STATUTORY INSTRUMENTS

1962 No. 621

LICENSING (LIQUOR)

The Isles of Scilly (Sale of Intoxicating Liquor) Order, 1962

Made - - - -	*23rd March*, 1962
Coming into Operation	*29th March*, 1962

In pursuance of the powers conferred on me by section one hundred and sixty-six of the Licensing Act, 1953(a), as extended by subsection (5) of section nineteen of the Betting and Gaming Act, 1960(b), and subsection (7) of section thirty-seven of the Licensing Act, 1961(c), I hereby make the following Order:—

Annual permits

1.—(1) Subject to the provisions of this Order, a person shall not sell nor expose for sale by retail in the Isles of Scilly any intoxicating liquor except as authorised by an annual permit granted by the Joint Police Committee nor except at the 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 at the premises specified therein—

(*a*) for consumption off those premises, or

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

(3) Any such annual permit shall have effect from the date stated therein until the thirty-first day of March next following.

Occasional permits

2.—(1) Notwithstanding anything in Article 1 of this Order, intoxicating liquor may be sold or exposed for sale by retail in accordance with the terms of an occasional permit granted by the Joint Police Committee in accordance with the provisions of this Article.

(2) A person who is the holder of an annual permit may be granted an occasional permit to sell and expose for sale by retail intoxicating liquor for a period and on premises specified in the said permit and in accordance with any conditions specified therein.

(3) Where a notice has been given under paragraph (1) of Article 7 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.

(a) 1 & 2 Eliz. 2. c. 46. (b) 8 & 9 Eliz. 2. c. 60. (c) 9 & 10 Eliz. 2. c. 61.

(4) Where an application for the renewal of an annual permit has been refused by the Joint Police Committee 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, as though the annual permit had been renewed.

Authorisation by court

3. Where an annual permit is forfeited on or in pursuance of a conviction for an offence, and an appeal is duly made against the conviction, the court by whom the conviction was made may, by order, authorise the sale and exposure for sale of intoxicating liquor by retail until the determination of the appeal upon such conditions as they think just, and, notwithstanding anything in Article 1 of this Order, intoxicating liquor may be sold and exposed for sale accordingly.

Penalty for unlawful sale of liquor

4. The provisions of subsections (3) to (6) of section one hundred and twenty of the Licensing Act, 1953, and subsection (2) of section twenty-two of the Licensing Act, 1961, shall apply as though the sale or exposure for sale of intoxicating liquor, otherwise than as authorised by a permit, or as authorised by a court under Article 3 of this Order, were a contravention of section one hundred and twenty of the Licensing Act, 1953.

Application for new annual permit

5.—(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 to the Joint Police Committee 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 sub-paragraph (*a*) of paragraph (1) above 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 ten of the Licensing Act, 1953, as extended by section fifteen of the Licensing Act, 1961 (other than an application under subsection (2) of section fifteen).

(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

6.—(1) The provisions of subsections (2) to (5) of section eleven of the Licensing Act, 1953, shall apply to an application for the renewal of an annual permit as they apply to an application for the renewal of a justices' licence.

(2) For the purposes 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 at 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.

Application for transfer of annual permit

7.—(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 to the clerk of the Joint Police Committee of his intention to apply for the transfer of the permit.

(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 subsection (4) of section twenty-one of the Licensing Act, 1953, as extended by subsection (2) of section thirteen of the Licensing Act, 1961, 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 fit and proper.

(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 sub-paragraph (*a*) of paragraph (2) 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 this Article 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 quarter sessions

8.—(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 twelve of the Licensing Act, 1953, may appeal against that refusal, decision or order to the court of quarter sessions for the county of Cornwall.

(2) The provisions of subsections (3) to (6) of section thirty-five, section thirty-six and section thirty-seven of the Licensing Act, 1953, and sub-paragraphs (2), (4), (5), (6) and (8) of paragraph 4 of the Fourth Schedule to the Licensing Act, 1961, shall apply to an appeal under paragraph (1) of this Article as they apply to an appeal under subsection (1) of section thirty-five of the Licensing Act, 1953, or paragraph (*b*) of subsection (1) of section twelve of the Licensing Act, 1961.

Renewal of annual permit

9. A renewal of an annual permit may be made by an endorsement on the permit or by the issue of a copy of the old permit.

