guidance-v1-20200403.pdf#page=3>

5. Collection of Vehicles

The collection of vehicles purchased online presents enforcement risks. The regulations do not permit collection from premises and restrict the admittance of persons who are not employees or service providers to premises.

Notwithstanding the challenges around collection, auction sites retain large numbers of vehicles owned by third parties and it may be difficult to resist customers who insist on the collection of their own property and who refuse to accept storage or delivery options.

In terms of enforcement risk under the Regulations and based on the anecdotal experiences of members to date, NAMA anticipates the relevant enforcement bodies to take a pragmatic approach to collection activity. The approach adopted by the authorities is expected to be heavily influenced by the behaviour of the auction site and its customers. Factors may include the volume of activity and whether the auction site can demonstrate rigorous and responsible measures for hygiene, safety and social distancing in line with government policy.

Given that these challenges are not specifically recognised in the Regulations, auction sites may choose to adopt a more cautious approach on vehicle collections until definitive guidance is received from Government/Trading Standards. Specific advice can be sought from the local Trading Standards department.

Delivery and drop-off at an agreed or designated location (i.e. at non-auction locations) are not officially prevented, although this practice may present other legal issues depending on the circumstances. The regulations impose wide ranging restraints on the movement of individuals, permitting travel for limited purposes. A customer seeking to collect a vehicle would need to fall within the regulations for permitted travel.

6. Suggested hygiene and social distancing measures

These recommendations (based on government guidelines and far from exhaustive) apply where goods are being delivered or collected and where any necessary non-restricted services are being provided.

1. **Necessity.** All employees should only be working where it is necessary to do so (i.e. where they cannot fulfil their role from home, and this should be limited as far as possible. For example, limiting the number of employees engaged in a particular activity). No-one should attend a workplace if presenting with coronavirus symptoms or where they or a member of their household is self-isolating.
2. **Policy.** Businesses should establish clear policies in these areas, ensuring social distancing measures are implemented (e.g. 2 metres distance between all employees and the use of personal protection equipment where appropriate). Policies should be communicated to staff and, where appropriate, to customers ahead of any delivery or other service. These include, for example, informing a customer that their vehicle will be thoroughly cleaned before delivery; that they are expected to observe social distancing measures at the point of delivery, etc.,
3. **Continuous risk assessment.** Businesses have a duty to constantly assess the risks posed to employees and the public as a result of their operations. This requirement is even more crucial in the current climate and will assist companies in recognising when process is too complicated to provide safely.

As a minimum, businesses should be following the Government's guidance, including: <https://www.gov.uk/government/publications/guidance-to-employers-and-businesses-about-covid-19/guidance-for-employers-and-businesses-on-coronavirus-covid-19>. If they fail to do so, it will be difficult for them to discharge their general obligations under the Health and Safety at Work Act.

7. Competition law compliance

NAMA Members need to be aware that competition law continues to apply. The penalties for failing to comply with the law are severe.

This document offers some guidance in respect of the operation of online sales. Members may discuss the application of different rules and government guidelines, but any discussion must focus on the application of the rules and should not include the disclosure of commercially sensitive information. Members must not, for example:

- seek consensus on how online sales should be operated (as it is for each company to adopt its own position independently);
- ask rivals how they intend to manage online sales commercially; or
- volunteer information to rivals in terms of how it will manage online sales.

Members should continue to exercise caution at this time of crisis. It is important to reflect on the purpose of any exchange of information. If it is essential

- in protecting the physical safety of employees and consumers
- to access and understand the government rules and support and
- to contribute to the national effort in maintaining security of key supplies and services (vital to the welfare of consumers, including those in vulnerable groups) that depend on mobility

then it is more likely to be justifiable. However, this will not serve as a broad shield for non-essential exchanges. It is important to be vigilant and avoid sharing commercial insights. If in any doubt, seek advice.