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**Changes to legislation:** Coronavirus (Scotland) Act 2020, SCHEDULE 5 is up to date with all changes known to be in force on or before 17 September 2021. There are changes that may be brought into force at a future date. Changes that have been made appear in the content and are referenced with annotations. (See end of Document for details) View outstanding changes

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## SCHEDULE 5

(introduced by section 6)

### ALCOHOL LICENSING

#### *Requirement to hold a hearing*

- 1 (1) The Licensing (Scotland) Act 2005 applies in accordance with the modification in this paragraph.
- (2) Section 133 (hearings) has effect as if after subsection (3) there were inserted—
- “(3A) Despite subsection (1), where a Licensing Board is required to, or may, hold a hearing under any provision of this Act, the Board may determine that the hearing cannot be held in person, or at a meeting of the Board, because of a reason relating to coronavirus.
- (3B) Where a Licensing Board determines under subsection (3A) that a hearing cannot be held in person, the Board must comply with subsection (3C) before reaching a decision on the matter which would have been the subject of the hearing.
- (3C) The Board must give any person who would have been given the opportunity to be heard at the hearing the opportunity to be heard instead by whichever of the following means the person prefers—
- (a) telephone,
- (b) written representations, including by means of an electronic communication (as defined in section 15(1) of the Electronic Communications Act 2000),
- (c) video conference, if the Board has video conference facilities.
- (3D) Where a Licensing Board gives a person an opportunity to be heard under subsection (3C) by telephone, written representations or video conference, and the holding of the hearing by that means would be inconsistent with a requirement imposed by regulations under this Act, the requirement of the regulations is to be construed as permitting the hearing by that means.”.

#### *Premises licences*

- 2 (1) The Licensing (Scotland) Act 2005 applies in accordance with the modifications in this paragraph.
- (2) Section 28 (period of effect of premises licence) has effect as if—
- (a) in subsection (2), after “section 34(1)”, there were inserted “ or if an application for the transfer of the licence is accepted by the Licensing Board under section 34(1A) ”,
- (b) after subsection (5) there were inserted—
- “(5A) For the avoidance of doubt, a licensed premises does not cease to be used for the sale of alcohol, for the purposes of subsection (5)(b), if the premises cease to be used for the sale of alcohol for a temporary period for a reason relating to coronavirus.”.
- (3) Section 34 (transfer on application of person other than licence holder) has effect as if after subsection (1) there were inserted—

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“(1A) If, for a reason relating to coronavirus, a person is unable to apply to the Licensing Board within the period set out in subsection (1), the Board may accept an application that is made after the end of that period.”.

(4) Section 39 (licensing board's powers on review) has effect as if after subsection (3) there were inserted—

“(3A) Where a Licensing Board determines under section 133(3A) that a review hearing cannot be held in person—

- (a) subsection (1) of this section is to have effect as if for “At a review hearing” there were substituted “ After having complied with section 133(3C) ”, and
- (b) subsection (2A) of this section is to have effect as if for “at a review hearing” there were substituted “ after having complied with section 133(3C) ”.”.

(5) Section 45 (provisional premises licence) has effect as if—

- (a) in subsection (7), at the beginning, there were inserted “Subject to subsection (7A),”,
- (b) after subsection (7) there were inserted—

“(7A) On the first application of the holder of a provisional premises licence made before the expiry of the provisional period, the Licensing Board which issued the licence must extend the provisional period by 6 months if the Board—

- (a) is satisfied as to the matter mentioned in subsection (8), and
- (b) is satisfied that the reason for the delay is a reason relating to coronavirus.”, and
- (c) in subsection (9), after “subsection (7)” there were inserted “ or (7A) ”.

(6) Section 54 (dismissal etc. of premises manager) has effect as if—

- (a) in subsection (3), for “7 days” there were substituted “ 28 days ”,
- (b) for subsection (4)(b) there were substituted—

“(b) either—

- (i) within the period of 3 months beginning with the day on which the event occurs, a premises licence variation application is made seeking a variation of the premises licence in respect of the premises so as to substitute another individual as the premises manager, or
- (ii) if, for a reason relating to coronavirus, such an application cannot be made within the period mentioned in sub-paragraph (i) but the Licensing Board extends that period on a request from the applicant, such an application is made within that extended period.”.

