



FIFE LICENSED TRADE ASSOCIATION

May 7 2020



**More updates.**

A shorter edition today to cover one or two issues that slipped through the net. I know the question of what to do with broached casks and kegs has been asked and the answer should make a bit of a welcome difference to hard-pressed licensees.

Stay safe!



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# Coronavirus (Scotland) Act 2020

This Act received Royal Assent on 6th April and came into force on the following day. It is a wide ranging act dealing with a number of issues arising from the Covid-19 situation and some of its provisions are of specific relevance to the hospitality sector. It is valid until 30 September 2020 although Scottish ministers can seek to extend it for two further periods of six months.

Section 3 deals with Protection From Debtors and provides for a temporary extension of certain moratoriums on diligence provided for in Part 15 of the Bankruptcy (Scotland) Act 2016, typically from 6 weeks to 6 months providing relief for people/businesses experiencing problems meeting debt payments. This also affects eviction notice periods.

Section 6 introduces a number of measures affecting alcohol licensing. The intent of the legislation is to minimise the risk of any person or business losing their current rights due to no fault of their own during the coronavirus outbreak. A summary of the changes in relation to licensing are below:

## Changes for licensing boards

- Provides for licensing boards to conduct hearings electronically).
- Provides a new timescale (9 months after the end of the financial year) for boards to publish their annual functions reports. Similar changes apply to their annual financial reports.
- Enables boards to be 'relieved' of any procedural failings that occur due to an excusable cause relating to coronavirus.
- Enables boards to delegate decision-making over a number of matters to a Committee of the Board consisting of no less than 3 members.
- Provides for an increased length of time for new members of boards to have undertaken necessary training where this is necessary as a result of the coronavirus outbreak (and the disqualification from taking part in proceedings of board is removed but the clerk is required to brief the member about their role, about decision-making by public authorities, and about the 2005 Act.).
- Modifies requirements so the quorum for a meeting of a board is one-third of members rather than one-half.
- Modifies requirements so boards do not have to meet in public if they cannot do so as a result of the coronavirus outbreak. A similar modification is relating to meetings of licensing forums.

## Changes for premises licences

- A premises licence will not cease to have effect because of a premises temporarily closing for a reason relating to coronavirus.
- Enables applications for the transfer of a premise licence to be made by persons other than the licence holder in certain circumstances (e.g. the death or incapacity of the licence holder), and enables boards to accept applications for this after the usual 28 day deadline.
- The existing discretion for boards to extend a provisional premises licence 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.
- 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 board why (e.g. resignation, death, incapacity of premises manager). A premises licence holder has up to 3 months (instead of 6 weeks) from the date of the loss of the premises manager to submit a premises licence variation to substitute a new premises manager.
- The Police and Licensing Standards Officers have longer to provide views on extended hours applications – boards can accept views after the current 10 day period if they consider it reasonable to do so.
- Modifies the parts of the 2005 Act relating to the requirement that any activity carried out on premises is to be carried out in accordance with their operating plans (which form part of a premises licence). If food is sold on the premises but the operating plan does not specifically state that food may be taken away, or delivered, from the premises then a term to that effect is to be implied into the operating plan.

## Changes for personal licence holders

- 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 (currently, if a personal licence renewal application is not determined by a board before the expiry date of the licence, the licence ceases to have effect).
- A personal licence renewal application may be made up to the day before the expiry date of the licence (this means a personal licence holder is no longer required to apply for renewal at least 3 months prior to the expiry date.). That is provided the Licensing Board is satisfied that it is for a reason relating to coronavirus.
- If the board is satisfied that the coronavirus outbreak means completion of necessary training cannot be done within required timescales, the board can extend the period up to a length of time of their choosing.

## Changes for Licensing Standards Officers

- If an LSO is, for a reason relating to coronavirus, unable to comply with current training requirement then the period within which a course is to be undertaken may be extended by the council which appointed the Officer (however, this must not be extended beyond 12 months after the date by which the course would have had to be undertaken).

# Ullage or unmerchantable stock

The Coronavirus crisis has served to throw a spotlight on the more obscure aspects of running a licensed premises, unfortunately for some businesses too late in the day.

One issue that quickly raised its head once the lockdown had come into force was what to do about draft beer stocks. The breweries, notably Belhaven/Greene King and Tennants, were quick to reassure Covid-19-hit licensees that unbroached draft stock would be replaced with fresh stock, which removed one headache, but left another regarding broached and partially used draft stock.

