

CORONAVIRUS (SCOTLAND) ACT 2020

EXPLANATORY NOTES

DETAIL ABOUT PROVISIONS

Schedule 5 – Alcohol licensing

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 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

*These notes relate to the Coronavirus (Scotland) Act
2020 (asp 7) which received Royal Assent on 6 April 2020*

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.