

1973 No. 1958

LICENSING (LIQUOR)

The Isles of Scilly (Sale of Intoxicating Liquor) Order 1973

Made - - - 19th November 1973*Coming into Operation* 1st January 1974

In exercise of the powers conferred on me by section 202 of the Licensing Act 1964(a), I hereby make the following Order:—

Citation, commencement etc.

1.—(1) This Order may be cited as the Isles of Scilly (Sale of Intoxicating Liquor) Order 1973 and shall come into operation on 1st January 1974.

(2) Save where the context otherwise requires, this Order shall apply only to the Isles of Scilly.

2.—(1) In this Order, unless the context otherwise requires—

“the Act as modified” means the Licensing Act 1964 with the exclusions, adaptations and modifications referred to in Article 3 of this Order;

“annual permit” means a permit granted in pursuance of Article 6 of this Order;

“intoxicating liquor” has the same meaning as in the Licensing Act 1964;

“Joint Police Committee” means the Joint Police Committee for the Isles of Scilly;

“new permit” means a permit granted otherwise than by way of renewal or transfer;

“occasional permit” means a permit granted in pursuance of Article 7 of this Order;

“permit” means an annual or an occasional permit for the sale by retail of intoxicating liquor (and also, in the case of a permit granted to a club for club premises, for its supply to or to the order of members otherwise than by way of sale);

“sale by retail” means, in relation to intoxicating liquor, the sale at any one time to any one person of quantities not exceeding—

(a) in the case of spirits, wine or British wine, two gallons or one case;

(b) in the case of beer or cider, four and a half gallons or two cases;

the expressions “beer”, “British wine”, “case”, “cider”, “spirits” and “wine” have the meanings respectively assigned to them in section 307 of the Customs and Excise Act 1952(b);

“transfer” has the meaning assigned to it in Article 12 of this Order.

(a) 1964 c. 26.

(b) 1952 c. 44.

(2) Any reference in this Order to any enactment, including any enactment in the Licensing Act 1964 and the Gaming Act 1968(a), shall be construed as a reference to that enactment as amended by any other enactment.

(3) The Interpretation Act 1889(b) shall apply to the interpretation of this Order as it applies to the interpretation of an Act of Parliament.

3. The Isles of Scilly (Sale of Intoxicating Liquor) Order 1962(c) is hereby revoked.

Exclusion, modification and adaptation of Licensing Act 1964 and other enactments

4.—(1) In its application to the Isles of Scilly, the Licensing Act 1964 (with the exception of Part X) shall be subject to the exclusions, modifications and adaptations contained in the Schedule to this Order and in paragraph (2) of this Article.

(2) Without prejudice to the provisions of the Schedule to this Order, section 6 of the Gaming Act 1968 and any provisions in the Licensing Act 1964 or any other enactment relating to the sale or supply of intoxicating liquor shall, in its application to the Isles of Scilly, be modified and adapted as follows, except where the context otherwise requires:—

- (a) a reference to the general annual licensing meeting or transfer sessions or licensing sessions shall be construed as a reference to a meeting of the Joint Police Committee held for the purposes of this Order;
- (b) subject to sub-paragraphs (c) and (d) of this paragraph and except in section 83 of the Licensing Act 1964, a reference to a licence of any description or a justices' licence shall be construed as a reference to a permit of that description;
- (c) a reference to a justices' on-licence shall be construed as a reference to an annual permit authorising the sale of intoxicating liquor on the premises specified therein for consumption either on or off those premises;
- (d) a reference to a justices' off-licence shall be construed as a reference to an annual permit authorising the sale of intoxicating liquor on the premises specified therein for consumption off those premises only;
- (e) a reference to the licensing district or the licensing district for which the licensing justices act, shall be construed as a reference to the Isles of Scilly;
- (f) a reference to the licensing justices, and, except in section 188 of the Licensing Act 1964 and in the expression "clerk to the justices", a reference to justices of the peace or justices shall be construed as a reference to the Joint Police Committee and a reference to a justice or a justice of the peace shall, except in sections 54, 85, 187 and 188 of the Licensing Act 1964, be construed as a reference to a member of that committee;
- (g) a reference to licensed premises shall be construed as a reference to premises in respect of which a permit has been granted under this Order;

(a) 1968 c. 65.

(b) 1889 c. 63.

(c) S.I. 1962/621 (1962 I. p. 597).

(h) a reference to the local authority shall be construed as a reference to the Council of the Isles of Scilly.

Powers of Joint Police Committee

5.—(1) The Joint Police Committee shall be the liquor licensing authority for the Isles of Scilly.

