



London Local Authorities Act 1995

1995 CHAPTER x

PART IV

NEAR BEER LICENSING

14 Interpretation of Part IV

In this Part of this Act—

“the Act of 1964” means the Licensing Act 1964;

“near beer premises” means any premises, vehicle, vessel or stall used for a business which—

(a) consists to a significant degree in—

(i) the sale to customers for consumption on the premises of liquid refreshments which include in their trade description any of the following words:— beer, lager, pils, shandy, cider, wine, champagne, cocktail, sherry, gin, brandy, whisky, vodka or other words which imply that the liquid refreshment contains or can reasonably be expected to contain alcohol; or

(ii) the sale to customers for consumption on the premises of liquid refreshments which consist of any beverage commonly expected to contain alcohol or calculated to represent any alcoholic beverage; and

(b) offers, expressly or by implication, whether on payment of a fee or not, either or both of the following:—

(i) the provision of companions for customers on the premises; or

(ii) the provision of live entertainment on the premises;

but does not include any such premises in which the sale to customers for consumption of intoxicating liquor is provided exemption or saving from the provisions of the Act of 1964 by virtue of section 199 of that Act or in respect of which there is in force—

(A) a justices' on-licence within the meaning of section 1 (2) of the Act of 1964;

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- (B) a licence granted by the council under Schedule 12 to the London Government Act 1963, section 21 (Licensing of public exhibitions, etc.) of the Greater London Council (General Powers) Act 1966 or the Private Places of Entertainment (Licensing) Act 1967;
- (C) a licence granted by the council under the Theatres Act 1968 for the performance of plays;
- (D) a licence granted by the council under the Cinemas Act 1985;
- (E) a licence granted by licensing justices under section 148 (licences for seamen’s canteens authorising the holding of retailer’s on-licences) of the Act of 1964;
- (F) a permission granted by licensing justices under section 1 (grant of occasional permissions) of the Licensing (Occasional Permissions) Act 1983;
- (G) an occasional licence granted under section 180 (consent to grant of occasional licence) of the Act of 1964;

during the hours permitted by such licence or, in the case of premises to which sub-paragraph (A) above applies, until the expiration of 30 minutes after the end of the hours permitted by such licence:

Provided that the premises are in use wholly or mainly and bona fide for the purpose authorised by such licence; and

does not include any such premises in respect of which there is in force a licence under Part II of the Gaming Act 1968;

“occupier” in relation to any premises means an occupier who is—

- (a) the freeholder; or
- (b) a lessee; or
- (c) a tenant holding a tenancy of at least one year in duration.

15 Application of Part IV

This Part of this Act applies to the City of Westminster as from the date of commencement and to the boroughs of all other participating councils as from the appointed day.

16 Licensing

- (1) No premises shall be used in the borough as near beer premises except under and in accordance with a near beer licence granted under this section by the council.
- (2) The council may grant to an applicant and from time to time, renew or transfer a near beer licence on such terms and conditions and subject to such restrictions as may be specified.
- (3) Without prejudice to the generality of subsection (2) above, such conditions may relate to—
 - (a) the maintenance of public order and safety;
 - (b) the hours of opening and closing the premises for use as near beer premises to ensure that nuisance is not likely to be caused to residents in the neighbourhood;

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- (c) the display of advertisements on or near the near beer premises and the prohibition of touting in any form;
 - (d) the display of prices of goods and services offered on the premises;
 - (e) the number of persons who may be allowed to be on the premises at any time;
 - (f) the taking of proper precautions against fire, and the maintenance in proper order of means of escape in case of fire, fire-fighting equipment and means of lighting, sanitation and ventilation of the premises;
 - (g) the maintenance in safe condition of means of heating the premises.
- (4) Provided it has not been cancelled or revoked the near beer licence shall remain in force for 18 months or such shorter period specified in the near beer licence as the council may think fit.