(7) Section 69 (notification of extended hours application) has effect as if—

- (a) after subsection (2) there were inserted—

“(2A) If the chief constable intends to object to an application but is, for a reason relating to coronavirus, unable to give notice of the objection

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to the Licensing Board within the period mentioned in subsection (2)

- (a) the chief constable must, within that period, make the Board aware of that situation, and
  - (b) if the chief constable gives notice of the objection after the end of that period, the Board may take the objection into account if the Board considers it reasonable to do so.”
- (b) after subsection (3) there were inserted—

“(3A) If a Licensing Standards Officer is, for a reason relating to coronavirus, unable to prepare and submit a report to the Licensing Board within the period mentioned in subsection (3)—

- (a) the Licensing Standards Officer must, within that period, make the Board aware of that situation, and
- (b) the Board may take into account a report that is submitted after the end of that period if the Board considers it reasonable to do so.”.

(8) Schedule 3 (premises licences: mandatory conditions) has effect as if in paragraph 3—

- (a) the existing text were sub-paragraph (1), and
- (b) after that sub-paragraph there were inserted—

“(2) If food is sold on the premises but the operating plan contained in the licence 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*

3 (1) The Licensing (Scotland) Act 2005 applies in accordance with the modifications in this paragraph.

(2) Section 77 (period of effect of personal licence) has effect as if—

- (a) after subsection (2) there were inserted—

“(2A) Subsection (2B) applies where a personal licence renewal application is made to a Licensing Board and the Board has not determined the application before the expiry date of the licence.

(2B) Despite subsection (1), the licence continues to have effect for a period of 6 months beginning on the expiry date of the licence.”, and

- (b) in subsection (4), for “subsection (2)” there were substituted “ subsections (2), (2A) and (2B) ”.

(3) Section 78 (renewal of personal licence) has effect as if for subsection (2) there were substituted—

“(2) The period referred to in subsection (1) is—

- (a) the period of 9 months beginning 12 months before the expiry date of the licence, or
- (b) if the Licensing Board is satisfied that, for a reason relating to coronavirus, the holder of the personal licence is unable to apply

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within the period mentioned in paragraph (a), the period which begins 12 months before the expiry date of the licence and ends on the day before the expiry date of the licence.”.

- (4) Section 87 (licence holder's duty to undertake training) has effect as if after subsection (3) there were inserted—

“(3A) For the purposes of subsection (3), a personal licence holder who fails to comply with subsection (1) for a reason relating to coronavirus is to be treated as having complied with subsection (1) if—

- (a) the Licensing Board which issued the licence extends the period within which the licence holder is to—
  - (i) comply with any training requirements mentioned in subsection (1), and
  - (ii) produce evidence of having so complied, and
- (b) the licence holder complies with such requirements and produces evidence of having so complied within that extended period.

(3B) For the purposes of subsection (3A), the Board may extend the period on more than one occasion if this is necessary for a reason relating to coronavirus.”.

*Licensing Boards etc.*

- 4 (1) The Licensing (Scotland) Act 2005 applies in accordance with the modifications in sub-paragraphs (2) to (6).

- (2) Section 9A (annual functions report) has effect as if after subsection (1) there were inserted—

“(1A) If, for a reason relating to coronavirus, a Licensing Board is unable to comply with subsection (1), the Board must—

- (a) not later than 3 months after the end of the financial year, publish on its website (or, if it does not have one, on the website of the council for the Board's area)—
  - (i) the fact that the Board is unable to comply with subsection (1) and the reason for that, and
  - (ii) the Board's estimate as to when it will publish the report, and
- (b) prepare and publish the report not later than 9 months after the end of the financial year.”.

- (3) Section 9B (annual financial report) has effect as if after subsection (1) there were inserted—

“(1A) If, for a reason relating to coronavirus, a Licensing Board is unable to comply with subsection (1), the Board must—

- (a) not later than 3 months after the end of the financial year, publish on its website (or, if it does not have one, on the website of the council for the Board's area)—
  - (i) the fact that the Board is unable to comply with subsection (1) and the reason for that, and
  - (ii) the Board's estimate as to when it will publish the report, and

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- (b) prepare and publish the report not later than 9 months after the end of the financial year.”.