The usual treatment of “ullage” or “unmerchantable” stock for accounting and tax purposes seems to vary from business to business and accountant to accountant. The content of drip trays and the beer disposed of during line cleaning along with spillages has a value and if not already doing so licensees are encouraged to maintain a simple ullage register detailing the date, product, amount and cause. This record is then available for any future tax or VAT audits to justify claims.

The Coronavirus crisis has amplified the importance of ullage-accounting as very few licensed premises will have been able to completely run down draft stocks prior to lockdown and the likelihood is that most premises will have a number of broached kegs in their cellars.

Help is at hand however. Arrangements have been made between HMRC and the brewers making it easier for the brewers to claim back duty on unsaleable stocks. The first step is for the licensee to contact his/her draft supplier.

This is absolutely vital. The brewer will be able to confirm the arrangements for assessing the amount of unmerchantable stock. Once this is agreed between the brewer and the licensee the brewer can then make the claim for a duty refund which it can then pass back to the licensee in the form of a credit or fresh stock.

The British Beer & Pub Association has advised that “...it is critical that any pub that wishes to destroy “unmerchantable” beer due to Covid-19 closures gets written agreement from the brewer or ensure that their supplier has received written agreement. If all the appropriate steps are taken to sufficiently record the destruction and provide an audit trail for HMRC, the brewer may either credit a pub with the value of the excise duty of any destroyed beer or replace the goods with fresh stock when available and safe to deliver. The brewer must provide their customer with evidence of this credit or agreement. Failure to record properly means a brewer will not be able to claim back the excise, and therefore will not be able to pass on credit/replace stock. It is vital that no destruction is carried out until all the necessary steps are understood, agreed to, and able to be carried out fully in accordance with HMRC requirements.” <https://www.beerandpub.com>

Usually the destruction of unmerchantable stocks has to be supervised by the brewery, however such is the scale of the problem that this is clearly impracticable and HMRC have waived this requirement in order to expedite the refund of excise on affected stocks.

## Temporary suspension of planning requirements

One of the provisions of the Coronavirus (Scotland) Act was to relax planning requirements for the delivery of food by hospitality outlets or for them to offer takeaways, even if such services are not in their operating plans.

June Barrie, the Legal Services Manager for Fife Council has noted that “the Scottish Coronavirus Act only modified operating plans in relation to allowing deliveries of food from premises. It does not mention deliveries of alcohol. The [Licensing] Team had quite a few enquiries from premises following their closure in March about whether they could deliver alcohol with food. The approach which the Fife Licensing Board has taken is that for the duration of the restrictions on premises opening, if the premises have off sales on the licence, then the delivery of alcohol can be done. The licenceholder is reminded that they have to comply with the requirements in the 2005 Act regarding keeping records of deliveries and preventing underage sales.

*This approach is consistent with advice that the Chief Planner at the Scottish Government sent to planning authorities that planning enforcement action should not be taken against premises who operate a takeaway or food delivery system, which ordinarily would require planning permission.”*

So any hospitality business looking to allow takeaways or deliveries of alcohol as well as food, the normal restrictions still apply, namely Challenge 25; full hard-copy record keeping both on-site and in the delivery vehicle prior to dispatch including a refusal register; no deliveries between the hours of midnight and 6am and all payments must be processed during licensed hours (10.00am to 10.00pm). To be clear: to allow for alcohol takeaways or deliveries a licensed premises must have off-sales included in its operating plan. Finally, note that it is an offence to deliver alcohol to an address other than is on the order form; the licensee is responsible for the actions of any third party carrying out deliveries; and be aware of the need to comply with any self-isolating arrangements the customer has in place.

