



Licensed Trade Bulletin No. 2

10th June 2020

Cheltenham Borough Council Licensing Team are producing a series of 'trade bulletins' to advise licence holders under the Licensing Act 2003 of their responsibilities, as local businesses deal with the impact of the COVID-19 virus.

We will update all online versions of the bulletins as the lockdown measures change from time to time, as far as practicable.

In this second bulletin we look at alcohol sales, specifically businesses that do not have off-sales for alcohol on their licence and how they might legally add that activity.

Alcohol Takeaway and Deliveries (Off-Sales)

Due to the impacts of COVID-19 on your business, you may be considering different ways of operating. One way that you may consider is providing alcohol for sale for consumption off the premises, through takeaway and/or delivery. These sales are known as **off-sales**.

Even if you already are licensed for off-sales, you are advised to read this bulletin in full, as we detail some best practice and considerations to help you promote the licensing objectives. Off-sales can generate numerous problems for the local area if not properly managed, and we hope to avoid or mitigate that.

The Council has a [Public Spaces Protection Order](#) (PSPO) in force that authorises the police and authorised council officers to seize alcohol to prevent public nuisance or disorder. As a licensed business, you have an important role to play in not selling alcohol in circumstances likely to lead to problems, and to manage the sale of alcohol professionally.

What permissions do I currently have?

A licence is required to sell alcohol, provide late-night refreshment, or provide regulated entertainment under the Licensing Act 2003.

On your premises licence you can check whether you have the licensable activity of the 'sale of alcohol' and whether your customers are allowed to consume the alcohol 'on' or 'off' the premises (or 'both').

If you are already licensed for off-sales, your licence and conditions will detail any restrictions on how you carry out that activity, such as the dates and times permitted.

If you are unsure whether you can sell alcohol or whether you have conditions that might restrict the activity you should contact the Licensing Team at licensing@cheltenham.gov.uk to check.

How do I vary my licence to include off-sales?

You can apply online to vary your licence – you will need to make either a minor variation or a full variation application.

Minor variation

Off-sales can only be added to a premises licence through a minor variation if on-sales are already licensed (but only for those times and not outside of the hours of 7 am to 11 pm). If you currently have on-sales but do not have permission for off-sales, you can [apply for a minor variation of your premises licence](#).

For minor variations, the consultation period is 10 working days, you must place a site notice at your premises (template available [here](#)), and the fee is £89. This can offer a simplified route to make certain changes to a premises licence, but cannot be used to undermine the promotion of the licensing objectives.

We have no legal power to add or modify conditions to a minor variation once the application has been submitted, however you can add them as part of your application. We advise that you review Annex 1 of this document prior to submitting your application.

When we receive a minor variation application for off-sales we will consult with the Police and the Council's Environmental Health Team. They will consider the potential for negative impacts on the promotion of the licensing objectives. If they feel an application could cause such negative effects, then they are likely to object.

Where the Police or Environmental Health object to a minor variation, the Licensing Team are likely to refuse that application. This is because we can only grant or refuse a minor variation, as we have no legal power to add/ modify conditions once the application has been duly made to us.

We hope to help you understand the potential risks of providing this activity but this guidance can help you mitigate potential problems. Where a licence holder considers the advice contained herein and demonstrates their commitment to manage this activity responsibly, the application is less likely to be subject to objections.

This means if you do make an application, you will be expected to have considered this guidance and reflect any measures that you will put in place in your application.

If a minor variation is refused or your planned changes are likely to affect the licensing objectives you should make a 'full' variation application.

Full variation

A 'full' variation is required to increase the time on any day during which alcohol may be sold, to allow alcohol sales between 11 pm and 7 am and to add alcohol sales as a new licensable activity (amongst other variations). You can apply online [here](#).

The [fee](#) will be similar to that of a new application and you will need to advertise the giving of the application through a public notice in the local press. The consultation period is 28 calendar days and your application will go to a sub – committee of the Licensing Committee if there are objections.

What should I consider before making an application to vary my licence to include off-sales?

If you do not currently have off-sales, we advise that you review the information below prior to making an application.

You may also wish to contact the Police Licensing Officer for Cheltenham on telephone number 101 before submitting any licence variation.