- (4) Section 135 (power to relieve failure to comply with rules and other requirements) has effect as if for subsection (1) there were substituted—

“(1) A Licensing Board may relieve any failure by the Board or by any applicant or other party to proceedings before the Board to comply with any procedural provision if—

- (a) in the case of a failure by—
  - (i) the Board, the failure is due to an excusable cause and that excusable cause relates to coronavirus,
  - (ii) any applicant or other party to proceedings before the Board, the failure is due to mistake, oversight or other excusable cause, and
- (b) the Board considers it appropriate in all the circumstances to relieve the failure.”.

- (5) Schedule 1 (licensing boards) has effect as if—

- (a) in paragraph 10—

- (i) after sub-paragraph (1) there were inserted—

“(1A) If a Licensing Board considers it necessary for a reason relating to coronavirus, the Board may authorise (whether generally or specifically) any committee established by the Board, and consisting of no fewer than 3 members, to exercise on behalf of the Board any of the functions mentioned in sub-paragraph (2).”.

- (ii) after sub-paragraph (2) there were inserted—

“(2A) For the purposes of sub-paragraph (2)(g), “hearing” includes giving persons an opportunity to be heard in accordance with section 133(3C).”.

- (b) in paragraph 11—

- (i) after sub-paragraph (2) there were inserted—

“(2A) Sub-paragraph (2B) applies if, for a reason relating to coronavirus, a member of a Licensing Board cannot produce to the clerk of the Board evidence of having complied with the requirements mentioned in sub-paragraph (1) within the period mentioned in sub-paragraph (1).

(2B) The member must, no later than one month after the expiry of each 9 month period, produce to the clerk evidence that the member has, during the period, complied with the requirements mentioned in sub-paragraph (1).

(2C) In sub-paragraph (2B), “9 month period” means, in relation to a member of a Licensing Board—

- (a) the period of 9 months beginning on the day on which the member is elected, and

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- (b) if the member is re-elected, the period of 9 months beginning with the day on which the member is re-elected.”
- (ii) after sub-paragraph (3) there were inserted—
  - “(3A) Where sub-paragraph (2B) applies in relation to a member of a Licensing Board—
    - (a) sub-paragraph (3) does not apply to the member,
    - (b) the member must not take part in any proceedings of the Board until the clerk of the Board has briefed the member (in person or otherwise) about—
      - (i) the role of a member of the Board,
      - (ii) decision-making by public authorities, and
      - (iii) the different licences governed by this Act.”
  - (c) in paragraph 12(1), for “one half” there were substituted “one third”, and
  - (d) in paragraph 12(2), after “public” there were inserted “unless the Board determines that a meeting cannot be held in public for a reason relating to coronavirus”.
- (6) In schedule 2 (local licensing forums), paragraph 5(3) has effect as if after “public” there were inserted “unless the Forum determines that a meeting cannot be held in public for a reason relating to coronavirus”.
- (7) The Licensing (Training) (Scotland) Regulations 2007 (S.S.I. 2007/95) apply in accordance with the modification in sub-paragraph (8).
- (8) Regulation 3 (training of Licensing Board members) has effect as if after “3 months” there were inserted “(or, where paragraph 11(2B) of the schedule applies in relation to a member, within 9 months)”.

*Modifications of duties of Licensing Standards Officers*

- 5 (1) The Licensing (Scotland) Act 2005 applies in accordance with the modifications in this paragraph.
- (2) Section 16 (training of licensing standards officers) has effect as if—
  - (a) after subsection (1) there were inserted—
    - “(1A) Subsections (1B) and (1C) apply if a Licensing Standards Officer is, for a reason relating to coronavirus, unable to comply with a requirement prescribed by regulations under subsection (1) to undertake a course of training within a particular period.
    - (1B) The period within which the course is to be undertaken—
      - (a) may be extended, on one or more than one occasion, by the (or each) council which appointed the Officer, but
      - (b) must not be extended beyond the date that is 12 months after the date by which the course would have had to be undertaken were it not for this subsection.
    - (1C) If a council extends the period—

