

2005 No. 3056 (C.131)

LICENCES AND LICENSING

The Licensing Act 2003 (Commencement No. 7 and Transitional Provisions) Order 2005

Made - - - - *2nd November 2005*

The Secretary of State makes the following Order in exercise of the powers conferred by sections 197(2) and 201(2) of the Licensing Act 2003(a):

Citation and interpretation

1.—(1) This Order may be cited as the Licensing Act 2003 (Commencement No.7 and Transitional Provisions) Order 2005.

(2) In this Order –

“the Act” means the Licensing Act 2003;

“the 1968 Act” means the Gaming Act 1968(b);

“the 1976 Act” means the Lotteries and Amusements Act 1976(c);

“the 1985 Act” means the Sporting Events (Control of Alcohol etc.) Act 1985(d);

“the second appointed day” means 24th November 2005(e).

Commencement

2.—(1) Part 5 (Permitted Temporary Activities) of the Act, so far as it is not already in force, comes into force on 10th November 2005.

(2) With the exception of paragraphs 98 and 99(c) of Schedule 6 to the Act and the repeal of section 2(1A) and section 5A of the 1985 Act, the remaining provisions of the Act, so far as they are not already in force, come into force on the second appointed day.

Transitional provisions

3. The Schedule to this Order shall have effect for the purposes of making transitional provisions and savings in connection with the commencement on the second appointed day of paragraphs 49, 52 and 62 to 66 of Schedule 6 to the Act (which respectively amend section 6 of the 1968 Act, Schedule 9 to that Act and Schedule 3 to the 1976 Act).

(a) 2003 c. 17. For the definition of “order” see section 193 of the Act.

(b) 1968 c. 65. The Gaming Act 1968 is to be repealed by the Gambling Act 2005 (c. 19), section 356(4) and Schedule 17, on a date to be appointed by order made under section 358(1) of that Act.

(c) 1976 c. 32. The Lotteries and Amusements Act 1976 is to be repealed by the Gambling Act 2005 (c. 19), section 356(4) and Schedule 17, on a date to be appointed by order made under section 358(1) of that Act.

(d) 1985 c. 57.

(e) S.I. 2005/2091 specifies the “second appointed day”.

Saving

4.—(1) The repeal of an enactment by section 199 of, and Schedule 7 to, the Act does not affect—

- (a) an entitlement to bring an appeal pursuant to the enactment, if the entitlement existed immediately before the second appointed day;
- (b) the conduct and determination of an appeal brought before that day pursuant to the enactment.

(2) In connection with an appeal brought or continued in reliance on paragraph (1)—

- (a) the court to which the appeal is brought has the same jurisdiction, powers and obligations as it would have had before the second appointed day; and
- (b) the parties to the appeal have the same rights and obligations as they would have had before that day.

2nd November 2005

James Purnell
Minister of State
Department for Culture, Media and Sport

SCHEDULE

Article 3

Transitional provisions and savings

PART 1

Interpretation

1. In this Schedule, in relation to an application for an order under section 6 of the 1968 Act, an application for a permit under section 34 of that Act, or an application for a permit under section 16 of the 1976 Act—

“the licensing justices” means, in relation to any time before the second appointed day, the licensing justices for the licensing district (within the meaning of the Licensing Act 1964(a)) in which the premises to which the application relates are situated, and to whom the application has been made;

“the relevant local justice area” means the local justice area which immediately before the second appointed day also constitutes the licensing district for which the licensing justices are appointed; and

“the relevant licensing authority” means the authority which granted the premises licence in respect of the premises to which the application relates.

PART 2

Orders under section 6 of the 1968 Act

2.—(1) This paragraph applies to premises in respect of which an order under section 6 of the 1968 Act is in force immediately before the second appointed day.

(a) 1964 c. 26. The Licensing Act 1964 is repealed by the Licensing Act 2003, section 199 and Schedule 7.

(2) The validity of the order is not to be affected by the justices' on-licence granted in respect of the premises ceasing to have effect immediately before the second appointed day; and, where a premises licence takes effect on that day authorising the supply of alcohol for consumption on the premises, the order is to continue to have effect on and after that day as if granted by the relevant licensing authority (as defined in section 6 of the 1968 Act).

3.—(1) The following provisions of this paragraph apply to any application for an order under section 6 of the 1968 Act which—

- (a) is made to the licensing justices before the second appointed day, and
- (b) is not determined or withdrawn before that date.