17 Applications under Part IV

- (1) The occupier of premises in the borough may apply for the grant, renewal or transfer of a near beer licence, and shall not later than the day the application is made send a copy to the Commissioner and a copy to the fire authority and, subject to subsection (2) below, no such application shall be considered by the council unless the applicant complies with this subsection.
- (2) The council may in such cases as they think fit, after consulting with the Commissioner and the fire authority, consider an application for the grant, renewal or transfer of a near beer licence notwithstanding that the applicant has failed to comply with subsection (1) above.
- (3) In considering any application for the grant, renewal or transfer of a near beer licence the council shall have regard to any observations submitted to them by the Commissioner or by the fire authority within 28 days of the making of the application and may have regard to any observations submitted by him or them thereafter.
- (4) An applicant for the grant, renewal, transfer or variation of a near beer licence shall furnish such particulars and give such other notices, including the public advertisement of the application, as the council may by regulation prescribe.
- (5) Regulations under subsection (4) above may, inter alia, prescribe the procedure for determining applications.
- (6) An applicant for the grant, renewal or transfer of a near beer licence shall pay a reasonable fee determined by the council.
- (7) Where, before the date of expiry of a near beer licence, an application has been made for its renewal or transfer, the near beer licence shall be deemed to remain in force, or as the case may require, to have effect with any necessary modifications until the determination of the application by the council or the withdrawal of the application.

18 Refusal of licence

- (1) The council may refuse to grant, renew or transfer a near beer licence on any of the following grounds:—
 - (a) the premises are not structurally suitable for the purpose;
 - (b) there is a likelihood of nuisance being caused by reason of the conduct, management or situation of the premises or the character of the relevant locality or the use to which any premises in the vicinity are put;

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- (c) the persons concerned or intended to be concerned in the conduct or management of the premises as a near beer establishment could be reasonably regarded as not being fit and proper persons to hold such a licence;
 - (d) the premises are not provided with satisfactory means of lighting, sanitation and ventilation;
 - (e) the means of heating the premises are not safe;
 - (f) proper precautions against fire on the premises are not being taken;
 - (g) satisfactory means of escape in case of fire and suitable fire-fighting equipment are not provided on the premises; or
 - (h) the applicant has failed to comply with the requirements of subsection (4) or (6) of section 17 (Applications under Part IV) of this Act.
- (2) The council shall not refuse an application without giving the applicant an opportunity to appear before the committee or sub-committee determining the application.
- (3) The council may not delegate to an officer their function of refusing an application under this Part of this Act.
- (4) Where the council refuse to grant, renew or transfer a licence, they shall, if required to do so by the applicant or holder of the licence, give him a statement in writing of the reasons for their decision within 7 days of his requiring them to do so.

19 Transmission and cancellation of near beer licences

- (1) In the event of the death of the holder of a near beer licence, the person carrying on at the place in respect of which the near beer licence was granted the function to which the near beer licence relates shall be deemed to be the holder of the near beer licence unless and until the near beer licence is transferred to some other person.
- (2) The council may, at the written request of the holder of a near beer licence, cancel the near beer licence.

20 Power to prescribe standard terms, conditions and restrictions under Part IV

- (1) The council may make regulations prescribing standard conditions applicable to all, or any class of near beer licences, that is to say terms, conditions and restrictions on or subject to which such near beer licences, or near beer licences of that class are in general to be granted, renewed or transferred by them.
- (2) Where the council have made regulations under this section, every such near beer licence granted, renewed or transferred by them shall be deemed to have been so granted, renewed or transferred subject to any standard conditions applicable to it unless those standard conditions have been expressly excluded or amended.

21 Provisional grant of near beer licences

- (1) Where application is made to the council for the grant of a near beer licence in respect of premises which are to be, or are in the course of being constructed, extended or altered or improved and the council are satisfied that the premises would if completed in accordance with plans or proposals deposited in pursuance of the requirements of the council be such that they would grant the near beer licence, the council may grant the near beer licence subject to a condition that it shall be of no effect until confirmed by them.

