
STATUTORY INSTRUMENTS

1996 No. 3158

The Licensing (Northern Ireland) Order 1996

PART II

THE GENERAL LICENSING SYSTEM

Temporary continuance of business in certain circumstances

Protection orders

26.—(1) A person who proposes to apply for the transfer of a licence or for the concurrent transfer and renewal of a licence may apply to a court of summary jurisdiction for a protection order authorising him to carry on business under the licence until an application for the transfer, or transfer and renewal, of the licence can be brought before a court.

(2) Where the holder of a licence dies and he has no personal representative or his personal representative is unwilling or unable to act, a person who is entitled in consequence of the holder's death to a beneficial interest in the business may apply to a court of summary jurisdiction for a protection order.

(3) Where the holder of a licence has become incapable through illness or other infirmity of carrying on the business authorised by the licence, a person who proposes to carry on the business on his behalf may apply to a court of summary jurisdiction for a protection order.

(4) A court of summary jurisdiction may, on an application made in compliance with the procedure set out in Schedule 6, make the protection order if it is satisfied that the applicant is, or that there are reasonable grounds for believing that he may be, a person or one of several persons to whom it could transfer the licence or a person such as is mentioned in paragraph (2) or (3).

(5) The authority conferred by a protection order in respect of any premises shall be the same as that conferred by the licence in force (or last in force) for those premises, and, while the order is in force, the provisions of this Order (other than those relating to the renewal or transfer of licences and the foregoing provisions of this Article) shall apply as if the person to whom the order is granted were the holder of that licence.

(6) Without prejudice to the generality of paragraph (5), a protection order may be suspended as if it were a licence and shall be deemed to be suspended during any period when the licence is suspended.

(7) A licence in connection with which a protection order is in force shall be deemed to continue in force for such period as the protection order remains in force.

Supplementary provisions relating to protection orders

27.—(1) A protection order shall, unless suspended, remain in force—

- (a) for a period of 6 months or such shorter period as may be specified in the order; and
- (b) where an application for the transfer of the licence is made but not finally disposed of within that period, until the time when the application (including any appeal) is finally

disposed of or, where the transfer is not granted, until the expiration of a period of 8 weeks after that time;

but, notwithstanding the foregoing provisions of this paragraph, it shall cease to have effect—

- (i) on the transfer of the licence; or
- (ii) on the making of a further protection order under paragraph (3); or
- (iii) on its revocation by a court of summary jurisdiction on application by either the holder of the licence or the holder of the protection order; or
- (iv) on the surrender of the licence.

(2) Where a protection order has been made on an application under Article 26(3), a court of summary jurisdiction may, on application by the person in whose favour the order was made, make such further protection order or orders as it thinks fit.

(3) A protection order may be made to supersede a previous protection order, if the court is satisfied that the person in whose favour the previous order was made—

- (a) will be unable to apply for a transfer before the expiration of that order; or
- (b) consents to that order being superseded; or
- (c) no longer proposes to apply for a transfer of the licence or is not qualified to do so; or
- (d) is unable to carry on business under that order.

(4) Where the court makes a protection order the clerk of petty sessions shall note the order on the licence.

Temporary continuance of business on death, bankruptcy, etc.

28.—(1) Where at any time—

- (a) the holder of a licence dies or is adjudged bankrupt, or a composition or scheme proposed by him is approved under Chapter II of Part VIII of the Insolvency (Northern Ireland) Order 1989, or a trustee is appointed under a deed of arrangement under Chapter I of that Part VIII for the benefit of his creditors, or a receiver of his property or a committee or guardian is appointed with power to manage the business carried on under the licence; or
- (b) in the case of a body corporate which is the holder of a licence, a winding-up is commenced or a receiver is appointed as aforesaid;

the personal representative or, as the case requires, the person who is for the time being trustee in bankruptcy, supervisor of the composition or scheme, trustee under the deed, receiver, committee, guardian or liquidator shall be in the same position as regards carrying on business under the licence as if he were the holder of that licence.

(2) Where the holder of a licence dies and he has no personal representative or his personal representative is unwilling or unable to act, the licence shall, unless suspended, continue in force for the benefit of any person entitled in consequence of his death to a beneficial interest in the business until—

- (a) the expiration of a period of 2 months from the date of his death, or
- (b) a protection order is made, or
- (c) paragraph (1) becomes applicable by reason of the appointment of a personal representative,

whichever first occurs.

(3) The authority conferred on any person by virtue of paragraph (1) or (2) to carry on a business in licensed premises shall be suspended on the expiration of the period of 2 weeks from the date when he commenced to carry on the business unless during that period he has served notice that

he is carrying on the business by virtue of that paragraph (and, if he is carrying it on by virtue of paragraph (1), the capacity in which he is doing so) upon—

- (a) the clerk of petty sessions for the petty sessions district, and
- (b) the sub-divisional commander of the police sub-division,

in which the premises are situated; but the authority, if so suspended, shall revive upon the service of such a notice.

Temporary continuance of business in other premises

29.—(1) Where by reason of any circumstance such as is mentioned in paragraph 2(a)(i) or (iii) to (vi) of Schedule 2, the holder of a licence which is in force for any premises (in this Article referred to as “the original premises”) is unable to carry on business under the licence in the premises, a court of summary jurisdiction may, on an application made by him in compliance with the procedure set out in Schedule 6, make an order authorising the continuance of the business in—

- (a) temporary premises erected or to be erected wholly or partly within the curtilage, or on the site, of the original premises; or
- (b) other premises in the vicinity of the original premises or their site,

for such period, not exceeding 6 months, as the court thinks fit.

(2) A court shall not make an order under paragraph (1) unless it is satisfied—

- (a) that the premises in which the business is proposed to be carried on are adequate for the conduct of the business and will continue to be adequate during the period of the order; and
- (b) that the applicant either—
 - (i) proposes to resume business under the licence in the original premises within a reasonable period (if Article 32 does not apply), or
 - (ii) has made an application for a new licence for those or other premises, or proposes to do so within a reasonable period.

(3) An application under this Article shall be made to a court of summary jurisdiction for the petty sessions district in which the premises in which the business is sought to be continued are situated.

(4) Where an order has been made under paragraph (1), a court of summary jurisdiction may, on application by the holder of the licence, make such further order or orders under that paragraph as it thinks fit.

(5) The temporary continuance of a business under this Article shall cease—

- (a) at the end of the period specified in an order or a further order made under paragraph (1), or
- (b) when the holder of the licence resumes the business in the original premises or premises for which a new licence is granted,

whichever first occurs.

(6) Where under this Article a court authorises the temporary continuance of a business in any premises—

- (a) those premises shall be deemed to be the licensed premises;
- (b) Article 15(2) shall apply in relation to the renewal of the licence as if sub-paragraph (c) (ii) were omitted.