

SCHEDULES

SCHEDULE 9

Section 34.

PERMITS UNDER SECTION 34

Authority responsible for grant and renewal of permits

- 1 In this Schedule " the appropriate authority "—
- (a) in relation to any premises in England or Wales in respect of which a justices' on-licence (other than a Part IV licence) is for the time being in force, and in relation to any premises in the district specified in Part I of Schedule 9 to the Licensing Act 1964 (the Carlisle district) which are for the time being used for the sale on behalf of the Secretary of State of intoxicating liquor for consumption on the premises, means the licensing justices for the licensing district in which the premises are situated ;
 - (b) in relation to any other premises in England or Wales, means the council of the county borough, London borough or county district in which the premises are situated, or, where the premises are in the City of London, means the Common Council of the City ;
 - (c) in relation to any premises in Scotland in respect of which a hotel certificate or a public house certificate is for the time being in force, and in relation to any premises in a district specified in Part I of Schedule 8 to the Licensing (Scotland) Act 1959 (State management districts) which are for the time being used for the sale on behalf of the Secretary of State of exciseable liquor for consumption on the premises, means the licensing court for the licensing area in which the premises are situated ;
 - (d) in relation to any other premises in Scotland, where they are situated in a burgh, means the council of the burgh, and in any other case means the council of the county in which the premises are situated,
- and " permit" means a permit under section 34 of this Act.
- 2 Where the premises are in Scotland and are situated in a district, the appropriate authority shall on each occasion consult the council of the district before performing any functions under this Schedule.

Resolution by local authority as to grant or renewal of permits

- 3 Any such council as is mentioned in sub-paragraph (b) or sub-paragraph (d) of paragraph 1 of this Schedule (in this Schedule referred to as a " local authority ") may pass any of the following resolutions, that is to say—
- (a) that (subject to paragraph 4 of this Schedule) the authority will not grant any permits in respect of premises of a class specified in the resolution ;
 - (b) that (subject to paragraph 4 of this Schedule) the authority will neither grant nor renew any permit in respect of premises of a class specified in the resolution;

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- (c) that (subject to paragraph 4 of this Schedule) where the authority grant or renew a permit in respect of any premises, or in respect of premises of a class specified in the resolution, they will grant or renew it subject to a condition limiting the number of machines to which Part III of this Act applies which may be made available for gaming on the premises so as not to exceed such number as may be specified in the resolution.
- 4 (1) No resolution under paragraph 3 of this Schedule shall have effect in relation to the grant or renewal of permits in respect of premises to which this paragraph applies.
- (2) This paragraph applies to any premises used or to be used wholly or mainly for the provision of amusements by means of machines to which Part III of this Act applies.

Application for grant or renewal of permit

- 5 (1) An application for the grant of a permit in respect of any premises may be made as follows, that is to say—
- (a) by the holder of the licence or certificate, or (as the case may be) by the Secretary of State, in the case of any such premises as are mentioned in sub-paragraph (a) or sub-paragraph (c) of paragraph 1 of this Schedule, and
- (b) in any other case, by the person who is, or by any person who proposes if the permit is granted to become, the occupier of the premises.
- (2) The holder of a permit may apply from time to time for the renewal of the permit.
- 6 The appropriate authority shall not refuse to grant or renew a permit without affording to the applicant or a person acting for him an opportunity of appearing before, and being heard by, the appropriate authority or (where that authority is a local authority) a committee of the local authority.

Grounds for refusal to grant or renew permit

- 7 Where an application for the grant or renewal of a permit is made to a local authority, then if—
- (a) there is for the time being in force a resolution passed by that authority as mentioned in sub-paragraph (a) or sub-paragraph (b) of paragraph 3 of this Schedule which is applicable to the premises to which the application relates, and
- (b) the permit could not be granted or renewed without contravening that resolution,
- it shall be the duty of the authority to refuse to grant or renew the permit.
- 8 (1) In the case of premises to which paragraph 4 of this Schedule applies—
- (a) the grant of a permit shall be at the discretion of the appropriate authority; but
- (b) the appropriate authority shall not refuse to renew a permit except either on the grounds that they or their authorised representatives have been refused reasonable facilities to inspect the premises or by reason of the conditions or manner in which machines to which Part III of this Act applies have been used on the premises, or any other amusements have been provided or conducted on the premises, while the permit has been in force.
- (2) In the case of premises other than premises to which paragraph 4 of this Schedule applies, the grant or renewal of a permit shall (subject to paragraph 1 of this Schedule) be at the discretion of the appropriate authority; and in particular, and without

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prejudice to the generality of that discretion, the appropriate authority may refuse to grant or renew any such permit on the grounds that, by reason of the purposes for which, or the persons by whom, or any circumstances in which, the premises are or are to be used, it is undesirable that machines to which Part III of this Act applies should be used for providing amusements on those premises.