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- (2) The council shall, on application being made for the appropriate variation of the near beer licence, confirm any near beer licence granted by virtue of subsection (1) above if and when they are satisfied that the premises have been completed in accordance with the plans or proposals referred to in the said subsection (1) or in accordance with those plans or proposals as modified with the approval of the council.

22 Variation of near beer licences

- (1) The holder of a near beer licence may at any time apply to the council for a variation in the terms, conditions or restrictions on or subject to which the near beer licence is held.
- (2) The person making an application for such a variation of licence shall on making the application pay to the council such reasonable fee as the council may fix.
- (3) The council may—
- (a) make the variation specified in the application;
 - (b) make that variation together with such further variation consequent thereon as the council may determine; or
 - (c) refuse the application:

Provided that no variation relating to fire safety conditions shall be made under this section before the fire authority have been consulted.

23 Appeals under Part IV

- (1) Any of the following persons, that is to say:—
- (a) an applicant for the grant, renewal or transfer of a near beer licence whose application is refused;
 - (b) an applicant for the grant, renewal or transfer of a near beer licence who is aggrieved by any term, condition or restriction on or subject to which the near beer licence is granted, renewed or transferred;
 - (c) an applicant for the variation of the terms, conditions or restrictions on or subject to which a near beer licence is held whose application is refused;
 - (d) an applicant for the variation of the terms, conditions or restrictions on or subject to which a near beer licence is held who is aggrieved by any term, condition or restriction contained in a further variation made consequent on the variation applied for;
 - (e) a holder of any such near beer licence whose near beer licence is revoked under section 24 (Enforcement under Part IV) of this Act;

may at any time before the expiration of the period of 21 days beginning with the relevant date appeal to the magistrates' court acting for the petty sessions area in which the premises are situated by way of complaint for an order.

- (2) In this section “the relevant date” means the date on which the person in question is notified in writing of the refusal of his application, the imposition of the terms, conditions or restrictions by which he is aggrieved or the revocation of his near beer licence, as the case may be.
- (3) An appeal by either party against the decision of the magistrates' court under this section may be brought to the Crown Court.

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- (4) On an appeal to the magistrates' court or to the Crown Court under this section the court may make such order as it thinks fit and it shall be the duty of the council to give effect to such order.
- (5) Where any near beer licence is revoked under the said section 24 of this Act or an application for the renewal of such a near beer licence is refused, the near beer licence shall be deemed to remain in force—
 - (a) until the time for bringing an appeal under this section has expired and, if such an appeal is duly brought, until the determination or abandonment of the appeal; and
 - (b) where an appeal relating to the refusal of an application for such a renewal is successful until the licence is renewed by the council.
- (6) Where any near beer licence is renewed under section 16 (Licensing) of this Act and the council specify any term, condition or restriction which was not previously specified in relation to that licence, the near beer licence shall be deemed to be free of it until the time for bringing an appeal under this section has expired and, if such an appeal is duly brought, until the determination or abandonment of the appeal.
- (7) Where the holder of a licence makes an application under section 22 (Variation of near beer licences) of this Act and the council make the variation applied for together with a further variation, then the licence shall continue as it was before the application—
 - (a) until the time for bringing an appeal under this section against any term, condition or restriction contained in the further variation has expired; and
 - (b) where any such appeal is brought, until the determination or abandonment of the appeal.

24 Enforcement under Part IV

- (1) If any occupier or other person concerned in the conduct or management of premises in the borough which are not currently licensed by the council under this Part of this Act—
 - (a) uses them as near beer premises; or
 - (b) permits them to be so used knowing or having reasonable cause to suspect that they are not currently so licensed;
 he shall be guilty of an offence and shall be liable on summary conviction to a fine not exceeding level 5 on the standard scale or to imprisonment for a term not exceeding three months or to both.
- (2) If any premises in respect of which a near beer licence is in force are used as near beer premises otherwise than in accordance with the terms, conditions or restrictions on or subject to which the near beer licence is held then the holder of the licence or other person concerned in the conduct or management of the premises shall be guilty of an offence and liable on summary conviction to a fine not exceeding level 5 on the standard scale.
- (3) Subject to section 23 (Appeals under Part IV) of this Act, the council may revoke a near beer licence if its holder is convicted of an offence under subsection (2) above.

