
STATUTORY INSTRUMENTS

1998 No. 114

DEREGULATION

The Deregulation (Licence Transfers) Order 1998

Made - - - - *24th January 1998*

Coming into force - - *1st February 1998*

Whereas—

- (a) the Secretary of State is of opinion that certain provisions of the Licensing Act 1964⁽¹⁾ impose burdens affecting the carrying on of a trade, business, profession or otherwise and that by amending the provisions concerned it is possible to remove or reduce the burdens without removing any necessary protection;
- (b) the Secretary of State has consulted such organisations as appear to be representative of interests substantially affected by his proposals and such other persons as he considers appropriate;
- (c) it appears to the Secretary of State that it is appropriate, following that consultation, to proceed with the making of this Order;
- (d) a document setting out the Secretary of State's proposals has been laid before Parliament in accordance with section 3 of the Deregulation and Contracting Out Act 1994⁽²⁾ and the period for parliamentary consideration under section 4 of that Act has expired;
- (e) the Secretary of State has had regard to representations made during the period;
- (f) a draft of this Order has been laid before Parliament with a Statement giving details of such representations and the changes to the Secretary of State's proposals in the light of those representations;
- (g) a draft of this Order has been approved by resolution of each House of Parliament;

Now, therefore, the Secretary of State, in exercise of the powers conferred upon him by section 1 of the Deregulation and Contracting Out Act 1994, hereby makes the following Order:

Citation, commencement and extent

- 1.—(1) This Order may be cited as the Deregulation (Licence Transfers) Order 1998.
- (2) This Order shall come into force on 1st February 1998.
- (3) This Order does not extend to Scotland or Northern Ireland.

(1) 1964 c. 26.
(2) 1994 c. 40.

Approval of prospective licensees

2. After section 8 of the Licensing Act 1964 there shall be inserted—

“Approval of prospective licensees.

8A.—(1) If, on an application made to licensing justices with respect to any licensed premises, the justices are satisfied that the applicant—

- (a) is a fit and proper person, and
- (b) is not disqualified under this or any other Act for holding a justices' licence,

the justices may, subject to subsection (3) of this section, approve him as a prospective licensee of the premises.

(2) Where the power of licensing justices to transfer a justices' licence for any premises is exercisable by virtue of section 8(1) of this Act, any person who has been approved as a prospective licensee of the premises may, by notice in writing—

- (a) to the clerk to the licensing justices, and
- (b) to the chief officer of police,

elect that the enactments relating to the sale of intoxicating liquor and to licensed premises shall apply as if the licence were transferred to him immediately after the giving of the notice; and any election so made shall have effect accordingly.

(3) Licensing justices shall not approve a person as a prospective licensee of any licensed premises if, in their opinion, there is a likelihood that, if he became a licensee of the premises under subsection (2) of this section, he would be prevented by other commitments from properly discharging his functions as such a licensee.

(4) Licensing justices approving any person as a prospective licensee of any licensed premises shall cause a memorandum of the approval to be endorsed on the justices' licence for the premises or, where a copy of the licence is admissible in evidence, on a copy of the licence.

(5) Paragraphs 1(a) and (c), 4(a) and (b) and 5 to 8 of Schedule 2 to this Act (application for justices' licence) shall apply in relation to an application for approval under this section as they apply to an application for the grant of a justices' licence.”

Interim authorities

3.—(1) After section 9 of the Licensing Act 1964 there shall be inserted—

“Interim authorities

Interim authorities.

9A.—(1) This section applies where the power of licensing justices to transfer a justices' licence for any premises is exercisable by virtue of section 8(1) of this Act.

(2) If the licensing justices are satisfied, on application made by notice in writing to the clerk to the licensing justices and to the chief officer of police, that the applicant—

- (a) is a fit and proper person, and
- (b) is not disqualified under this or any other Act for holding a justices' licence,

the justices may grant him an authority (in this Act referred to as an “interim authority”) conferring in respect of the premises the same authority as that conferred by the justices' licence.

(3) An interim authority shall be granted for a period of 28 days beginning with such date as may be specified in it.