- (3) The preceding provisions of this paragraph shall have effect subject to section 34(7) of this Act.

Condition imposed on grant or renewal of permit

- 9 Where an application for the grant or renewal of a permit is made to a local authority, and there is for the time being in force a resolution passed by that authority as mentioned in sub-paragraph (c) of paragraph 3 of this Schedule which is applicable to the premises to which the application relates, then, if the authority grant or renew the permit, it shall be their duty to do so subject to a condition limiting the number of machines to which Part III of this Act applies which may be made available for gaming on the premises to such number, not exceeding the number specified in the resolution, as the authority may determine.
- 10 Subject to paragraph 9 of this Schedule, on granting or renewing a permit in respect of any premises, other than premises to which paragraph 4 of this Schedule applies, the appropriate authority may grant or renew it subject to a condition limiting the number of machines to which Part III of this Act applies which may be made available for gaming on the premises to such number as the authority may determine.

Appeal in England or Wales against decision of appropriate authority

- 11 (1) Where on an application under this Schedule in England or Wales the appropriate authority refuse to grant or renew a permit, or grant or renew it subject to a condition, the authority shall forthwith give to the applicant notice of their decision and of the grounds on which it is made.
- (2) Where such a notice has been given, the applicant may, by notice to the clerk to the appropriate authority, appeal against the decision to a court of quarter sessions having jurisdiction in the authority's area.
- (3) As soon as practicable after receiving notice of appeal against a decision of the appropriate authority, the clerk to the authority shall send the notice to the clerk of the peace together with a statement of the decision against which the appeal is brought and of the name and last-known residence or place of business of the appellant.
- (4) On receipt of the notice of appeal, the clerk of the peace shall enter the appeal and give to the appellant and to the appropriate authority not less than seven days' notice in writing of the date, time and place appointed for the hearing of the appeal.
- (5) A justice shall not act in the hearing or determination of an appeal under this paragraph from any decision in which he took part.
- 12 (1) Where the appeal is an appeal against a decision of a local authority refusing to grant or renew a permit, the court of quarter sessions shall not allow the appeal if satisfied that, by virtue of paragraph 7 of this Schedule, it was the duty of the authority to refuse to grant or renew the permit.

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- (2) Where the appeal is against a decision of a local authority to grant or renew a permit subject to a condition, and the court of quarter sessions is satisfied that, by virtue of paragraph 9 of this Schedule, it was the duty of the authority to grant or renew the permit subject to such a condition as is mentioned in that paragraph, the court shall not reverse or vary the decision so as—
- (a) to grant or renew the permit unconditionally, or
 - (b) to grant or renew the permit subject to a condition limiting the number of machines to which Part III of this Act applies which may be made available for gaming on the premises to a number exceeding the number specified in the resolution of the local authority.
- 13 Subject to paragraph 12 of this Schedule, on any appeal under paragraph 11 of this Schedule the court of quarter sessions may by its order allow or dismiss the appeal, or reverse or vary any part of the decision of the appropriate authority, and may deal with the application as if it had been made to the court of quarter sessions in the first instance ; and the judgment of the court of quarter sessions on the appeal shall be final.
- 14 (1) On determining any appeal under paragraph 11 of this Schedule, or on being satisfied that the appellant, after giving notice of such an appeal, has failed to prosecute it, the court of quarter sessions may make such order as it thinks fit for the payment of costs by or to the appellant or the appropriate authority.
- (2) Where the appropriate authority is die licensing justices for a licensing district, and the court of quarter sessions—
- (a) has allowed such an appeal, or
 - (b) has awarded the licensing justices any costs under the preceding sub-paragraph and is satisfied that the licensing justices cannot recover those costs,
- the court shall order payment out of local funds of such sums as appear to the court sufficient to indemnify the licensing justices from all costs and charges whatever to which they have been put in consequence of the appellant's having served notice of appeal.
- (3) Costs payable out of local funds under this paragraph—
- (a) if the licensing district is a borough having a separate court of quarter sessions, shall be paid out of the general rate fund of the borough ; and
 - (b) in any other case, shall be paid out of the county fund of the county in which the licensing district is situated.
- (4) Sections 8(1) and 11(1) of the Costs in Criminal Cases Act 1952 (which make provision for payment out of local funds of costs ordered to be paid under that Act) shall apply to costs ordered to be paid under this paragraph as if any reference in those provisions to a county borough were a reference to a borough having a separate court of quarter sessions.
- (5) An order of a court of quarter sessions under this paragraph may be made either at the sessions at which the appeal is heard, or at which it would have been heard if the appeal had been prosecuted, or at the next following sessions; and the costs may be taxed either in or out of sessions.