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- (a) during the period of the extension, the Officer is not to be treated by that council as failing to comply with subsection (1) on the basis of having failed to undertake a course within a particular period, but
    - (b) at the end of the period of the extension, the Officer is to be treated by that council as failing to comply with subsection (1) if the Officer has not undertaken the course.”, and
  - (b) in subsection (2), at the beginning, there were inserted “Subject to subsection (1C),”.
- (3) Section 57 (notification of application to chief constable and licensing standards officer) has effect as if after subsection (3) there were inserted—
  - “(3A) If a Licensing Standards Officer intends to prepare and submit a report but is, for a reason relating to coronavirus, unable to do so within the period mentioned in subsection (3)—
    - (a) the Officer must, within that period, make the Licensing Board aware of that situation, and
    - (b) if the Officer submits a report after the end of that period, the Board may take the report into account if the Board considers it reasonable to do so.”.
- (4) Section 73A (notification of application to licensing standards officer) has effect as if after subsection (2) there were inserted—
  - “(2A) If a Licensing Standards Officer intends to respond to a notice but is, for a reason relating to coronavirus, unable to do so within 21 days of receipt of the notice—
    - (a) the Officer must, within that period, make the Licensing Board aware of that situation, and
    - (b) if the Officer responds to the notice after the end of that period, the Board may take the response into account if the Board considers it reasonable to do so.”.

*Notifications by the chief constable*

- 6 (1) The Licensing (Scotland) Act 2005 applies in accordance with the modifications in this paragraph.
- (2) Section 21 (notification of application) has effect as if—
  - (a) in subsection (3), after “subsection (1)(d),” there were inserted “ or within such longer period as the chief constable considers reasonable in the circumstances because of a reason relating to coronavirus, ”,
  - (b) after subsection (3) there were inserted—
    - “(3A) Where the chief constable is not going to respond to a notice within the 21 day period referred to in subsection (3), the chief constable must inform the Licensing Board of—
      - (a) that fact, and
      - (b) the time period within which the chief constable expects to respond.”.

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- (3) Section 24 (applicant's duty to notify licensing board of convictions) has effect as if—
- (a) in subsection (6), after “subsection (5)(b),” there were inserted “ or within such longer period as the chief constable considers reasonable in the circumstances because of a reason relating to coronavirus, ”,
  - (b) after subsection (6) there were inserted—
    - “(6A) Where the chief constable is not going to respond to a notice within the 21 day period referred to in subsection (6), the chief constable must inform the Licensing Board of—
    - (a) that fact, and
    - (b) the time period within which the chief constable expects to respond.”.
- (4) Section 24A (power to request antisocial behaviour report) has effect as if—
- (a) in subsection (2), after “request” there were inserted “ or within such longer period as the chief constable considers reasonable in the circumstances because of a reason relating to coronavirus ”,
  - (b) after subsection (2) there were inserted—
    - “(2A) Where the chief constable is not going to give the report within the 21 day period referred to in subsection (2), the chief constable must inform the Licensing Board of—
    - (a) that fact, and
    - (b) the time period within which the chief constable expects to give the report.”.
- (5) Section 33 (transfer on application of licence holder) has effect as if—
- (a) in subsection (5), after “subsection (4),” there were inserted “ or within such longer period as the chief constable considers reasonable in the circumstances because of a reason relating to coronavirus, ”,
  - (b) after subsection (5) there were inserted—
    - “(5A) Where the chief constable is not going to respond to a notice within the 21 day period referred to in subsection (5), the chief constable must inform the Licensing Board of—
    - (a) that fact, and
    - (b) the time period within which the chief constable expects to respond.”.
- (6) Section 44 (procedure where licensing board receives notice of conviction) has effect as if—
- (a) in subsection (3), after “subsection (2),” there were inserted “ or within such longer period as the chief constable considers reasonable in the circumstances because of a reason relating to coronavirus, ”,
  - (b) after subsection (3) there were inserted—
    - “(3A) Where the chief constable is not going to respond to a notice within the 21 day period referred to in subsection (3), the chief constable must inform the Licensing Board of—
    - (a) that fact, and