The test for whether a proposed variation is 'minor' is whether it could impact adversely on any of the four licensing objectives:

- prevention of crime and disorder
- prevention of public nuisance
- public safety
- protection of children from harm

Some of the issues that you need to consider are:-

- Have you revised any risk assessments (i.e. health and safety at work and fire safety) in light of the changes you are making to how you deliver your services?
- Have you implemented social distancing measures to ensure your staff and customers are safe?
- Have you considered the potential for underage drinking, drunkenness on or near to your premises, the taking of illegal drugs and violent/ anti-social behaviour in association with your plans? e.g. do you follow Challenge 25?
- Have you considered how you will serve drinks safely (will you sell bottles/ cans or decant drinks) and how you will manage litter from your customers?
- What will you do to ensure that your customers do not cause nuisance to your neighbours (and a risk to public health) by congregating near to your premises?
- Do you need door supervisors to ensure that you can manage the activity adequately and professionally?
- How will you ensure that your staff do not serve persons under 18 years of age?
- Does your staff training properly reflect your modified operation? The Council does provide training, namely the Level 2 Award for Personal Licence Holders – the APLH - please find more information [here](#).
- Do you work with other businesses to promote the licensing objectives and your business? e.g. radio/ pub watch or Night/ Day Safe.
- Does your CCTV system reflect your new way of working and remain [legally compliant](#)?
- If you are using a 3rd party to deliver alcohol on your behalf are you clear on who has responsibilities in respect of ensuring you do not serve someone alcohol if they are under 18 years of age?
- Are you aware of current guidance from government regarding the COVID – 19 health emergency and are you taking steps to ensure you stay up to date with any changes? Have you thought through the implications for your business specifically?

e.g. on managing queues for customers and providing adequate separation between customers

- Are you doing enough to protect yourself, your staff and customers under current circumstances?

To help you work through these considerations and produce an application that reflects your management of the business, we have produced an aide memoire that you can complete and attach to your application. This is attached as ANNEX 1 and you are free to use it for your application.

You are under no obligation to use this document, but you will be expected to demonstrate clearly and comprehensively in your application how your operation could not undermine the promotion of the licensing objectives. If you do not do so, your minor variation application is likely to be refused and you will then need to make a full variation to attempt to vary the licence.

I have made a minor variation application - what happens next?

If there are no objections, your minor variation will be granted and your new premises licence will be issued.

The minor variation will take a minimum of 10 working days to process and so you may wish to apply for Temporary Event Notices (TENs) or late TENs to allow off-sales in the interim period. However, you must give us at least 10 clear working days' notice for a standard TEN or at least 5 clear working days' notice for a late TEN. You can find further information [here](#) and apply online half way down that webpage under 'Make an application'.

To conclude

If you do not have off-sales on your licence, you cannot sell alcohol for consumption off the premises. You can apply for TENs to carry out this activity on a short-term basis but you must serve them on us with the minimum notice periods.

You can apply for a minor variation to add off-sales to your premises licence, if you already have on-sales. You are strongly advised to follow the guidance laid out herein and reflect how you will manage the activity through the minor variation. If the application is subject to objections we may refuse it. You would then need to apply for a full variation.

Contact information

Gloucestershire Constabulary

Call 101 and ask to speak with the Licensing Officer for Tewkesbury, Cheltenham and the Forest of Dean

Cheltenham Borough Council

- Licensing Team - licensing@cheltenham.gov.uk
- Main switchboard – 01242 262626

ANNEX 1

Aide Memoire for Premises Licence Holders – Minor Variations for Off-Sales

In making a minor variation you should consider the following guidance. You do not have to use this document, however if you do not address the concerns that might arise from you making off-sales, your application could be refused. We have provided a clear steer on where we believe issues may arise both through the guidance we issue for licensed premises and through the conditions we suggest below.

We are taking this approach to provide a fair and balanced approach that does the following:

Manages the expectations of licence holders wishing to amend their operation in light of the COVID-19 health emergency,

Provides clear and detailed guidance on how to promote the licensing objectives and mitigate any potential adverse impact of their business on the local area, and

Supports businesses that might need to offer such a service, particularly where they may not fully appreciate the potential risks of doing so.