(2) The Joint Police Committee may grant a permit to any person not disqualified under this order or under any enactment from holding such a permit or a justices' licence as they think fit and proper.

Annual permits

6.—(1) Subject to the provisions of this Order and of the Act as modified, a person shall not sell or expose for sale by retail any intoxicating liquor except as authorised by an annual permit on premises specified in the permit and in accordance with any conditions specified therein.

(2) Any such annual permit shall be one authorising the sale of intoxicating liquor on the premises specified therein—

(a) for consumption off those premises; or

(b) for consumption either on or off those premises.

(3) In the case of a permit for consumption off the premises, the permit may authorise the sale of—

(a) intoxicating liquor of all descriptions; or

(b) of beer, cider and wine only.

(4) In the case of a permit for consumption either on or off the premises, the permit may authorise the sale—

(a) of intoxicating liquor of all descriptions; or

(b) of beer, cider and wine only; or

(c) of beer and cider only; or

(d) of cider only; or

(e) of wine only.

(5) Any such annual permit shall have effect from the date stated therein until 31st March next following.

Occasional permits

7.—(1) Notwithstanding anything contained in Article 6 of this Order, intoxicating liquor may be sold or exposed for sale by retail in accordance with an occasional permit granted by the Joint Police Committee or, in the case of paragraph (7) of this Article, a court, in accordance with the provisions of this Article.

(2) The holder of an annual permit may be granted an occasional permit authorising the sale or exposure for sale by him of any intoxicating liquor to which his annual permit extends at such place, other than the premises in respect of which his annual permit was granted, and between such hours as may

be specified in the occasional permit; but an occasional permit unless granted under paragraphs (5) to (7) of this Article shall not authorise the sale of intoxicating liquor thereunder on Christmas Day, Good Friday or any day appointed for public fast or thanksgiving.

(3) The Joint Police Committee shall not grant an occasional permit to an applicant who holds only a residential permit granted under Part IV of the Act as modified; and if he holds only a restaurant permit or residential and restaurant permit granted under that Part, the Committee shall not grant the occasional permit unless satisfied that the sale of intoxicating liquor under the authority of the occasional permit is to be ancillary to the provision of substantial refreshment.

(4) Unless granted under paragraphs (5) to (7) of this Article, an occasional permit shall not be granted for a period exceeding three weeks at any one time.

(5) When a notice has been given under Article 12 of this Order, the person to whom it is proposed to transfer the annual permit may be granted an occasional permit to sell and expose for sale by retail intoxicating liquor until the Joint Police Committee give their decision on the application for transfer, as though the annual permit had been transferred.

(6) Where an application for the renewal of an annual permit has been refused and an appeal against the refusal has been duly made, the applicant may be granted an occasional permit to sell and expose for sale intoxicating liquor until the determination of the appeal.

(7) Where on conviction of an offence an annual permit is forfeited either by the court or by virtue of the conviction, and the person convicted appeals against the conviction, the convicting court may, on such conditions as it thinks just, grant an occasional permit to be in force until the appeal is determined.

Disqualification

8.—(1) Where under any enactment a person is disqualified for holding a justices' licence that person shall be disqualified for holding a permit.

(2) Any provision in the Licensing Act 1964 empowering a court to disqualify a person for holding a justices' licence shall, in its application to the Isles of Scilly, have effect as if it provided also for disqualification for holding a permit.

Penalty for unlawful sale of liquor

9. The provisions of section 160 of the Licensing Act 1964 shall apply as if the sale or exposure for sale of intoxicating liquor, otherwise than as authorised by a permit, were a contravention of that section.

Application for new annual permit

10.—(1) A person applying for a new annual permit shall—

- (a) not less than twenty-one days before the application is made, give notice in writing to the clerk of the Joint Police Committee, the chief constable of the Devon and Cornwall police area, the clerk of the Council of the Isles of Scilly and the chief fire officer of his intention to apply for the permit;

- (b) not more than twenty-eight days before the application is made, display notice of the application for a period of seven days in a place where it can conveniently be read by the public on or near the premises to which the application relates.

(2) With the notice given under paragraph (1)(a) of this Article there shall be deposited a plan of the premises to which the application relates, if the application is—

- (a) for the grant of an annual permit authorising consumption on the premises; or
- (b) for the provisional grant of an annual permit under section 6 of the Act as modified (except where the applicant complies with subsection (5) of that section).

(3) A notice under this Article shall—

- (a) be signed by the applicant or his authorised agent;
- (b) state the name and address of the applicant and his trade or calling during the six months preceding the giving of the notice;
- (c) state the situation of the premises to which the application relates;
- (d) state the kind of permit for which application is to be made.

