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STATUTORY INSTRUMENTS

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**1990 No. 594**

**The Licensing (Northern Ireland) Order 1990**

**PART II**

**THE GENERAL LICENSING SYSTEM**

*Grant of licences*

**Persons to whom licences may be granted**

5.—(1) The person to whom a licence is granted (other than a housing authority to whom a licence is granted provisionally) shall be the owner of the business proposed to be carried on under the licence.

(2) A licence may be granted to an individual, to a body corporate or to two or more persons carrying on business in partnership.

(3) In considering the fitness of a person to hold a licence for any premises, a court shall have regard to—

- (a) his character;
- (b) his suitability to manage the business which is or is proposed to be carried on under the licence, or the suitability of any person who is or is proposed to be employed by him in that behalf;
- (c) the extent to which, by virtue of any estate vested in him, he is entitled to possession and control of the premises.

(4) In considering the fitness of a body corporate to hold a licence, a court shall also have regard to the character of the directors of the body and any other persons who have executive control of it, as if the licence were, or were proposed to be, held by them jointly.

**Premises for which licences may be granted**

6.—(1) Without prejudice to Article 85, the premises in which the sale of intoxicating liquor is authorised by a licence shall be premises of one of the following kinds—

- (a) premises in which the only or principal business carried on is the business of selling intoxicating liquor by retail for consumption either in or off the premises;
- (b) premises in which the only or principal business carried on is the business of selling intoxicating liquor by retail for consumption off the premises;
- (c) an hotel;
- (d) a restaurant;
- (e) a place of public entertainment;
- (f) a refreshment room in public transport premises;
- (g) a seamen's canteen.

(2) Premises shall not cease to be premises of a kind mentioned in paragraph (1)(a) by reason only of the fact that at particular times or on particular occasions the principal business carried on is the business of selling meals or refreshments or providing accommodation for guests such as is mentioned in Article 33(3).

(3) Subject to paragraph (5), a licence shall not authorise the sale of intoxicating liquor in premises of any kind mentioned in paragraph (1)(c) to (g),—

- (a) unless, subject to Article 18(3)—
  - (i) there is being carried on in those premises a business of the type normally carried on in premises of that kind; and
  - (ii) the sale of intoxicating liquor is ancillary to that business;
- (b) for consumption off the premises.

(4) A licence for premises other than an hotel shall be authority for the sale of intoxicating liquor only in the part or parts of the premises delineated in plans kept under Article 39(2) by the clerk of petty sessions for the petty sessions district in which the premises are situated as the part or parts of the premises in which such liquor is permitted to be sold.

(5) In relation to premises which are an hotel—

- (a) paragraph (3)(a) shall not apply, where a note showing that the licence was granted—
  - (i) before 31st July 1902; or
  - (ii) between 30th July 1902 and 3rd May 1971 otherwise than under section 2(2) of the Licensing (Ireland) Act 1902(1) or section 9(a)(ii) of the Intoxicating Liquor Act (Northern Ireland) 1923(2); or
  - (iii) under Article 4(1) of the Licensing (Northern Ireland) Order 1978(3) or Article 12(1) of this Order in lieu of an existing licence to which head (i) or (ii) applied;
 has been made on the licence and recorded in the register of licences in respect of the premises;
- (b) paragraph (3)(b) shall not prohibit or restrict the sale of intoxicating liquor for consumption off the premises, where—
  - (i) the purchaser is a resident or diner in the premises, or
  - (ii) a note such as is mentioned in sub-paragraph (a) has been made on the licence and recorded in the register of licences in respect of the premises.

### **Applications for the grant of licences**

7.—(1) An application for the grant of a licence shall be made to a county court.

(2) The procedure for applications for the grant of licences is set out in Part I of Schedule 1.

### **Powers of court on applications for licences**

8.—(1) Subject to paragraph (2), where an application is made for the grant of a licence, the court, after hearing the objections, if any, made under Part I of Schedule 1,—

- (a) if the application was duly made, may grant the licence; or
- (b) may refuse to grant the licence.