(2) The application is to be treated for the purposes of section 6 of the 1968 Act as having been made to the relevant licensing authority on the second appointed day.

(3) The designated officer for the relevant local justice area is to send the relevant licensing authority on the second appointed day or as soon as reasonably practicable after that day—

- (a) the application, and
- (b) copies of any other documents or records held by him which he considers to be relevant to the application.

(4) The designated officer for the relevant local justice area is to give notice in writing to the applicant as soon as reasonably practicable after sending the documents referred to in sub-paragraph (3)—

- (a) indicating that the application and copies of documents and records relating to the application have been sent to the relevant licensing authority, and
- (b) explaining that the application will be determined by that authority.

PART 3

Permits under section 34 of the 1968 Act

4.—(1) This paragraph applies to premises in respect of which a permit under section 34 of the 1968 Act granted by the licensing justices is in force immediately before the second appointed day.

(2) The validity of the permit is not to be affected by the justices' on-licence granted in respect of the premises ceasing to have effect immediately before the second appointed day; and, where a premises licence takes effect on that day authorising the supply of alcohol for consumption on the premises, the order is to continue to have effect on and after that day as if granted by the relevant licensing authority (as defined in Schedule 9 to the 1968 Act).

5.—(1) This paragraph applies in relation to premises in respect of which—

- (a) a permit under section 34 of the 1968 Act is in force immediately before the second appointed day granted by the authority mentioned in paragraph 1(b) of Schedule 9 to that Act, and
- (b) a premises licence takes effect on that day authorising the supply of alcohol for consumption on the premises.

(2) Despite the amendments made by paragraph 52 of Schedule 6 to the Act, the permit is to continue to have effect on and after the second appointed day, and may be renewed on or after that day by the authority mentioned in paragraph 1(b) of Schedule 9 to the 1968 Act.

(3) Where a permit has effect in accordance with this paragraph—

- (a) any reference in the 1968 Act to premises mentioned in sub-paragraph (a) of paragraph 1 of Schedule 9 to that Act, or to premises to which that sub-paragraph applies, is not to include a reference to the premises to which the permit applies, and
- (b) any reference in that Act to the authority mentioned in that sub-paragraph is not to be construed as including a reference to the authority which granted the permit.

6.—(1) This paragraph applies where—

- (a) an application for the renewal or grant of a permit under section 34 of the 1968 Act is made before the second appointed day to the authority mentioned in paragraph 1(b) of Schedule 9 to that Act in respect of premises which are licensed under Part 4 of the Licensing Act 1964 when the application is made,
- (b) the application is not determined or withdrawn before that day, and
- (c) a premises licence takes effect on that day authorising the supply of alcohol for consumption on the premises.

(2) For the purposes of sub-paragraph (1), where the authority mentioned in paragraph 1(b) of Schedule 9 to the 1968 Act makes a decision on an application, it is not to be treated as having been determined until the period for appealing has elapsed; or, where an appeal is made, until the appeal has been determined or abandoned.

(3) Despite the amendments made by paragraph 52 of Schedule 6 to the Act—

- (a) the application may continue to be considered and determined by the authority mentioned in paragraph 1(b) of Schedule 9 to the 1968 Act, and
- (b) an appeal against such a decision may be made or may continue to be made in accordance with paragraph 11 of that Schedule.

(4) Sub-paragraphs (2) and (3) of paragraph 5 shall have effect in relation to a permit granted in pursuance of this paragraph as they have effect in relation to permits to which that paragraph applies.

7.—(1) Paragraphs 8 to 11 apply to any application for the renewal or grant of a permit under section 34 of the 1968 Act which—

- (a) is made to the licensing justices before the second appointed day, and
- (b) is not determined or withdrawn before that date.

(2) For the purposes of sub-paragraph (1), where the licensing justices make a decision on an application, it is not to be treated as having been determined until the period for appealing has elapsed; or, where an appeal is made, until the appeal has been determined or abandoned.

8.—(1) This paragraph applies where no decision on the application is made by the licensing justices before the second appointed day.

(2) The application is to be treated for the purposes of Schedule 9 to the 1968 Act as having been made to the relevant licensing authority on the second appointed day; and any reference in that Schedule to the appropriate authority is to be construed in relation to the application as a reference to that authority.

(3) The designated officer for the relevant local justice area is to send the relevant licensing authority on the second appointed day or as soon as reasonably practicable after that day—

- (a) the application, and
- (b) copies of any other documents or records held by him which he considers to be relevant to the application.