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Appeal in Scotland against decision of appropriate authority

- 15 Where on an application under this Schedule in Scotland the appropriate authority refuse to grant or renew a permit, or grant or renew it subject to a condition, the authority shall forthwith give to the applicant notice of their decision and of the grounds on which it is made ; and the applicant may, within such time, and in accordance with such rules, as may be prescribed by the Court of Session by Act of Sederunt, appeal against the decision to the sheriff having jurisdiction in the authority's area.
- 16 Paragraph 12 of this Schedule shall apply to an appeal under the last foregoing paragraph except that for any reference to the court of quarter sessions there shall be substituted a reference to the sheriff.
- 17 (1) Subject to paragraph 16 of this Schedule, on any appeal under paragraph 15 of this Schedule the sheriff may allow or dismiss the appeal, or reverse or vary any part of the decision of the appropriate authority, and may deal with the application as if it had been made to the sheriff in the first instance.
- (2) The decision of the sheriff on the appeal shall be final and may include such order as to the expenses of the appeal as he thinks proper.

Duration of permit

- 18 Subject to the following provisions of this Schedule, and without prejudice to the cancellation of any permit under section 39 of this Act, a permit—
- (a) if not renewed, shall cease to have effect on such date, not being less than three years beginning with the date on which it was granted, as may be specified in the permit, or
 - (b) if renewed, shall, unless further renewed, cease to have effect on such date, not being less than three years beginning with the date on which it was renewed or last renewed, as the case may be, as may be specified in the decision to renew it.
- 19 (1) Where an application for the renewal of a permit is made not less than one month before the date on which it is due to expire, the permit shall not cease to have effect by virtue of the last preceding paragraph before the appropriate authority have determined the application or the application has been withdrawn.
- (2) Where, on such an application, the appropriate authority refuse to renew the permit, it shall not cease to have effect by virtue of the last preceding paragraph before the time within which the applicant can appeal against the refusal has expired, and, if he so appeals, shall not cease to have effect by virtue of that paragraph until the appeal has been determined or abandoned.
- 20 (1) A permit shall not be transferable, and, subject to the following provisions of this paragraph, shall cease to have effect if—
- (a) in the case of premises falling within sub-paragraph (a) or sub-paragraph (c) of paragraph 1 of this Schedule, the holder of the permit (not being the Secretary of State) ceases to be the holder of the licence or certificate in respect of the premises, or
 - (b) in the case of any other premises, the holder of the permit ceases to be the occupier of the premises.
- (2) If the holder of a permit (not being the Secretary of State) dies while the permit is in force—

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- (a) the permit shall not cease to have effect by virtue of paragraph 18 of this Schedule or by virtue of the preceding sub-paragraph before the end of the period of six months beginning with the date of his death, and
- (b) except for the purposes of a renewal of the permit, his personal representatives shall be deemed to be the holder of the permit;

and the appropriate authority may from time to time, on the application of those personal representatives, extend or further extend the period for which the permit continues to have effect by virtue of this sub-paragraph if satisfied that the extension is necessary for the purpose of winding up the estate of the deceased and that no other circumstances make it undesirable.

Payment of fees

- 21 Notwithstanding anything in the preceding provisions of this Schedule, no permit shall be granted or renewed except on payment by the applicant to the appropriate authority or their clerk of the fee chargeable in accordance with section 48 of this Act.

Supplementary provisions

- 22 The grant or renewal of a permit shall not be invalidated by any failure to comply with any requirement of paragraph 7 or paragraph 9 of this Schedule ; and any duty of a local authority to comply with such a requirement shall not be enforceable by any legal proceedings.
- 23 In this Schedule " justices' on-licence ", " Part IV licence ", and " licensing district" have the same meanings as in the Licensing Act 1964, and " hotel certificate ", " public house certificate " and " licensing area " have the same meanings as in the Licensing (Scotland) Act 1959.