Application for renewal of annual permit

11.—(1) A person proposing to apply to the Joint Police Committee for the renewal of an annual permit shall give notice in accordance with Article 10(1)(a) of this Order but shall not be required to give notice to the chief fire officer.

(2) A person intending to oppose an application by the holder of a permit for the renewal of his permit shall give notice in writing of his intention to the applicant, specifying in general terms the grounds of the opposition, not later than seven days before the meeting of the Joint Police Committee; and unless notice has been so given the Joint Police Committee shall not entertain the objection:

Provided that, on objection being made to the renewal, the Joint Police Committee may, notwithstanding that notice of intention to oppose has not been given, adjourn consideration of the application to a day of which they shall give notice to the applicant and the objector, and shall, on that day, hear the application and the objection as if notice of intention to oppose had been given.

(3) Evidence given on an application for the renewal of a permit shall be given on oath.

(4) For the purpose of this Order the renewal of an annual permit means the grant of an annual permit by way of renewal of a similar permit in respect of the same premises which is in force on the date of the application:

Provided that where such a permit is not in force at the date of the application, but was in force at some time within the period of twelve months preceding the application, the grant of a permit in pursuance of the application

shall be treated as a renewal of that permit, if the Joint Police Committee are satisfied that the applicant had reasonable cause for not making the application while that permit was in force.

(5) A renewal of an annual permit may be made by endorsement on the original permit or on a copy.

Application for transfer of annual permit

12.—(1) A person applying for the transfer of an annual permit shall, not less than twenty-one days before the application is made, give notice in writing of his intention to apply for the transfer of the permit to the clerk of the Joint Police Committee, the chief constable of the Devon and Cornwall police area, the clerk of the Council of the Isles of Scilly and the holder of the permit (if any) if he is not the applicant.

(2) The Joint Police Committee shall not grant an application to transfer an annual permit—

(a) except in the cases and to the persons described in paragraphs (a) to (e) of section 8(1) of the Act as modified, or, in the case of a forfeiture of a permit or the personal disqualification of the holder of the permit, to the owner of the premises specified in the permit or any person applying on his behalf;

(b) unless the transfer is to a person who is in the opinion of the Joint Police Committee a fit and proper person to be the holder of a permit.

(3) This Article shall apply in relation to the transfer of a provisional annual permit as if the permit were in force but so that in paragraph (2)(a) the reference to the case of a forfeiture of a permit or the personal disqualification of the holder of the permit shall be omitted, and for the purposes of section 8(1) of the Act as modified as it applies to provisional annual permits, "occupation" shall include intended occupation, and other expressions shall be similarly construed.

(4) For the purposes of this Order, the transfer of an annual permit is the grant of an annual permit to one person in substitution for another person who holds or has held a similar permit in respect of the same premises.

Appeal to the Crown Court

13. - (1) Any person aggrieved by the refusal of the Joint Police Committee to grant a new annual permit or a renewal or transfer of an annual permit or by any decision of the Joint Police Committee as to the conditions of an annual permit or by the making of an order under section 19 of the Act as modified may appeal against that refusal, decision or order to the Crown Court.

(2) The provisions of sections 21 to 25 of the Act as modified shall apply to an appeal under paragraph (1) of this Article as they apply to an appeal under section 21(1) of the Licensing Act 1964.

Fees payable in respect of permits

14. There may be charged by the clerk to the Joint Police Committee in respect of the issue, renewal and transfer of annual permits and the issue of certified copies of annual permits such fees respectively as are for the time

being chargeable by justices' clerks under the Licensing Act 1964 in respect of the issue, renewal and transfer of justices' licences and the issue of certified copies of justices' licences.

Clerk to Joint Police Committee not to act professionally in certain matters

15.—(1) A solicitor or other person being a clerk to the Joint Police Committee shall not by himself, his partner or clerk, as solicitor or agent for any person, conduct or act in any application for or in respect of a permit or any other proceedings under this Order or any of the provisions of the Licensing Act 1872(a), the Licensing Act 1902(b) or the Licensing Act 1964, before the Joint Police Committee or before any justice acting for the Isles of Scilly.

(2) The provisions of subsection (3) of section 28 of the Licensing Act 1964 shall apply as if any contravention of this Article were a contravention of that subsection.

Savings

16. Nothing contained in this Order shall prejudice or affect any rights, powers, authorities or privileges vested in or enjoyed by Her Majesty, Her Heirs or Successors in right of the Duchy of Cornwall or in or by the Duke of Cornwall for the time being.

Robert Carr,

One of Her Majesty's Principal
Secretaries of State.