# Business support summary

What	Where	How	When	How much
Local authority grant for businesses with an RV < £18k	Fife Council	Apply to Fife Council at <a href="http://www.fife.gov.uk/reductions">www.fife.gov.uk/reductions</a>	Approximately 5 days	£10,000
Local authority grant for businesses with an RV between £18k & £51k	Fife Council	Apply to Fife Council at <a href="http://www.fife.gov.uk/reductions">www.fife.gov.uk/reductions</a>	Approximately 5 days	£25,000
Business rates 100% 12 months relief	Fife Council	Automatically applied by Fife Council	Revised rates bills will be issued	Varies case by case
Business rates relief of 1.6% canceling the poundage increase for 2020/2021	Fife Council	Automatically applied by Fife Council	Revised rates bills will be issued	Varies case by case
Self Employment Income Support Scheme	HMRC	HMRC will make contact and invite applications which can only be accessed via <a href="http://www.gov.uk">www.gov.uk</a>	HMRC will make contact by mid-May and payments will be made by early June	Direct cash grant of up to 80% of profits up to £2.5k per month for 3 months initially
Covid-19 Job Retention Scheme	HMRC	Contact <a href="https://www.gov.uk/guidance/claim-for-wages-through-the-coronavirus-job-retention-scheme">https://www.gov.uk/guidance/claim-for-wages-through-the-coronavirus-job-retention-scheme</a>	The Scheme is now open for applications.	Direct cash grant of 80% of wages up to £2.5k per month
Coronavirus Business Interruption Loan Scheme	British Business Bank and its panel of lenders	Apply to one of the accredited lenders on the list at <a href="http://www.british-business-bank.co.uk">www.british-business-bank.co.uk</a>	The Scheme is now open for applications.	Loans of up to £5.0m interest-free for first 12 months
HMRC Time To Pay Scheme	HMRC	HMRC	Scheme is available now.	Varies case by case
Statutory Sick Pay Scheme for businesses to recover SSP.	HMRC	Contact HMRC to make a claim.	Scheme is available now with effect from 13 March.	Varies case by case
VAT & Income Tax Deferment Scheme	HMRC	Contact HMRC to make a claim.	Scheme is available now.	Varies case by case
Belhaven Brewery old-for-new swap arrangement for unopened kegs	Belhaven Brewery	Contact your Belhaven representative or phone 0345 600 1799 0345 850 4545	Scheme is available now	Varies case by case
Tennants old-for-new swap arrangement for unopened kegs	Tennants Caledonian	Contact your Tennants representative or <a href="mailto:contactus@tennents.com">contactus@tennents.com</a> Tel 0141 202 7290	Scheme is available now	Varies case by case

# Business support summary

What	Where	How	When	How much
PRS/PPL Licences suspension of fee payments, deferred payments, suspension of surcharges	PRS/PPL	Should be automatic but contact <a href="http://www.pplprs.co.uk">www.pplprs.co.uk</a>	Available now	Varies case by case
Coronavirus Large Business Interruption Loan Scheme for businesses with T/O £45.0m - £500.0m	British Business Bank and its panel of lenders	Apply to one of the accredited lenders on the list at <a href="http://www.british-business-bank.co.uk">www.british-business-bank.co.uk</a>	T.B.A.	Loans of up to £25.0m guaranteed to 80% but at commercial rates of interest
Recovery of Beer Duty and VAT on unsold draft beers	HMRC/Brewers	Declare draft beers unsold due to lockdown as "Ullage". Contact your supplier in the first instance.	As soon as possible	Varies case by case
The Drinks Trust Covid-19 Relief Fund for unemployed bar staff	The Ben	Apply to <a href="http://www.bensoc.org.uk/apply-for-help/application">www.bensoc.org.uk/apply-for-help/application</a>	Available now	£250 one-off grant
Sky Sports suspension of subscription fees	Sky Sports	Should be automatic. If you have not heard from Sky contact <a href="http://www.skyforbusiness.sky.com">www.skyforbusiness.sky.com</a>	Available now	Varies case by case
BT Sport suspension of subscription fees	BT Sport	Should be automatic. If you have not heard from BT contact <a href="http://www.btsportbusiness.com">www.btsportbusiness.com</a>	Available now	Varies case by case
Newly Self Employed Hardship Fund	Fife Council	Apply to Fife Council - there is a direct link on the <a href="http://businessgatewayfife.com">businessgatewayfife.com</a> website which provides more details.	Available now	One off grant of £2,000
Business Support Grants-amendment so that a business's additional properties can apply for a grant.	Fife Council	Apply to Fife Council at <a href="http://www.fife.gov.uk/">www.fife.gov.uk/</a> reductions	Available from 5 May	Depending upon eligibility 75% of the original grant can be applied for subsequent properties.

**NOTE:** All the HMRC administered schemes can only be accessed via GOV.UK. Be aware that any approaches that offer you one of these packages by telephone or by means of another site are more than likely to be a scam.

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**Condies** provide a helpline for tax and accounting matters. Condies are based in Dunfermline and Edinburgh and provide a wide range of proactive business advice in addition to traditional accountancy services. They are long standing friends of Fife LTA.

**Lindores Abbey Distillery** is the latest addition to Scotland's distilling estate and is built on the site of the historic Lindores Abbey, which also happens to be the location for the first written record of whisky production.