Fees payable in respect of permits

10. 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, 1961, 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

11.—(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 Acts, 1828 to 1906, or of the Licensing Acts, 1953 to 1961, before the Joint Police Committee or before any justice acting for the Isles of Scilly.

(2) The provisions of subsection (3) of section thirty-nine of the Licensing Act, 1953, shall apply as though any contravention of this Article were a contravention of the said section.

Exclusion, modification and adaptation of certain enactments

12.—(1) Subsections (1) to (4) of section nineteen of the Betting and Gaming Act, 1960, any provision in the Licensing Act, 1953, and the Licensing Act, 1961, and 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, that is to say, in relation to the Isles of Scilly, 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*) a reference to a justices' licence shall be construed as a reference to a permit;

(*c*) a reference to a justices' on-licence shall be construed as a reference to an annual permit authorising the sale of intoxicating liquor at 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 at 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 shall be construed as a reference to the Joint Police Committee;

(*g*) a reference to licensed premises shall be construed as a reference to premises in respect of which a permit has been granted or an authorisation issued under Article 3 of this Order;

(*h*) a reference to any Act or enactment shall be construed as a reference to that Act or enactment as applied, modified or adapted by this Order.

(2) The supplemental and consequential provisions set out in the Schedule to this Order shall have effect for the purpose of excluding, modifying and adapting the Licensing Act, 1953, and the Licensing Act, 1961, in their application to the Isles of Scilly.

Interpretation

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

"annual permit" means a permit granted in pursuance of Article 1 of this Order;

"intoxicating liquor" means any liquor which would have been intoxicating liquor within the meaning of the Licensing Act, 1953, if this Order had not been made;

"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 2 of this Order;

"permit" means an annual or an occasional permit;

"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 sweets, two gallons or, if bottled, one dozen reputed quart bottles;

(*b*) in the case of beer or cider, four and a half gallons or, if bottled, two dozen reputed quart bottles,

and for the purposes of this definition, the expressions "beer", "cider", "spirits", "sweets" and "wine" have the meanings respectively assigned to them in section three hundred and seven of the Customs and Excise Act, 1952(a);

"transfer" has the meaning assigned to it in Article 7 of this Order.

(2) Any reference in this Order to any enactment, including any enactment in the Licensing Act, 1953, the Betting and Gaming Act, 1960, or the Licensing Act, 1961, 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.

Savings

14. 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.

(a) 15 & 16 Geo. 6 & 1 Eliz. 2. c. 44. (b) 52 & 53 Vict. c. 63.

Revocation and transitional provisions

15.—(1) Subject to the transitional provisions of paragraph (2) of this Article, the Isles of Scilly (Sale of Intoxicating Liquor) Order, 1951(**a**), and the Isles of Scilly (Sale of Intoxicating Liquor) Order, 1960(**b**), are hereby revoked.

(2) So much of the Isles of Scilly (Sale of Intoxicating Liquor) Order, 1951, as relates to clubs shall continue in force for the purposes only of the transitional provisions of the Eighth Schedule to the Licensing Act, 1961.

Citation, commencement and extent

16.—(1) This Order may be cited as the Isles of Scilly (Sale of Intoxicating Liquor) Order, 1962, and shall come into operation on 29th March, 1962.

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

R. A. Butler,

One of Her Majesty's Principal Secretaries of State.

Home Office,
Whitehall.
23rd March, 1962.

ARTICLE 12 (2) SCHEDULE

PART I

Enactments which are excluded from applying to the Isles of Scilly

Act	Extent of exclusion
The Licensing Act, 1953	Sections one to seven. Section eleven, except as applied by Article 6 of this Order. Sections thirteen to nineteen. Section twenty-one, except as applied by Article 7 of this Order. Sections twenty-three to twenty-seven.

(**a**) S.I. 1951/808 (1951 I, p. 1138). (**b**) S.I. 1960/1969 (1960 II, p. 1840).

