



Licensed Trade Interim Update no. 1

15th 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 publish interim updates where we have specific information that we want to release pending a new Licensed Trade Bulletin. This update looks at licensed premises selling alcohol through applications and/ or offering table service.

Selling Alcohol Through Applications (apps)/ Table Service

Best Bar None (BBN) recently held an interactive seminar on licensing issues, as part of an ongoing series aimed at assisting the licensed trade respond to the impact of COVID - 19. BBN is a national organisation that promotes best practice in managing the night time economy. More information can be found on their activities [here](#).

A question was raised during their last session about the issue of customers purchasing alcoholic drinks (with or without food and non-alcoholic beverages) through apps on customer's smart phones, tablets, etc and through table service.

The response was given by David Lucas, a prominent and well-respected licensing consultant. It is not advice tailored to your individual needs, and so should not be considered as legal advice, but his response touches upon most of the issues that need consideration, and so provides very helpful general advice:-

"With regard to the query, I assume that there has been no physical alteration to the licensed premises and the bar counter remains within the licensed premises (i.e. inside the pub). It is merely a question of customers being served with, and consuming, alcohol in an external area adjacent to the pub building.

In those circumstances, the fact that any orders are taken (whether manually or by means of an app) in the external area will not have any effect on the licensing requirements (subject to my comment below regarding authorisation for off sales).

The Licensing Act specifically deals with the location of sales in section 190 where it states that when the place where a contract for the sale of alcohol is made is different from the place where the alcohol is appropriated to the contract, the sale of alcohol is to be treated as taking place where the alcohol is appropriated to the contract.

The effect of section 190 is that for licensing purposes, the part of the premises which needs to be licensed is the area where alcohol is selected and dispensed not where the order is taken.

The practical effect is that orders can be taken and paid for in an external area which does not need to be licensed, provided that the part of the premises where the drinks contained in the order are selected in the case of a bottle of wine or poured in the case of other drinks (usually the bar counter) is included within the licensed area.

The only proviso to this arrangement is that the premises licence authorises off-sales as well as on-sales.

There is nothing to prevent a beer garden or something similar being included in the area covered by a premises licence, in this case only authorisation for on-sales will be required.”

In summary

If you wish to make sales of alcoholic beverages for consumption by your customers in your outdoor courtyard, garden or similar areas you must check the permissions on your premises licence. The plan attached to your premises licence will show the ‘licensed area’ – often shown by a red line boundary.

To make sales of alcoholic beverages you must be licensed to do so, you will either have permissions for on-sales, off-sales, or both. The points below are based upon the assumption that you select and dispense the drinks ordered from a bar area which is included in your licensed area.

If your licensed area includes those areas where your customers will consume their drinks then you can make on-sales with no need to vary the licence (provided that you already have permission to make on-sales). You should also check your conditions to ensure you comply with any restrictions on this activity. If you wish to amend your conditions, then you may still need to apply to vary the licence.

If those areas where customers will consume their drinks are not included in your licensed area, then you will need to ensure your licence allows off-sales and ensure you comply with any conditions that restrict this activity. If you wish to amend your conditions, then you may still need to apply to vary the licence.

If your licence does not permit off-sales, you can make an application to amend your premises licence to permit them. Further information on making minor and full variations for off-sales can be found in our second [Licensed Trade Bulletin](#) and information on how to apply online can be found [here](#).

Contacts

Police

Telephone – 101 and ask for the Licensing Officer for Tewkesbury, Cheltenham and Forest of Dean.

Cheltenham Borough Council

Website - https://www.cheltenham.gov.uk/info/11/licensing_and_permits

Email: licensing@cheltenham.gov.uk