Home Office,
Whitehall.

19th November 1973.

(a) 1872 c. 94.

(b) 1902 c. 28.

SCHEDULE

Article 4(1)

PART I

Provisions of Licensing Act 1964 which are excluded from applying to the Isles of Scilly

Sections 1 to 5, 6(2), 7, 8 (except as applied by Article 12 of this Order), 9(3) and (4), 10(1) to (4), 21 to 25 (except as applied by Article 13 of this Order), 26 to 29, 36(2)(b), 37, 38, 56, 57(2) and (3), 61(1), 66, 67, 74(6), 75(1), 87, 93(4), 102 to 147, 180 and 189.

Schedule 1, paragraphs 1 to 5 of Schedules 2, 3, 4, 8, 9 and 11.

PART II

Provisions of Licensing Act 1964 which are modified or adapted in their application to the Isles of Scilly

Section	Extent of modification or adaptation
Section 9	Section 9 shall apply as if the reference in subsection (5) to subsection (3) were omitted and any reference to a licence or justices' licence included a reference to a permit.
Section 10	Section 10 shall apply as if in subsection (5) for the reference to a protection order there were substituted a reference to an occasional permit, valid for two months, authorising such sales of intoxicating liquor as might lawfully be made under the annual permit.
Section 19	Section 19 shall apply as if for subsection (1) there were substituted the following provision: <p style="margin-left: 40px;">"On an application for the renewal of an annual permit authorising the sale of intoxicating liquor either on or off the premises, the Joint Police Committee, on renewing such a permit may order that, within the time fixed by the order, such structural alterations may be made in the part of the premises where intoxicating liquor is sold or consumed as they think reasonably necessary to secure the proper conduct of the business."</p>
Section 36	Section 36 shall apply as if in subsection (2) the reference to removal were omitted.
Section 58	In section 58 subsection (1) shall apply as if for paragraphs (a) and (b) there were substituted the words <p style="margin-left: 40px;">"(a) 'local authority' means the Council of the Isles of Scilly; (b) 'clerk of the local authority' means the clerk of the Council of the Isles of Scilly."</p>
Section 60	Section 60 shall apply as if each parish of the Isles of Scilly were a separate licensing district and the Joint Police Committee the licensing justices for that district.

Section	Extent of modification or adaptation
Section 64	Section 64 shall apply as if the reference to removal in subsection (3) were omitted.
Section 65	Section 65 shall apply as if the reference to removal in subsection (3) were omitted.
Section 69	Section 69 shall apply as if for the reference in subsection (2) to 4th April there were substituted a reference to 31st March.
Section 71	Section 71 shall apply as if the references in subsection (3) to the requirements as to notices of Schedule 2 of the Act were references to the requirements as to notices of paragraph (1) of Article 10 of this Order and a notice under that section shall be signed by the applicant or his authorised agent and shall state the situation of the premises and the nature of the application.
Section 98	Section 98 shall apply as if the authorities referred to in subsection (5) were <p style="margin-left: 40px;">(a) the Council of the Isles of Scilly, and</p> <p style="margin-left: 40px;">(b) the chief constable of the Devon and Cornwall police area.</p>
Section 99	Section 99 shall apply as if the references to removal in subsections (3) and (4) were omitted.
Section 183	Section 183 shall apply as if in subsection (1) for the word "licensed" in the second place where it occurs there were substituted the word "authorised".
Section 193	Section 193 shall apply to members of the Joint Police Committee as it applies to justices.
Schedule 2	In Schedule 2, paragraph 6 shall apply as if it required the clerk to the Joint Police Committee to keep a list of persons giving notice under Articles 10, 11 or 12 of this Order and paragraph 7 shall apply as if the references to the requirements of the preceding paragraphs of the Schedule were references to the requirements of those Articles.

EXPLANATORY NOTE

(This Note is not part of the Order.)

This Order applies only to the Isles of Scilly and substitutes for those provisions of the Licensing Act 1964 which prohibit the sale of intoxicating liquor except as authorised under that Act, and are applicable in England and Wales generally, a prohibition on the sale of intoxicating liquor except as authorised by permits granted by the Joint Police Committee for the Isles of Scilly. The Order also provides for the exercise by that Committee of the functions of licensing justices as to permitted hours, and makes certain ancillary provisions excluding, modifying or adapting the provisions of the 1964 Act in order to conform with the special conditions in the Isles of Scilly. The provisions of the Order are similar to those of the Isles of Scilly (Sale of Intoxicating Liquor) Order 1962, which it revokes, but take account of legislation enacted since 1962.

SI 1973/1958
ISBN 0-11-031958-3

