

CORONAVIRUS (SCOTLAND) ACT 2020

EXPLANATORY NOTES

DETAIL ABOUT PROVISIONS

Schedule 5 – Alcohol licensing

Requirement to hold a hearing

186. Paragraph 1 of schedule 5 of the Act sets out modifications to the operation of provisions in section 133 of the Licensing (Scotland) Act 2005 (“the 2005 Act”) relating to requirements falling on Licensing Boards to hold hearings.
187. Paragraph 1 provides that section 133 has effect as if new subsections (3A) to (3D) were inserted into that section. These new subsections provide flexibility for the Licensing Board in respect of holding in-person hearings. New subsection (3A) enables the Licensing Board to determine that a hearing cannot be held in person, or at a meeting of the Licensing Board, because of reasons relating to coronavirus. Where such a determination is made, the Board must comply with new subsection (3C) before reaching a decision on the matter which would have been the subject of the hearing.
188. New subsection (3C) obliges the Licensing Board to give any person who would have been heard at the hearing the opportunity to be heard either by telephone, in written representations (including by electronic communication) or, where available, by video conference.
189. Subsection (3D) ensures that any procedural requirements made by regulations under the 2005 Act are classed as being adhered to notwithstanding a hearing in person has not taken place.

Premises licences

190. Paragraph 2 sets out modifications to the operation of provisions in the 2005 Act relating to premises licences.
191. Section 28 of the 2005 Act sets out the period of effect of premises licences. Paragraph 2(2)(b) of schedule 5 of the Act provides that section 28 of the 2005 Act has effect as if new subsection (5A) were inserted into that section. The effect of this is to put beyond doubt that a premises that ceases to sell alcohol for a temporary period as a result of the coronavirus outbreak is not to be classed as premises ceased to be used for the sale of alcohol by virtue of section 28(5)(b) of the 2005 Act. This means that a premises licence will not cease to have effect by virtue of a premises temporarily closing for a reason relating to coronavirus.
192. Section 34 of the 2005 Act enables applications for the transfer of a premise licence to be made by certain persons other than the licence holder. Such applications have to be made within 28 days of the occurrence of certain events mentioned in section 28(3) of the 2005 Act. Paragraph 2(3) of schedule 5 of the Act provides discretion for Licensing Boards to be able to accept applications for the transfer of premises licences after the 28 day deadline. This discretion, contained in new section 34(1A) of the 2005

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Act, is available where the Licensing Board considers it appropriate in respect of the coronavirus outbreak. Paragraph 2(2)(a) of schedule 5 of the Act makes a consequential change to section 28 of the 2005 Act to the effect that a premises licence continues to have effect when a late transfer application is accepted by the Licensing Board. By virtue of section 28(3) of the 2005 Act, the licence ceases to have effect if that application is ultimately refused.

193. Paragraph 2(4) makes necessary modifications arising from paragraph 1 of schedule 5 of the Act relating to review hearings provided for in section 39 of the 2005 Act. As a result of discretion being provided for Licensing Boards to decide not to hold a hearing in person, modifications are necessary to ensure that decisions made under review, which may now not have been made through a hearing in person, are valid for the purposes of the taking of steps mentioned in section 39(2). Before such steps are taken the Licensing Board must have complied with new section 133(3C) (see paragraph 1 of schedule 5 of the Act). These modifications are provided for in new section 39(3A).
194. Paragraph 2(5) modifies the operation of section 45 of the 2005 Act relating to provisional premises licences, providing that section 45 of the 2005 Act has effect as if new subsection (7A) were inserted into that section. The effect is that the existing discretion for a Licensing Board to extend a provisional premises licence for a period to be determined by the Board remains, but where a person is applying for an extension for the first time and it is for reasons related to the Coronavirus outbreak, then a 6 month extension must be granted. Further extensions can continue to be considered through the operation of section 45.
195. Paragraph 2(6) modifies the operation of section 54 of the 2005 Act relating to where a premises manager is no longer able to undertake their duties. Additional time (28 days instead of 7 days) is provided for the premises licence holder to notify the Licensing Board that any of the events in section 54(2) have occurred. Section 54(4)(b) is modified to the effect that instead of a premises licence variation application to substitute a new premises manager being required to be submitted to the Licensing Board within 6 weeks, a premises licence holder has up to 3 months from the date of the loss of the premises manager. The Licensing Board can extend this period of 3 months for a further period of time for a reason relating to the coronavirus outbreak.
196. Paragraph 2(7) modifies the operation of section 69 of the 2005 Act relating to notification periods to the Chief Constable of Police Scotland and Licensing Standards Officers in respect of extended hours applications. New section 69(2A) and (3A) provide for the Chief Constable and Licensing Standards Officers being required to advise the Licensing Board whether they can provide views within the 10 day period provided for in section 69. The Licensing Board can accept views after this date if they consider it reasonable to do so.
197. Paragraph 2(8) modifies the operation of paragraph 3 of schedule 3 of the 2005 Act relating to the requirement that any activity carried out on the premises is to be carried out in accordance with the operating plans for premises (which forms part of the premises licence). Paragraph 2(8) puts beyond doubt that if food is sold on the premises but the operating plan does not contain an express term to the effect that food may be taken away, or delivered, from the premises for consumption off the premises, a term to that effect is to be implied into the operating plan.