(4) The designated officer for the relevant local justice area is to give notice in writing to the applicant as soon as reasonably practicable after sending the documents referred to in sub-paragraph (3)—

- (a) indicating that the application and other documents and records relating to the application have been sent to the relevant licensing authority, and
- (b) explaining that the application will be determined by that authority.

9.—(1) This paragraph applies where—

- (a) a decision is made by the licensing justices to reject the application, or to grant or renew the permit subject to a condition, but

(b) immediately before the second appointed day either the period for appealing against that decision under paragraph 11 of Schedule 9 to the 1968 Act has not elapsed, or an appeal has been made by the applicant and that appeal has not been determined or abandoned.

(2) Subject to sub-paragraph (3), the decision of the licensing justices is to be treated for the purposes of Schedule 9 to the 1968 Act as having been made by the relevant licensing authority.

(3) Sub-paragraph (2) is to be without prejudice to paragraph 11(5) of Schedule 9 to the 1968 Act which is to continue to have effect for the purposes of any appeal to which this paragraph applies.

(4) Where an appeal is made under paragraph 11 of Schedule 9 to the 1968 Act, the relevant licensing authority is to be the respondent for the purposes of the appeal; and, in relation to the appeal, any reference in that Schedule to the appropriate authority or the clerk to the appropriate authority is to be construed accordingly.

(5) The designated officer for the relevant local justice area is to send the relevant licensing authority on the second appointed day or as soon as reasonably practicable after that day—

(a) the application,

(b) where an appeal is made before that day, the notices given under sub-paragraphs (1) and (2) of paragraph 11 of Schedule 9 to the 1968 Act, and

(c) copies of any other documents or records held by him which he considers to be relevant to the application and (where an appeal has been made) to the appeal.

(6) The designated officer for the relevant local justice area is to give notice in writing to the applicant as soon as reasonably practicable on or after sending the documents referred to in sub-paragraph (5)—

(a) indicating that the documents and records referred to in paragraphs (a) to (c) of sub-paragraph (5) have been sent to the relevant licensing authority, and

(b) explaining the effect of sub-paragraphs (2) and (4).

10. Where before the second appointed day the applicant for the permit makes a payment to the licensing justices or their designated officer in respect of the fee for the permit, the payment (or a sum equal to the amount of the payment) is to be returned to the applicant by the designated officer for the relevant local justice area as soon as reasonably practicable on or after that date.

11.—(1) This paragraph applies where the application is for the renewal of a permit.

(2) Where the application to the licensing justices is made not less than one month before the date on which the permit is due to expire, despite paragraph 8(2) above, paragraph 19 of Schedule 9 to the 1968 Act is to continue to apply to the application on or after the second appointed day as it had effect immediately before that day.

12.—(1) This paragraph applies in the case of a permit under section 34 of the 1968 Act which expires on or after the second appointed day but before 8 January 2006, where no application for renewal is made before the second appointed day.

(2) Where the permit expires before 9 December 2005 it is to be treated as continuing to have effect until immediately before that date.

(3) Where the application for renewal is made before 9 December 2005 paragraph 19 of Schedule 9 to the 1968 Act is to apply to the application even if it is made less than one month before the date on which the permit is due to expire.

PART 4

Permits under section 16 of the 1976 Act

13.—(1) This paragraph applies to premises in respect of which a permit under section 16 of the 1976 Act granted by the licensing justices is in force immediately before the second appointed day.

(2) The validity of the permit is not to be affected by the justices' on-licence granted in respect of the premises ceasing to have effect immediately before the second appointed day; and, where a premises licence takes effect on that day authorising the supply of alcohol for consumption on the premises, the order is to continue to have effect on and after that day as if granted by the relevant licensing authority (as defined in Schedule 3 to the 1976 Act).

14.—(1) This paragraph applies in relation to premises in respect of which—

- (a) a permit under section 16 of the 1976 Act is in force immediately before the second appointed day granted by the authority mentioned in paragraph 1(1)(b) of Schedule 3 to that Act, and
- (b) a premises licence takes effect on that day authorising the supply of alcohol for consumption on the premises.

(2) Despite the amendments made by paragraph 63 of Schedule 6 to the Act, the permit is to continue to have effect on and after the second appointed day, and may be renewed on or after that day by the authority mentioned in paragraph 1(1)(b) of Schedule 3 to the 1976 Act.

