

## **AFS Licensing Update - May 2020**

### **What legal changes have been made?**

The Coronavirus (Scotland) Act made a number of temporary but significant changes to the alcohol licensing regime. Its intent is to minimise the risk of people losing their current rights due to no fault of their own during the Coronavirus outbreak. The legislation enables boards to be 'relieved' of any procedural failings that occur due to the Coronavirus, and modifies requirements so that boards and forums do not have to meet in public. The measures will automatically expire after six months, but they may be extended for two further periods of six months, giving a maximum duration of 18 months. Further information about the Act can be viewed at:

<https://www.parliament.scot/parliamentarybusiness/Bills/114929.aspx>

### **How are boards conducting business?**

In some areas all planned board meetings have been postponed and new applications are not being accepted, or only certain types of applications are being considered e.g. occasional licences, personal licence renewals, or applications for existing businesses. In other areas, boards are continuing to meet remotely and are considering new applications, although application numbers appear to be very low. Some boards have also been required to review premises licences as the premises did not comply with lockdown rules. Many boards have updated their website to provide advice and guidance to licensees and explain the temporary local measures that have been put in place.

### **How is the trade operating?**

The Scottish Government has told businesses including cafes, pubs, and restaurants to close, along with nightclubs, theatres and cinemas. As a result, the majority of on-sales premises are closed. However, some on-sales have remained open in order to provide off-sales of alcohol and deliveries. It would appear that some traditional pub type premises that provided off-sales at the start of lockdown did not find this to be commercially viable, and have since closed (there are also reports in some areas that where premises had open kegs of beer they were giving this away for free to regular customers). The Coronavirus (Scotland) Act included a measure to ensure that premises licences will not cease to have effect because of closing due to coronavirus. There have also been some enquiries from the trade as to whether there will be any relaxation of the licensing fees.

Off-licences have been added to the UK Government's list of essential UK retailers allowed to stay open during the coronavirus pandemic. Off-sales premises have therefore remained open and some have applied for variations to add home delivery/click and collect facilities to their operating plans. In addition, some small breweries and shops have requested occasional licences in order to sell alcohol on-line. There have also been some reports of people buying alcohol in large quantities leading some stores to limit purchases, although this practice now seems to have stopped.

### **How have licensing stakeholders been impacted?**

Local Authority staff and LSOs are working from home with IT functionality, so are still providing a service although it seems there is generally limited demand. Some LSOs have been contacting all licensees to find out what services they are providing and are collating this information.

In many areas, public health and ADP staff with a licensing remit have been asked to prioritise Covid-19 related work, and have either been redeployed or asked to split activities between “usual” business and Covid-19 related work. This means there is significantly reduced capacity amongst health stakeholders to input to licensing processes.

Police Scotland has provided guidance for operational officers in relation to the status of off-licences in the current circumstances, and what that entails in terms of members of the public visiting these premises. There have been anecdotal reports that the police have issued fixed-penalty notices to people who had travelled to a shop solely to purchase alcohol, which could be an essential item for dependent drinkers, and so Police Scotland is reviewing the guidance to see if it could be improved. The police have also been providing LSOs with regular updates, and have been required to intervene in some instances where premises did not comply with lockdown rules.

Similarly to licensing boards, some forums are continuing to meet or process business remotely, and have maintained contact with boards and Clerks.

### **What are the rules regarding deliveries?**

The Licensing (Scotland) Act 2005 contains a number of provisions regarding deliveries, and it is an offence to deliver alcohol between midnight and 6am. In addition, the majority of boards have set out requirements regarding deliveries within their local licensing policies e.g. that delivery staff must be trained, and that challenge 25 checks must be conducted.

Some boards also indicate the types of premises which may be more suitable to offer home delivery e.g. they may generally only be permitted as part of a delivery of food, or takeaway premises may not be considered to be suitable for off-sales of alcohol. In some areas boards may have a policy whereby deliveries can take place by virtue of having an off sales provision, while others may require that this is specifically listed as an activity in the operating plan.