Personal licence holders

198. Paragraph 3 sets out a number of modifications to the operation of provisions in the 2005 Act relating to personal licence holders.
199. Section 77 of the 2005 Act makes provision relating to the period of effect of a personal licence. Section 78 of the 2005 Act makes provision relating to the renewal of a personal licence. Section 87 of the 2005 Act makes provision relating to a personal licence holder's duty to undertake training.

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200. Subparagraphs (2), (3) and (4) of paragraph 3 modify sections 77, 78 and 87 of the 2005 Act respectively.
201. A personal licence has effect for a period of 10 years from the date of issue (see section 77 of the 2005 Act). On application by the licence holder, a personal licence can be renewed for further 10 year periods. If a personal licence renewal application (made under section 78 of the 2005 Act) is not determined by a Licensing Board before the expiry date of the licence, the personal licence ceases to have effect. Paragraph 3(2) provides that where a personal licence renewal application is made and the Board has not determined the application before the expiry date, the licence will continue to have effect for a period of 6 months. This provides additional time for a Licensing Board to determine an application. This provides flexibility for Licensing Boards when capacity may be reduced due to the coronavirus outbreak, and is also necessary in light of the modifications made by paragraph 3(3) of schedule 5 of the Act.
202. Section 78 of the 2005 Act provides that a personal licence holder may make a personal licence renewal application during the period from 12 months prior to the expiry date up to three months prior to the expiry date. Paragraph 3(3) of schedule 5 of the Act has the effect that a personal licence renewal application may be made up to the day before the expiry date of the licence. That is provided the Licensing Board is satisfied that, for a reason relating to coronavirus, the licence holder was unable to make the application within the usual period allowed. This means a personal licence holder is no longer required to apply for renewal at least 3 months prior to the expiry date.
203. Paragraph 3(4) provides that if the Licensing Board is satisfied that the coronavirus outbreak means completion of necessary training cannot be done in line with the timescales in section 87 of the 2005 Act, the Licensing Board can extend the period up to a length of time of their choosing for completion of the necessary training and for the licence holder to provide evidence of having undertaken that training. The Licensing Board can, by virtue of new section 87(3B), extend the period more than once.

Licensing Boards etc.

204. Paragraph 4 modifies the operation of a number of provisions in the 2005 Act relating to Licensing Boards.
205. Paragraph 4(2) modifies section 9A of the 2005 Act to provide a new timescale for a Licensing Board to publish their annual functions report if they are unable (for a reason relating to coronavirus) to adhere to the timings provided in section 9A(1) of the 2005 Act. If a Board is unable to adhere to the timings in section 9A(1), a notice is required to be published to this effect along with an estimate as to when the annual functions report will be published. Paragraph 4(2) also provides that the functions report must be published not later than 9 months after the end of the financial year (meaning the year ending on 31 March). Similar modifications are made to section 9B of the 2005 Act by paragraph 4(3) of schedule 5 of the Act, relating to annual financial reports of Licensing Boards.
206. Section 135 of the 2005 Act allows a Licensing Board to relieve any applicant or other party to proceedings before the Board of certain procedural failings. This is where the failure is due to mistake, oversight or other excusable cause and the Board considers it appropriate in all the circumstances to relieve the failure. Section 135(3) defines what is meant by “procedural provision” for the purposes of that section. Section 135 is extended by paragraph 4(4) of schedule 5 of the Act to include procedural failings of Licensing Boards. This is only where the failure is due to an excusable cause and that excusable cause relates to coronavirus.
207. Schedule 1 of the 2005 Act makes further provision in relation to Licensing Boards. Paragraph 4(5) of schedule 5 of the Act provides that schedule 1 of the 2005 Act has effect as if various modifications were made.