15.—(1) This paragraph applies where—

- (a) an application for the renewal or grant of a permit under section 16 of the 1976 Act is made before the second appointed day to the authority mentioned in paragraph 1(1)(b) of Schedule 3 to that Act in respect of premises which are licensed under Part 4 of the Licensing Act 1964 when the application is made,
- (b) the application is not determined or withdrawn before that day, and
- (c) a premises licence takes effect on that day authorising the supply of alcohol for consumption on the premises.

(2) For the purposes of sub-paragraph (1), where the authority mentioned in paragraph 1(1)(b) of Schedule 3 to the 1976 Act makes a decision on an application, it is not to be treated as having been determined until the period for appealing has elapsed; or, where an appeal is made, until the appeal has been determined or abandoned.

(3) Despite the amendments made by paragraph 63 of Schedule 6 to the Act—

- (a) the application may continue to be considered and determined by the authority mentioned in paragraph 1(1)(b) of Schedule 3 to the 1976 Act, and
- (b) an appeal against such a decision may be made or may continue to be made in accordance with paragraph 8 of that Schedule.

(4) Sub-paragraph (2) of paragraph 14 shall have effect in relation to a permit granted in pursuance of this paragraph as it has effect in relation to permits to which that paragraph applies.

16.—(1) Paragraphs 17 to 20 apply to any application for the renewal or grant of a permit under section 16 of the 1976 Act which—

- (a) is made to the licensing justices before the second appointed day, and
- (b) is not determined or withdrawn before that date.

(2) For the purposes of sub-paragraph (1), where the licensing justices make a decision on an application, it is not to be treated as having been determined until the period for appealing has elapsed; or, where an appeal is made, until the appeal has been determined or abandoned.

17.—(1) This paragraph applies where no decision on the application is made by the licensing justices before the second appointed day.

(2) The application is to be treated for the purposes of Schedule 3 to the 1976 Act as having been made to the relevant licensing authority on the second appointed day; and any reference in that Schedule to the appropriate authority is to be construed as a reference to that authority.

(3) The designated officer for the relevant local justice area is to send the relevant licensing authority on the second appointed day or as soon as reasonably practicable after that day—

- (a) the application, and

- (b) copies of any other documents or records held by him which he considers to be relevant to the application.

(4) The designated officer for the relevant local justice area is to give notice in writing to the applicant as soon as reasonably practicable on or after sending the documents referred to in sub-paragraph (3)—

- (a) indicating that the application and copies of other documents and records relating to the application have been sent to the relevant licensing authority, and
- (b) explaining that the application will be determined by that authority.

18.—(1) This paragraph applies where—

- (a) a decision is made by the licensing justices to reject the application, or to grant or renew the permit subject to a condition, but
- (b) immediately before the second appointed day either the period for appealing against that decision under paragraph 8 of Schedule 3 to the 1976 Act has not elapsed, or an appeal has been made by the applicant and that appeal has not been determined or abandoned.

(2) Subject to sub-paragraph (3), on and after the second appointed day the decision of the licensing justices is to be treated for the purposes of Schedule 3 to the 1976 Act as having been made by the relevant licensing authority.

(3) Sub-paragraph (2) is to be without prejudice to paragraph 8(4) of Schedule 3 to the 1976 Act which is to continue to have effect for the purposes of any appeal to which this paragraph applies.

(4) Where an appeal is made under paragraph 8 of Schedule 3 to the 1976 Act, the relevant licensing authority is to be the respondent for the purposes of the appeal; and, in relation to the appeal, any reference in that Schedule to the appropriate authority or the clerk to the appropriate authority is to be construed accordingly.

(5) The designated officer for the relevant local justice area is to send the relevant licensing authority on the second appointed day or as soon as reasonably practicable after that day—

- (a) the application,
- (b) where an appeal is made before that day, the notices given under sub-paragraphs (1) and (2) of paragraph 8 of Schedule 3 to the 1976 Act, and
- (c) copies of any other documents or records held by him which he considers to be relevant to the application and (where an appeal has been made) to the appeal.

(6) The designated officer for the relevant local justice area is to give notice in writing to the applicant as soon as reasonably practicable on or after sending the documents referred to in sub-paragraph (5)—

- (a) indicating that the documents and records referred to in paragraphs (a) to (c) of sub-paragraph (5) have been sent to the relevant licensing authority, and
- (b) explaining the effect of sub-paragraphs (2) and (4).