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(1) 1902 c. 18  
 (2) 1923 c. 12 (N.I.)  
 (3) 1978 NI 14

- (2) Without prejudice to its power to refuse to grant a licence on any ground, a court shall not grant a licence for any premises unless it is satisfied—
- (a) that the applicant is a fit person to hold a licence; and
  - (b) that the premises are of the kind specified in the application and either that they are suitable to be licensed for the sale of intoxicating liquor by retail or if they are not suitable that they will be made suitable in consequence of an order under Article 9; and
  - (c) where the premises are of a kind mentioned in Article 6(1)(a) or (b)—
    - (i) subject to paragraph (3), that the number of licensed premises of the kind specified in the application which are in the vicinity of the premises is, and having regard to any licences provisionally granted under Article 10 or any sites approved under Article 11 will be, inadequate; and
    - (ii) subject to paragraph (4), that a subsisting licence for premises of either such kind, or a subsisting licence in respect of which the note and record mentioned in Article 6(5)(a) have been made, has been surrendered to the clerk of the court or will be so surrendered before the licence is issued; and
    - (iii) where, under any statutory provision, the applicant is or will be entitled to compensation for the loss of goodwill which attached or attaches to the business carried on under the licence proposed to be surrendered, that he has abandoned his claim to so much of that compensation as is equivalent to the value of any of that goodwill which is likely to be attracted to the business proposed to be carried on under the new licence; and
  - (d) either—
    - (i) that there is in force planning permission to use the premises as premises of the kind specified in the application for the period during which the licence would be in force; or
    - (ii) that the premises may be used as such premises for that period without such permission.
- (3) Without prejudice to paragraph 6 of Schedule 3, paragraph (2)(c)(i) shall not apply where—
- (a) the subsisting licence which is proposed to be surrendered is for premises to which paragraph 2(a) of Schedule 2 applies and which were or are on the site or in the vicinity of the premises for which the licence is sought; or
  - (b) the site of the premises for which the licence is sought has been approved under Article 11 as a site for licensed premises of the kind specified in the application.
- (4) Paragraph (2)(c)(ii) shall not apply—
- (a) where—
    - (i) the premises for which the licence is sought are situated in an area designated by an order under section 1 or 47 of the New Towns Act (Northern Ireland) 1965<sup>(4)</sup> as the site of a new town or a town to be expanded or developed under that Act; and
    - (ii) if a new town commission has been established for the purposes of the town, an order has not been made under section 33 of that Act for the winding-up of the commission; or
  - (b) where, at any time during the period of 5 years immediately preceding the date of the application for the licence, a previous licence (including a licence under the Licensing Act (Northern Ireland) 1971<sup>(5)</sup> or under statutory provisions repealed by that Act) was in force

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(4) 1965 c. 13 (N.I.)

(5) 1971 c. 13 (N.I.)

for the premises for which the licence is sought, as being premises of the kind specified in the application, and has not been surrendered under this Order or that Act or any of those statutory provisions or annulled under any of those provisions.

(5) For the purposes of paragraph (4)(a)(ii) an order under section 131(3)(b) of the Local Government Act (Northern Ireland) 1972<sup>(6)</sup> shall have effect as if it were an order under section 33 of the New Towns Act (Northern Ireland) 1965.

(6) Schedule 2 defines the circumstances in which a licence is or is not to be treated as a subsisting licence.

(7) Where a court grants a licence under paragraph (1) in respect of premises of a kind mentioned in Article 6(1)(a) and the applicant for that licence has applied to the court for a direction specifying that on Sundays there shall be no permitted hours on the premises, the court shall give such a direction.

(8) A court which grants a licence under paragraph (1) in respect of premises of a kind mentioned in Article 6(1)(e) may attach to the licence such conditions as it thinks fit.

(9) Where by virtue of the grant of a licence in respect of any premises, those premises are licensed premises to which regulations under Article 108(1)(b) of the Betting, Gaming, Lotteries and Amusements (Northern Ireland) Order 1985<sup>(7)</sup> apply the court may, on an application by the sub-divisional commander of the police sub-division in which those premises are situated, give a direction specifying the number of gaming machines which may be made available for gaming on the licensed premises in accordance with the provisions of Article 108 of that Order.

(10) Where the court refuses to grant a licence, it shall specify in its order the reasons for its refusal.

(11) Where the court gives a direction under paragraph (7) or (9) the chief clerk shall note the direction on the licence.