(4) If during the period for which an interim authority granted to any person is in force, an application for the transfer of the justices' licence is made (whether by him or by any other person), the interim authority shall continue in force until the application is disposed of.

(5) While an interim authority in respect of any premises is in force, the enactments relating to the sale of intoxicating liquor and to licensed premises (other than those relating to the renewal or transfer of licences or to protection orders) shall apply to the person granted the authority as if he were the holder of the justices' licence.

(6) The power conferred on licensing justices by subsection (2) of this section—

- (a) shall not be exercisable in relation to premises which are already the subject of an interim authority, and
- (b) shall not be exercisable more than twice in relation to each occasion on which the power to transfer a justices' licence becomes exercisable as mentioned in subsection (1) of this section.

Supplementary provisions relating to interim authorities.

9B.—(1) Where an application for an interim authority is made under section 9A of this Act within seven days of the power of the licensing justices to transfer a justices' licence becoming exercisable by virtue of section 8(1) of this Act—

- (a) an interim authority shall be deemed to have been granted in respect of the premises; and
- (b) subject to subsection (2) of this section, that authority shall remain in force for a period of 14 days beginning with the date of the application.

(2) An interim authority deemed to have been granted by virtue of subsection (1) of this section shall cease to have effect if, within the period of 14 days mentioned in that subsection—

- (a) the chief officer of police, or
- (b) an officer of police designated by him,

by notice in writing served on the applicant and the licensing justices, objects to the granting of an interim authority under section 9A of this Act.

(3) The power conferred on licensing justices by section 9A of this Act—

- (a) may be exercised by a single justice, and
- (b) may be exercised otherwise than at licensing sessions.

(4) A justice to whom application is made under section 9A of this Act for an interim authority may examine the applicant on oath.”.

(2) In section 201(1) of that Act (interpretation of other expressions), after the definition of “grant” there shall be inserted the following definition—

““interim authority” has the meaning assigned to it by section 9A(2) of this Act;”.

Power of clerk to licensing justices to grant certain transfers etc.

4. After section 193A of the Licensing Act 1964 there shall be inserted—

“Power of clerk to licensing justices to grant certain transfers etc.

193AA.—(1) This section applies where—

Status: This is the original version (as it was originally made). This item of legislation is currently only available in its original format.

- (a) the power of licensing justices to transfer a justices' licence for any premises is exercisable by virtue of section 8(1) of this Act, and
 - (b) application is made for the transfer of the licence or the grant of an interim authority.
- (2) If the applicant—
- (a) holds a justices' licence, or
 - (b) has held such a licence at any time in the three years immediately preceding the date of the application,
- the clerk to the licensing justices may grant the application on behalf of the justices unless he considers that there are circumstances which make it desirable for the matter to be considered by the justices.
- (3) The functions of the clerk to the licensing justices under this section may be exercised otherwise than at licensing sessions.”.

Home Office
24th January 1998

George Howarth
Parliamentary Under-Secretary of State

EXPLANATORY NOTE

(This note is not part of the Order)

This Order is made under section 1 of the Deregulation and Contracting Out Act 1994. It reduces the burdens on business in three respects in connection with the transfer of licences under the Licensing Act 1964 (“the 1964 Act”).

Article 2 inserts into the 1964 Act section 8A which introduces a system allowing approval to be given to prospective licensees. A person approved as a prospective licensee of premises may, where the power to transfer a justices' licence in respect of the premises becomes exercisable, by notice elect that enactments in respect of the sale of intoxicating liquor apply as if the licence was transferred to him (section 8A(2)).

Article 3 inserts into the 1964 Act sections 9A and 9B which introduce a system of interim authorities to be granted to persons not intending to apply for the formal transfer of the licence. Such an interim authority is granted for a period of 28 days (section 9A(3)). There is also provision for an interim authority which lasts for a period of 14 days to be deemed to be granted on the making of an application (section 9B(1)), but this authority ceases to have effect on the service of a notice in writing from the police objecting to the grant of such an authority (section 9B(2)).

Article 4 inserts into the 1964 Act section 193AA which allows a clerk to the justices to grant an application for the transfer of a justices' licence or the grant of an interim authority where the applicant satisfies the conditions in section 193AA(2).