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- (b) the time period within which the chief constable expects to respond.”.
- (7) Section 73 (notification of application to chief constable) has effect as if—
  - (a) in subsection (2), after “subsection (1),” there were inserted “ or within such longer period as the chief constable considers reasonable in the circumstances because of a reason relating to coronavirus, ”,
  - (b) after subsection (2) there were inserted—
    - “(2A) Where the chief constable is not going to respond to a notice within the 21 day period referred to in subsection (2), the chief constable must inform the Licensing Board of—
      - (a) that fact, and
      - (b) the time period within which the chief constable expects to respond.”.
- (8) Section 75 (applicant's duty to notify licensing board of convictions) has effect as if—
  - (a) in subsection (5), after “subsection (4)(b),” there were inserted “ or within such longer period as the chief constable considers reasonable in the circumstances because of a reason relating to coronavirus, ”,
  - (b) after subsection (5) there were inserted—
    - “(5A) Where the chief constable is not going to respond to a notice within the 21 day period referred to in subsection (5), the chief constable must inform the Licensing Board of—
      - (a) that fact, and
      - (b) the time period within which the chief constable expects to respond.”.
- (9) Section 83 (procedure where licensing board receives notice of conviction) has effect as if—
  - (a) in subsection (3), after “subsection (2),” there were inserted “ or within such longer period as the chief constable considers reasonable in the circumstances because of a reason relating to coronavirus, ”,
  - (b) after subsection (3) there were inserted—
    - “(3A) Where the chief constable is not going to respond to a notice within the 21 day period referred to in subsection (3), the chief constable must inform the Licensing Board of—
      - (a) that fact, and
      - (b) the time period within which the chief constable expects to respond.”.

#### *Interpretation*

- 7 (1) The Licensing (Scotland) Act 2005 applies in accordance with the modification in this paragraph.
- (2) Section 147 (interpretation) has effect as if after the definition of “community council” there were inserted—

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““coronavirus” has the meaning given by section 1 of the Coronavirus (Scotland) Act 2020.”.

*Modifications of the Licensing (Procedure) (Scotland) Regulations 2007*

- 8 (1) The Licensing (Procedure) (Scotland) Regulations 2007 (S.S.I. 2007/453) apply in accordance with the modifications in this paragraph.
- (2) The Regulations have effect as if after regulation 12 (timetable for hearings under sections 23(2) and 30(3)) there were inserted—

*“Timetable for hearings under sections 23(2) and 30(3): further provision*

12A(1) If, for a reason relating to coronavirus, a Board is unable to hold a hearing under section 23(2) or 30(3) within the period required by regulation 12, the Board must hold the hearing as soon as reasonably practicable after the end of that period.

(2) If a Board determines under section 133(3A) that a hearing cannot be held in person, the Board is to be treated as having held a hearing if the Board complies with section 133(3C).”.

- (3) The Regulations have effect as if after regulation 13 (timetable for other hearings) there were inserted—

*“Timetable for other hearings: further provision*

13A(1) If, for a reason relating to coronavirus, a Board is unable to hold a hearing under section 33(9), 38(1), 59(4), 70(2) or 83(7) within the period required by regulation 13, the Board must hold the hearing as soon as reasonably practicable after the end of that period.

(2) If a Board determines under section 133(3A) that a hearing cannot be held in person, the Board is to be treated as having held a hearing if the Board complies with section 133(3C).”.

- (4) Regulation 15 (statement of reasons) has effect as if after paragraph (3) there were inserted—

“(4) Where a clerk of the Board cannot issue a statement of reasons within the period required by paragraph (3) because of a reason relating to coronavirus, the clerk of the Board must—

- (a) notify the person who required the statement to be given that there will be a delay, and
- (b) issue the statement as soon as reasonably practicable after the end of that period.”.

- (5) Regulation 20 (issuing and updating licences) has effect as if after paragraph (4) there were inserted—

“(5) If, for a reason relating to coronavirus, a Board is unable to comply with paragraph (2), (3) or (4) within the period required, the Board must comply with the paragraph as soon as reasonably practicable afterwards.”.

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**Changes and effects yet to be applied to :**

- sch. 5 para. 4(5)(d) expires by [2021 asp 19 s. 2\(5\)](#)