Act	Extent of exclusion
The Licensing Act, 1953 (*continued*)—	Sections thirty-five to thirty-seven, except as applied by Article 8 of this Order.
	Section thirty-eight.
	Section thirty-nine, except as applied by Article 11 of this Order.
	In section forty-six, subsection (2).
	Sections forty-nine and fifty.
	Section fifty-two.
	Part II.
	Part III.
	Part IV.
	Part V.
	Part VI.
	In section one hundred and five, subsection (1).
	Section one hundred and eight.
	Sections one hundred and eleven and one hundred and twelve.
	Section one hundred and twenty, except as applied by Article 4 of this Order.
	In section one hundred and forty-eight, subsections (1), (2), (4) and (5).
	Section one hundred and fifty-six.
	Section one hundred and fifty-nine.
	The First, Fourth, Seventh, Eighth and Ninth Schedules.
The Licensing Act, 1961	Section six.
	In section twelve, subsections (1) to (3).
	In section thirteen, subsections (1) and (3) and, except as applied by Article 7 of this Order, subsection (2).
	Section fourteen.
	Section seventeen.
	In section twenty-one, subsection (8).
	Section thirty-six.
	The Second Schedule.
	In the Fourth Schedule, paragraphs 1, 2, 5, 6, 9, 10 and 11.

PART II

Enactments modified or adapted in their application to the Isles of Scilly

Enactment	Extent of modification or adaptation
The Licensing Act, 1953—	
Section twenty-eight	Section twenty-eight shall apply to transfers of annual permits as it applies to transfers under section twenty-one of the Licensing Act, 1953, and with the omission of the reference to special removal.
Section forty-seven	Section forty-seven shall apply to the proof of permits as it applies to the proof of licences with the omission of paragraph (*b*) of subsection (2) and subsection (3) and as if for the reference in paragraph (*a*) of subsection (1) to the majority of justices present there were substituted a reference to the majority of members of the Joint Police Committee present.
Section forty-eight	Section forty-eight shall apply to members of the Joint Police Committee as it applies to justices.
Section one hundred and four ...	Section one hundred and four shall apply as if for the reference in subsection (6) to the fourth day of April there were substituted a reference to the thirty-first day of March.
Section one hundred and six ...	Section one hundred and six shall apply as if for references to justices of the peace having jurisdiction for the purposes of the section there were substituted references to the Joint Police Committee.
Section one hundred and seven ...	Section one hundred and seven shall apply as if for references to justices of the peace having jurisdiction for the purposes of the section there were substituted references to the Joint Police Committee.
Section one hundred and thirty-five	Section one hundred and thirty-five shall apply as if for the word "licensed" in subsection (1) there were substituted the word "authorised".
Section one hundred and forty-eight	In section one hundred and forty-eight, subsection (6) shall apply to sales of intoxicating liquor authorised by an occasional permit as it applies to sales of intoxicating liquor authorised by an occasional licence.

Enactment	Extent of modification or adaptation
The Licensing Act, 1953 (*continued*)—	
Section one hundred and forty-nine	Section one hundred and forty-nine shall apply as if for the reference to an occasional licence in subsection (1) there were substituted a reference to an occasional permit.
Section one hundred and fifty-four	Section one hundred and fifty-four shall apply to proceedings relating to an offence under the Order as it applies to proceedings relating to an offence under the Licensing Act, 1953.
Section one hundred and sixty ...	Section one hundred and sixty shall apply to offences under this Order as it applies to offences under the Licensing Act, 1953.
Section one hundred and sixty-one	Section one hundred and sixty-one shall apply for the purposes of this Order as it applies for the purposes of the Licensing Act, 1953.
Section one hundred and sixty-four	Section one hundred and sixty-four shall apply as if the references to the Licensing Act, 1953, included a reference to this Order.
The Licensing Act, 1961—	References in the Licensing Act, 1961, to a restaurant licence, a residential licence or a residential and restaurant licence shall be construed as references to a restaurant permit, a residential permit or a residential and restaurant permit.
Section one	Section one shall apply as if for the reference in paragraph (*b*) of subsection (5) to an occasional licence there were substituted a reference to an occasional permit.
Section two	Section two shall apply as if the authorities referred to in subsection (4) were— (i) the Council of the Isles of Scilly, and (ii) the chief constable of the Cornwall county constabulary.