The Coronavirus (Scotland) Act modifies the parts of the Licensing (Scotland) Act 2005 relating to the requirement that any activity carried out on premises is to be carried out in accordance with their operating plans. If food is sold on the premises but the operating plan does not specifically state that food may be taken away/delivered then a term to that effect is to be implied into the operating plan. As such, some boards have indicated that they are supportive of licensed premises which wish to provide a food take away/delivery service, and that where the premises sell food and are licensed for both on and off-sales of alcohol, the delivery of alcohol with food will also be permitted.

### **Are there any current concerns and what might the longer term implications be?**

Overall there appears to be limited licensing activity across Scotland, and stakeholders are reporting that the vast majority of licensed premises have complied with lockdown measures and other requirements. However, the ongoing Coronavirus crisis has caused some concerns and raised some questions:

- There have been enquiries about how licensing laws apply to community hub type operations e.g. where people order items from various shops which are then delivered to one point of contact (to save people having to go round various shops). Members of the public organising this type of service have enquired about whether an alcohol licence is required, and have been advised that as they are not the point of sale and dispatch they do not require a licence.
- There have been some complaints about pubs remaining open and continuing to sell alcohol during lockdown. In many cases these have been found to be due to misunderstandings,

such as members of the public mistaking workers entering premises to switch off taps as customers, but some cases have required police intervention.

- Delivery during lockdown is causing some concern, particularly in relation to the potential lack of understanding of retailers on their responsibilities. There is also anecdotal evidence of volunteers delivering groceries which include alcohol such as crates of beer without instruction on the licensing board delivery conditions.
- The impact of the crisis on patterns of alcohol sales and consumption is unclear. Some have questioned whether harm will reduce due to on-sale closures and the relative cost of alcohol increasing as unemployment rises, or if it will increase due to increased drinking to 'cope' with social distancing and lockdown. The media has reported a marked increase in off-sales and home deliveries of alcohol. In addition, polling commissioned by AFS and Alcohol Change UK suggests that more than a million adults in Scotland have reduced how often they drink or stopped drinking altogether, while the same proportion are drinking more frequently. It is those people who were already drinking a lot before lockdown who reported drinking more. Further information can be viewed at: <https://www.alcohol-focus-scotland.org.uk/news/scots-report-changing-drinking-patterns-during-coronavirus-lockdown/>
- Understanding alcohol harm during this time is going to be problematic due to the usual data (e.g. hospital admissions) being skewed. Some stakeholders are concerned data will no longer be considered reliable by boards, and that this could cause significant issues for the foreseeable future. They also have concerns about the wider implications on national alcohol policy e.g. evaluating the impact of MUP. Several stakeholders have suggested that it would be beneficial to get a national consensus on what data should be collected (particularly from Police Scotland in relation to the COVID enforcement aspects as well as other indicators where alcohol has a contributory impact, domestic abuse / child protection etc.)
- There is significantly reduced capacity amongst licensing stakeholders, particularly health stakeholders, to input to licensing processes.
- The Coronavirus (Scotland) Act introduces a form of remote hearing. Some stakeholders have invited the Scottish Government to review these new procedures because they believe they are widely thought to be unworkable.
- Consideration will need to be given to public communications as the lockdown measures begin to be relaxed. It is unlikely that things will return to normal for some time and it will be important that the public understand how and why social distancing measures apply to licensed premises once they start reopening. Licensees will also require guidance about social distancing, and it is unclear how compliance will be ensured and measures enforced.
- The prospects do not look good for the on-trade, with some level of restrictions likely to remain in place for the foreseeable future, and a likelihood that people will be wary of attending any venue where social distancing is likely to be an issue. Local Licensed Trade Associations will be carrying out surveys to establish how well member businesses have fared so far, but it is clear that a significant number of businesses will not have survived despite the support packages that have been put together, and there are early reports that many have already "gone under". The cancellation of local festivals and events is also likely to have significant financial implications for some businesses.
- Some stakeholders have indicated that, depending on the number of businesses who have stopped trading and may never resume, boards may look to review the validity of their overprovision statements.
- As things do start to return to normal, there may be a surge in licensing activity in addition to any postponed business which will require to be dealt with. This could put a significant pressure on licensing boards and other stakeholders.