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25 Powers of entry under Part IV

- (1) Any authorised officer (on production, if so required, of a duly authenticated document of his authority) or any police officer may at all reasonable times enter upon, inspect and examine any premises used, or which he has reasonable cause to believe are—
 - (a) used or intended to be used as a near beer premises either without the requisite near beer licence; or
 - (b) used in contravention of the terms, conditions or restrictions on or subject to which a near beer licence is granted;and may do all things reasonably necessary for the purpose of ascertaining whether an offence has been committed.
- (2) Subsections (2), (3) and (4) of section 287 of the Public Health Act 1936 shall apply in respect of entry to premises for the purposes of subsection (1) above as they apply to entry to premises for the purposes of subsection (1) of that section.
- (3) An officer of the fire authority authorised by the fire authority in writing to act in relation to this Part of this Act may at all reasonable times enter upon, inspect and examine premises which are licensed under this Part of this Act to ascertain whether conditions attached to the licence by virtue of section 16 (3) (f) (Licensing) of this Act are being complied with.
- (4) Any person who intentionally obstructs any person acting in the exercise of his powers under this section shall be guilty of an offence and shall be liable on summary conviction to a fine not exceeding level 3 on the standard scale.

26 Seizure

- (1) Any police officer who enters any premises by virtue of the powers contained in subsection (1) of section 25 (Powers of entry under Part IV) of this Act or any authorised officer who enters any premises under the authority of a warrant granted under subsection (2) of the said section 25 of this Act may seize and remove any apparatus or equipment or other thing whatsoever found on the premises which he has reasonable cause to believe may be liable to be forfeited under section 43 of the Powers of Criminal Courts Act 1973.
- (2)
 - (a) The following provisions of this subsection shall have effect where any apparatus or equipment or any other thing is seized under subsection (1) above and references in those provisions to proceedings are to proceedings in respect of the alleged offence in relation to which the article or thing is seized.
 - (b) Subject to paragraphs (c) and (d) below, at the conclusion of the proceedings the apparatus, equipment or thing shall be returned to the premises from which it was seized unless the court orders it to be forfeited under any enactment.
 - (c) If no proceedings are instituted before the expiration of a period of 28 days beginning with the date of seizure, or any proceedings instituted within that period are discontinued, at the expiration of that period or, as the case may be, on the discontinuance of the proceedings, the apparatus, equipment or thing shall, subject to paragraph (d) below, be returned to the premises from which it was seized.
 - (d) Where, at the time at which any apparatus, equipment or thing falls to be returned under paragraph (b) or (c) above, the premises from which it was seized have ceased to be occupied or the occupier of the premises appears to the council to be different from the person who occupied the premises at the

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time of seizure the council may, instead of returning it to the premises apply to a magistrates' court for an order as to the manner in which it should be dealt with.

27 Application to existing premises

Where near beer premises exist on the date this Part of this Act comes into force in the borough in which the near beer premises are situated and application for a near beer licence is made in respect of those premises within four weeks of that date those premises may lawfully continue to be used as near beer premises until the determination or withdrawal of that application and if an appeal is lodged until the determination or abandonment of the appeal.

28 Amendment of London Local Authorities Act 1990

Section 4 (Interpretation of Part II) of the London Local Authorities Act 1990 is hereby amended by the deletion, in the definition of night café, of the words “or the Private Places of Entertainment (Licensing) Act 1967” and the substitution of “, the Private Places of Entertainment (Licensing) Act 1967 or section 16 (Licensing) of the London Local Authorities Act 1995”.