Conditions

Additions to the operating schedule can be put forward as part of your minor variation application. You are asked to select from the recommended wordings below – to confirm commitments that you believe are appropriate to promote the licensing objectives and are likely to mitigate any potential harms your application may otherwise lead to. Please highlight existing conditions on your current licence that will be removed/ amended/ replaced through your application.

If your application is granted, these commitments will become licence conditions.

Please use the tick boxes to confirm the steps you will take to promote the licensing objectives and submit this document with your application. Alternatively, you can copy and paste your chosen conditions into your online application form where you describe the variation when you apply.

The premises licence holder shall ensure that Challenge 25 is followed at all times in respect of any sale of alcohol. Where any person attempts to purchase alcohol and it appears that they may be under 25 years of age, as demonstrated by their appearance and/ or behaviour, photographic identification that proves that they are over 18 years of age will be required to complete the sale. (This age verification check shall also be carried out on any person accepting a delivery that includes alcohol). Passports, UK/ EU driving licences/ PASS cards shall be the only original documents accepted for this purpose.

The premises licence holder shall ensure that where alcohol is delivered to a customer, Challenge 25 must be followed in respect of the person receiving the order.

The premises licence holder shall keep and maintain a refusals register to record all occasions when a sale is not completed due to a customer failing to provide sufficient evidence that they are over 18 years of age (this includes any sale refused on delivery and where a person is considered as drunk or shows sign of being under the influence of drugs).

The premises licence holder shall ensure that all bottles and cans taken away for immediate consumption are decanted into suitable plastic containers with closable lids (with the exception of bottles of wine where appropriate).

The premises licence holder shall ensure that notices are displayed at the premises advising customers of the Public Spaces Protection Order in force in Cheltenham and that the Police may seize alcohol to prevent disorder and nuisance.

The premises licence holder shall ensure that notices are displayed at the premises advising customers not to congregate on (unless on-sales are permitted) or adjacent to the premises.

The premises licence holder shall ensure that notices are displayed at the premises advising customers to respect the neighbours of the business and not cause noise or disturbance.

The premises licence holder shall ensure that a litter management plan is in place, and followed at all times the premises offers takeaway off-sales.

And/ or

At all times that take away drinks are available, the premises licence holder shall ensure that litter from his/ her customers is not left in the immediate vicinity of the premises by carrying out regular checks of the area, and disposing of it properly.

The premises licence holder shall manage any queues of customers to ensure compliance with any legislation and guidance on social distancing measures. This shall be done in way that allows reasonable access to the public highway adjacent to the business and without adversely affecting queuing arrangements for other businesses in the vicinity.

The premises holder shall manage all customers in a queue for service to ensure that any licensable activity is completed by the terminal hour permitted.

Licensed door staff shall be provided on the following days and at the following times:-

Insert days and times

The council will expect all applicants to understand the importance of managing their operations responsibly and professionally. The Council's [Statement of Licensing Policy](#) includes helpful information and guidance: at pages 11 to 16 there is information on the considerations for business carrying out licensable activity, at page 27 the suggested cores hours for off sales are shown, page 31 highlights some specific issues for making off sales and Appendix C shows the pool of model conditions that you should consider before completing your application.

Further information

Finally, you are advised to look beyond the conditions that should be attached to your licence and consider how best to promote public protection in its widest sense and best practice. You could copy and paste the information overleaf, and any comments, into your application in the same section that you describe the variation - with the title 'Other Commitments/ Actions'.

Therefore, you are advised to consider the following issues and take steps to ensure you are complying with best practice and other legislation:-

I will ensure that I am aware of any capacity restrictions for my premises in relation to COVID-19 and that I follow them. In particular, I shall consider how I will manage the business in adverse weather, in this respect.

I will only sell drinks in non-glass or non-metal containers and will require a 'cash' deposit to promote these vessels being returned, decreasing the level of litter and lowering the use of 'single use plastic'.

I will consider joining Day and/ or Night Safe if I am not already a member to work collaboratively with other businesses to ensure I promote the licensing objectives.

I will ensure that I understand any contractual arrangements for deliveries, where I use a third party to make the delivery.

I will ensure that change to my operation is reflected in my insurance policies for the business. i.e. ensuring that deliveries are properly covered.