19. Where before the second appointed day the applicant for the permit makes a payment to the licensing justices or their designated officer in respect of the fee for the permit, the payment (or a sum equal to the amount of the payment) is to be returned to the applicant by the designated officer for the relevant local justice area as soon as reasonably practicable on or after that date.

20.—(1) This paragraph applies where the application is for the renewal of a permit.

(2) Where the application to the licensing justices is made not less than one month before the date on which the permit is due to expire, despite paragraph 17(2) above, paragraph 16 of Schedule 3 to the 1976 Act is to continue to apply to the application on or after the second appointed day as it had effect immediately before that date.

21.—(1) This paragraph applies in the case of a permit under section 16 of the 1976 Act which expires on or after the second appointed day but before 8 January 2006, where no application for renewal is made before the second appointed day.

(2) Where the permit expires before 9 December 2005 it is to be treated as continuing to have effect until immediately before that date.

(3) Where the application for renewal is made before 9 December 2005 paragraph 16 of Schedule 3 to the 1976 Act is to apply to the application even if it is made less than one month before the date on which the permit is due to expire.

EXPLANATORY NOTE

(This note is not part of the Order)

This is the seventh Commencement Order made by the Secretary of State under the Licensing Act 2003 (“the Act”). The Order brings into force those provisions of the Act which have not already been brought into force by earlier Commencement Orders. It does so in two stages:

(a) Part 5, so far as it is not already in force, is brought into force on 10th November 2005; and

(b) with the exception of the provisions mentioned in article 2(2), the remaining provisions of the Act, so far as they are not already in force, are brought into force on 24th November 2005.

The Order includes transitional provisions and savings relating to the commencement on the second appointed day of amendments made to the Gaming Act 1968 and the Lotteries and Amusements Act 1976 by Schedule 6 to the Act. The provisions are concerned with ensuring that permits and orders made under those Acts in relation to premises licensed under the Act continue to have effect on and after the second appointed day; and that any applications for permits or orders which are outstanding on that day can continue to be determined.

NOTE AS TO EARLIER COMMENCEMENT ORDERS

(This note is not part of the Order)

<i>Provision</i>	<i>Date of Commencement</i>	<i>S.I. No.</i>
s.199 of and Sch.7 to the Act, so far as it relates to s.66 (Sunday closing in Wales and Monmouthshire) and s.67 (supplementary provisions for Welsh Sunday polls) of and Sch.8 (polls in Wales and Monmouthshire) to the Licensing Act 1964	16.07.03	2003/1911
s.155 and s.199 in so far as it relates to entries in Sch.7 to the Act relating to the Confiscation of Alcohol (Young Persons) Act 1977 and section 12 of the Criminal Justice and Police Act 2001	10.09.03	2003/2100
ss. 1, 3 to 5, 8, 9(2), 13(2)(f) and (4)(i), 16(1)(i), 17(3)(b), (c), (4) and (5), 24, 29(6), 30, 31(6)(a), 34(5), 37(3)(a), 47(2)(a), 51(3), 54, 55, 58(1)(c), 69(2)(f), and (4)(i), 71(4)(b), (5) and (6), 78, 84(4), 87(3), 91, 92, 95(1)(c), 100(4), (5)(f), (7)(b) and (8), 102(2), 107(7) and (12), 110(3), 113(2), 120(2)(b), 125(4), 133, 167(4), 173(1)(h), (3) and (5), 176(3), 178(1)(b) and (4)(d), 182, 183(1), 187(7), 191	16.12.03	2003/3222

to 194, 197, 198(2), 200 (partially), Schs.1 to 3 and Sch.8 (partially)

Paragraph 34 of Sch.8 to the Act and s.200 in so far as it relates to it 07.07.04 2004/1738

ss.6 and 9(1) and (3) 10.09.04 2004/2360

ss. 7, 10 to 23, 25, 29, 31 to 33, 34 to 37 (each section partially), 39 (partially), 59 (partially) to 66, 68 to 77, 79, 82, 83, 84 to 86 (each section partially), 90, 96 (partially), 111 to 118, 120, 122 to 135, 158, 178, 181 (partially), 183(2), 184 to 190, 195, 200 (partially), Sch.4, Sch.5 (partially), Sch.8 (partially) 07.02.05 2004/2360

ss. 34 to 40, 42, (1) and (2), (3)(partially), (5) and (6), 44 to 46, 84 to 86, 181 (partially), Schedule 5 (partially) 07.08.05 2005/2090