### **Grant of licence conditional on alterations being made in premises**

**9.—**(1) A court which grants a licence may order that, within a period fixed by the order, the holder of the licence—

- (a) shall make such alterations in the licensed premises as may be specified in the order, being alterations which the court thinks necessary—
  - (i) to secure the proper conduct of the business carried on under the licence;
  - (ii) to secure compliance with the provisions of Article 33 as to the structural arrangement of premises; or
  - (iii) to secure that no part of any room which is used for the sale or consumption of intoxicating liquor is concealed or screened from observation in such a manner as to obstruct proper supervision; and
- (b) shall deposit with the clerk of the court a plan of the premises showing the alterations so specified.

(2) Notice of any order made under paragraph (1) shall be served by the clerk of the court on the person whose name has been notified to the court as the owner of the premises.

(3) The period fixed by an order under paragraph (1) may be extended by order of a court of summary jurisdiction on the application of the holder of the licence.

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(6) 1972 c. 9 (N.I.)

(7) 1985 NI 11

(4) If the holder of the licence makes default in complying with an order under paragraph (1) he shall be guilty of an offence and shall be liable on summary conviction to a fine not exceeding level 5 on the standard scale or to imprisonment for a term not exceeding 6 months or to both.

### **Provisional grant of licences**

**10.**—(1) Where premises are about to be constructed, altered or extended or are in the course of construction, alteration or extension, an application may be made to a county court for the provisional grant of a licence for those premises.

(2) An application for the provisional grant of a licence may be made by—

- (a) the person who proposes to be the owner of the business to be carried on under the licence after it has been declared final under paragraph (7); or
- (b) a housing authority.

(3) The procedure for applications for the provisional grant of licences is set out in Part I of Schedule 1 as modified by Part II of that Schedule.

(4) For the purposes of the provisional grant of licences Article 8 shall have effect as if—

- (a) any reference to the grant of a licence were a reference to the provisional grant of a licence;
- (b) any reference to the premises for which a licence is sought included a reference to proposed premises;
- (c) the reference to the surrender of a subsisting licence before the licence is issued were a reference to its surrender then or before the licence is declared final;
- (d) where the application is made by a housing authority, paragraph (2)(a) of that Article were omitted.

(5) A licence which is provisionally granted shall not authorise the sale of intoxicating liquor until the grant of the licence is declared final.

(6) At any time before a licence which has been provisionally granted is declared final, a county court may consent to any modification of the plans deposited under Schedule 1 if, in its opinion, the premises, when completed in accordance with the modified plans, will be suitable to be licensed for the sale of intoxicating liquor by retail and, if it does so, shall require a copy of the modified plan to be deposited with the clerk of the court.

(7) Where a licence has been granted provisionally for any premises, a county court—

- (a) where the licence was granted to a person such as is mentioned in paragraph (2)(a), on the application of the holder of the licence, or
- (b) where the licence was granted to a housing authority, on the application of a person nominated by the authority who proposes to be the owner of the business to be carried on under the licence in the premises,

shall, subject to paragraph (9), declare the grant of the licence final, if it is satisfied—

- (i) that the premises have been completed in accordance with the plans deposited under Schedule 1 or in accordance with those plans with modifications consented to under paragraph (6), and
- (ii) that the applicant is a fit person to hold a licence.

(8) The procedure for applications by persons such as are mentioned in paragraph (7) to have the provisional grant of licences declared final is set out in Part III of Schedule 1.

(9) A county court shall not entertain an application made under paragraph (7) after the expiration of 2 years from the date on which the licence was granted provisionally, unless the applicant satisfies the court that there were reasonable grounds for the failure to complete the construction, alteration or extension of the premises within that period.

(10) Where the provisional grant of a licence is declared final the chief clerk shall note the declaration on the licence.

### **Preliminary approval of sites and disposal in certain cases**

**11.**—(1) A housing authority proposing to develop or re-develop any area of land may apply to the county court with respect to any site in that area for a declaration that the court approves that site as a site for licensed premises of a kind specified in the declaration.

(2) The provisions of Schedule 3 shall have effect in connection with applications under paragraph (1), the approval of sites, the grant of licences for premises on approved sites and, where the sites are in a re-development area, the disposal of the sites or of premises erected on the sites; and the provisions as to expenses in Part III of that Schedule shall also have effect.