Enactment	Extent of modification or adaptation
The Licensing Act, 1961 (*continued*)—	
Section four	Section four shall apply, with the omission of subsection (2), as if for subsection (5) there were substituted the following provision:— "An occasional permit shall not be granted to a person who holds only a restaurant permit, residential permit or residential and restaurant permit, unless— (*a*) he holds a restaurant permit or residential and restaurant permit; and (*b*) the Joint Police Committee are satisfied that the sale of intoxicating liquor under the authority of the occasional permit is to be ancillary to the provision of substantial refreshment.".
Section five	Section five 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 and as if the reference in subsection (6) to section one hundred and five of the Licensing Act, 1953, were a reference to subsections (2) to (4) of that section.
Section nine	Section nine shall apply as though the references in subsection (9) to the requirements as to notices of paragraph 2 of the Fourth Schedule to the Licensing Act, 1961, were references to the requirements of paragraph (1) of Article 5 of this Schedule and a notice under the provisions of subsection (9) of section nine 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 ten	Section ten shall apply as if the references to removal were omitted.
Section eleven	Section eleven shall apply as if subsection (2) and the references in subsection (3) to removal were omitted.
Section fifteen	Section fifteen shall apply as if the references in subsections (4) and (6) to removal were omitted.

Enactment	Extent of modification or adaptation
The Licensing Act, 1961 (*continued*)—	
Section sixteen	Section sixteen shall apply as if subsections (1) to (3) and (5) were omitted and, in subsection (4), 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 eighteen	Section eighteen shall apply as if subsections (3) and (5) were omitted and in subsection (4)— (*a*) for a reference to justices of the peace there were substituted a reference to the Joint Police Committee; (*b*) for a reference to an occasional licence there were substituted a reference to an occasional permit; (*c*) the requirement to give the particulars required by subsection (1) of section one hundred and forty-eight of the Licensing Act, 1953, were omitted; and (*d*) the proviso were omitted.
Section nineteen	Section nineteen shall apply to members of the Joint Police Committee as it applies to justices.
Section twenty-four	Section twenty-four shall apply as if the reference to the provisions of the Licensing Act, 1953, included a reference to this Order.
Section twenty-eight	Section twenty-eight shall apply as if the reference in subsection (1) to a licence included a reference to a permit.
Section thirty-five	Section thirty-five shall apply as if— (*a*) in subsection (1) the reference to an excise licence taken out for club premises were a reference to an annual permit granted to a club and the reference to a justices' licence were omitted; and

Enactment	Extent of modification or adaptation
The Licensing Act, 1961 (*continued*)—	
Section thirty-five (*continued*)—	(*b*) in subsection (2) the references to any excise licence taken out by the club and any justices' licence granted to the club were a reference to an annual permit granted to the club.
Section thirty-seven	In section thirty-seven, subsection (4) shall apply as if for paragraph (*a*) there were substituted the words "'local authority' means the Council of the Isles of Scilly".
Fourth Schedule	In the Fourth Schedule, paragraph 3 shall apply to proceedings of the Joint Police Committee as it applies to proceedings of the licensing justices and paragraph 4 shall apply as if sub-paragraphs (1), (3) and (7) and the references in sub-paragraph (2) to an appeal against the grant of a licence and to removal were omitted.
Eighth Schedule	In the Eighth Schedule— (*a*) paragraph 1 shall have effect as if for the definition of the transitional period there were substituted the words "'the transitional period' means the period of six weeks which begins with the appointed day"; (*b*) paragraphs 2 and 3 shall have effect as if for a reference to Part IX of the Licensing Act, 1953, there were substituted a reference to Part IX of that Act as modified or adapted by the Isles of Scilly (Sale of Intoxicating Liquor) Order, 1951, and references to registration under that Act shall be construed accordingly; and sub-paragraph (2) of paragraph 3 shall apply as if for a reference to an application for the grant of a licence made after the end of the transitional period, but at the first licensing sessions beginning not less than one month after the date of the refusal, there were substituted a reference to an application for the grant of an annual permit made to the Joint Police Committee within six weeks of the end of the transitional period.

EXPLANATORY NOTE

(This Note is not part of the Order, but is intended to indicate its general purport.)

This Order applies only to the Isles of Scilly and substitutes for those provisions of the Licensing Acts of 1953 and 1961 which prohibit the sale of intoxicating liquor except as authorised under those Acts, 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 of 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 various enactments relating to the sale and supply of intoxicating liquor. The provisions of the Order are similar to the provisions of the Isles of Scilly (Sale of Intoxicating Liquor) Order, 1951 (which it revokes), with such changes and additions as have been made necessary by the passing of the Licensing Act, 1961.