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208. New paragraph 10(1A) of schedule 1 provides that a Licensing Board may decide to delegate decision-making over any matter listed in paragraph 10(2) to a Committee of the Board consisting of no less than 3 members. Such a delegation can take place only if a Licensing Board considers it necessary for a reason relating to coronavirus.
209. New paragraphs 11(2A) to (2C) of schedule 1 provide for an increased length of time for new members of Licensing Boards to have undertaken necessary training where an extension to comply with training requirements is necessary as a result of the coronavirus outbreak. Consequential changes are made to the Licensing (Training) (Scotland) Regulations 2007 (S.S.I. 2007/95) by paragraph 4(7) and (8) of schedule 5 of the Act.
210. Where the period to undergo training and provide evidence of such has been extended, the disqualification from taking part in proceedings of the Licensing Board (in paragraph 10(3) of schedule 1) is removed. However, that is subject to new paragraph 11(3A)(b) which provides that the member must not take part in proceedings of the Licensing Board until the clerk of the Board has briefed the member about the role of a member of the Board, about decision-making by public authorities and about the different licences governed by the 2005 Act.
211. Paragraph 12(1) of schedule 1 is modified so the quorum for a meeting of a Licensing Board is one-third of members rather than one-half. The proviso that the quorum is, in any case, not fewer than 3 members is maintained.
212. Paragraph 12(2) of schedule 1 is modified so that the Licensing Board does not have to meet in public if it cannot do so as a result of the coronavirus outbreak. A similar modification is made to paragraph 5(3) of schedule 2 relating to meetings of Local Licensing Forums.

Modifications of duties of Licensing Standards Officers

213. Paragraph 5 sets out a number of modifications to the operation of provisions in the 2005 Act relating to Licensing Standards Officers.
214. Section 16 of the 2005 Act makes provision relating to the training of Licensing Standards Officers. Sections 57 and 73A of the 2005 Act make provision relating to notification of licensing applications to, amongst other persons, Licensing Standards Officers.
215. Subparagraphs (2), (3) and (4) of paragraph 5 of schedule 5 of the Act modify sections 16, 57 and 73A of the 2005 Act respectively. These modifications provide for different timescales for completion of training and other procedures provided for in those sections. The different timescales will provide additional flexibility during the coronavirus outbreak.

Notification by the chief constable

216. Paragraph 6 modifies the operation of a number of provisions in the 2005 Act relating to the Chief Constable of Police Scotland being required to respond within 21 days to a notice from a Licensing Board. The purposes of the response is to provide information to Licensing Boards in respect of various licensing matters.
217. The provisions which are modified are: sections 21 (notification of premises licence application), 24 (applicant's duty to notify of convictions), 24A (Licensing Board's power to request antisocial behaviour report), 33 (notification of premises licence transfer application), 44 (notification of conviction), 73 (notification of personal licence application), 75 (applicant's duty to notify of convictions) and 83 (notification of conviction) of the 2005 Act.

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218. The effect of the modifications is that if the Chief Constable is unable to offer views within 21 days, the Licensing Board must be advised of this and given a timeframe for when the Chief Constable expects to be able to provide views.

Interpretation

219. Paragraph 7 has the effect of modifying section 147 (interpretation) of the 2005 Act as if there were inserted a definition of “coronavirus” into that Act.

Modification of the Licensing (Procedure) (Scotland) Regulations 2007

220. Paragraph 8 modifies the operation of the Licensing (Procedure) (Scotland) Regulations 2007 ([S.S.I. 2007/343](#)) (“the Procedure Regulations”).
221. Regulations 12 and 13 of the Procedure Regulations provide that hearings under various provisions of the 2005 Act must take place within a certain time period. Paragraph 8(2) and (3) provide that the Procedure Regulations have effect as if regulations 12A and 13A were inserted into those Regulations. New regulations 12A(1) and 13A(1) provide that if, for a reason relating to coronavirus, a Licensing Board is unable to hold a hearing within the period required by regulation 12 or 13 (as the case may be), the Board must hold the hearing as soon as reasonably practicable after the end of that period. New regulations 12A(2) and 13A(2) of the Procedure Regulations make consequential provision in light of the modifications to section 133 of the 2005 Act made by paragraph 1 of schedule 5 of the Act.
222. Regulation 15 of the Procedure Regulations requires the clerk of a Licensing Board to issue a statement of reasons for certain decisions of the Board within 14 days of receipt of a notice requesting those reasons. Where, for a reason relating to coronavirus, reasons cannot be issued within 14 days, the modification made by paragraph 8(4) of schedule 5 enables the clerk to notify the person who required the statement of reasons to be given that there will be a delay and to issue the statement of reasons as soon as reasonably practicable after the end of the 14 day period.
223. Regulation 20(2) to (4) of the Procedure Regulations require a Licensing Board to carry out certain duties related to updating of licences or issuing replacement licences or summaries of licences, within 14 days of certain events. Where, for a reason relating to coronavirus, a Licensing Board is unable to carry out those duties within 14 days, paragraph 8(5) provides that the Board is to respond as soon as reasonably practicable afterwards.