### **Grant of new licence in lieu of existing licence**

**12.**—(1) Where the holder of a licence which has been renewed under Article 18 (or which could have been so renewed if the renewal date had fallen between the date of the discontinuance of the principal business and the date when his application for a new licence comes before the county court) applies to a county court for the grant or provisional grant of a new licence in lieu of the existing licence, and the court is satisfied that the premises for which the new licence is sought are, or will be,—

- (a) where the existing licence was granted—
  - (i) before 31st July 1902, or
  - (ii) between 30th July 1902 and 3rd May 1971 otherwise than under section 2(2) of the Licensing (Ireland) Act 1902<sup>(8)</sup> or section 9(a)(ii) of the Intoxicating Liquor Act (Northern Ireland) 1923<sup>(9)</sup>,  
 registered in the register of hotels maintained by the Northern Ireland Tourist Board (“the Board”) under section 10 of the Development of Tourist Traffic Act (Northern Ireland) 1948<sup>(10)</sup>, or
- (b) where the existing licence is for premises to which Article 2(5)(a) applied, an hotel as defined by section 1(3) of the Intoxicating Liquor Act (Northern Ireland) 1923<sup>(11)</sup> providing accommodation approved by the Board, or
- (c) where the existing licence is for premises to which Article 2(5)(b) applied, registered in the register of guest houses maintained by the Board under the said section 10 and without a public bar for the sale of intoxicating liquor,

the court, if it grants the licence applied for, may order that a statement be noted on the licence and recorded in the register of licences to the effect that the licence is granted in lieu of an existing licence of that description.

(2) In this Article “principal business” means the business of an hotel or the business of providing accommodation for guests in premises such as are mentioned in Article 2(5)(a) or (b).

### **Effect on new licence of suspension of surrendered, or previous, licence**

**13.**—(1) Where a suspended licence is surrendered as mentioned in Article 8(2)(c)(ii) or 10(4) (c) the court which grants the new licence or declares the provisional grant of the new licence final

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(8) 1902 c. 18  
 (9) 1923 c. 12 (N.I.)  
 (10) 1948 c. 4 (N.I.)  
 (11) 1985 NI 11

may direct that the suspension shall be disregarded, except where the holder of the new licence was the holder of the surrendered licence.

(2) Where—

- (a) the surrendered licence is suspended and the suspension is not disregarded, or
- (b) a new licence is granted by virtue of Article 8(4)(b) by reason of a previous licence having been in force for the premises and the previous licence would be suspended if it were still in force,

the new licence shall be expressed not to come into force, or, as the case requires, shall be declared not to become final, until the expiration of the period of suspension.

(3) For the purpose of paragraph (1) a person shall be deemed to be the holder of a licence if he is one of several joint holders or if he is a director of a body corporate which is the holder.

### **Duration of new licences**

**14.**—(1) Subject to the succeeding provisions of this Article, a licence shall, unless suspended, remain in force from the date on which it is granted (or, where under Article 13(2) it is expressed to come into force at any later date, from that date) until—

- (a) the expiration of the licensing year in which it is granted, or
- (b) if it is granted within the 3 months immediately preceding the expiration of that year, the expiration of the next-following licensing year.

(2) Where, at the hearing of an application for the grant of a licence, any person appears before the court and opposes the grant, but the court grants the licence,—

- (a) until the expiry of the time for bringing an appeal against the grant and, if an appeal is brought, until the grant is confirmed or the appeal is abandoned—
  - (i) the licence granted shall not come into force, and
  - (ii) the licence, if any, which has been surrendered shall not cease to be in force;
- (b) if on appeal the grant is confirmed or if the appeal is abandoned, for the purpose of determining the period for which the licence is to be in force the date when the appeal is disposed of shall be substituted for the date on which the licence was granted or for any other date earlier than the first-mentioned date on which the licence is expressed under Article 13(2) to come into force, and the chief clerk shall (if necessary) amend the licence accordingly;
- (c) if on appeal the grant is not confirmed, the licence, if any, which has been surrendered shall, unless suspended, continue in force until the expiration of a period of 8 weeks after the appeal is determined, if it would have earlier ceased to be in force but for the provisions of this sub-paragraph.

(3) Where a licence granted provisionally is at any time declared final, paragraphs (1) and (2) shall apply as if the licence were granted at that time.

(4) Paragraph (1) shall not prejudice the operation of paragraph (2)(c) and Articles 21, 27(b), 28(8) and 30, under which a licence may, or may be deemed to, continue in force after the time when it would otherwise expire.

(5) Where, on granting a licence, a county court gives a direction under Article 8(9) and the holder of the licence appeals against that direction, the direction shall not take effect until the appeal is determined or abandoned.