

*Status: Point in time view as at 01/12/2016.*

**Changes to legislation:** Civic Government (Scotland) Act 1982, SCHEDULE 1 is up to date with all changes known to be in force on or before 10 July 2024. There are changes that may be brought into force at a future date. Changes that have been made appear in the content and are referenced with annotations. (See end of Document for details)

## SCHEDULES

### SCHEDULE 1

#### LICENSING—FURTHER PROVISIONS AS TO THE GENERAL SYSTEM

**Modifications etc. (not altering text)**

**C1** Sch. 1: power to apply conferred (18.11.1996) by 1996 c. 58, ss. 33(3), 48(6)

*Applications for the grant and renewal of licences*

- 1 (1) An application to a licensing authority for the grant or renewal of a licence shall be—
- (a) made in writing in such form as may be determined by the licensing authority;
  - (b) signed by the applicant or his agent; and
  - (c) accompanied by such fee as the authority may charge under paragraph 15 below.
- (2) An application under sub-paragraph (1) above shall specify—
- (a) the kind of licence in respect of which the application is made;
  - (b) where the applicant is a natural person, his full name [<sup>F1</sup>, address and date and place of birth] and, where the applicant himself is not to be carrying on the day-to-day management of the activity in relation to which the application is made, the full name [<sup>F1</sup>, address and date and place of birth] of any employee or agent who is;
  - (c) where the application is made by or on behalf of a person other than a natural person,
    - (i) the full name of the person;
    - (ii) the address of its registered or principal office;
    - (iii) the names [<sup>F2</sup>, private addresses and dates and places of birth] of its directors, partners or other persons responsible for its management; and
    - (iv) the full name [<sup>F3</sup>, address and date and place of birth] of any employee or agent who is to carry on the day-to-day management of the activity in relation to which the application is made;
  - (d) the address of the premises, if any, in or from which and the area in which the activity is to be carried on; and
  - (e) such other information as the authority may reasonably require.
- (3) Where the application relates to a licence for an activity which is wholly or mainly to be carried on in premises, it shall contain one or other of the following declarations by the applicant, that is to say, a declaration that he is complying with paragraph 2(2) below or a declaration by him that he is unable to do so because he has not such rights of access or other rights in respect of the premises as would enable him to do

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so, but that he has taken such reasonable steps as are open to him (specifying them) to acquire those rights and has been unable to acquire them.

#### Textual Amendments

- F1** Words in Sch. 1 para. 1(2)(b) substituted (28.2.2011) by [Criminal Justice and Licensing \(Scotland\) Act 2010 \(asp 13\)](#), **ss. 178(2)(a)**, 206(1); S.S.I. 2010/413, art. 2, sch. (with sch.)
- F2** Words in Sch. 1 para. 1(2)(c)(iii) substituted (28.2.2011) by [Criminal Justice and Licensing \(Scotland\) Act 2010 \(asp 13\)](#), **ss. 178(2)(b)(i)**, 206(1); S.S.I. 2010/413, art. 2, sch. (with sch.)
- F3** Words in Sch. 1 para. 1(2)(c)(iv) substituted (28.2.2011) by [Criminal Justice and Licensing \(Scotland\) Act 2010 \(asp 13\)](#), **ss. 178(2)(b)(ii)**, 206(1); S.S.I. 2010/413, art. 2, sch. (with sch.)

- 2 (1) A licensing authority shall, as soon as an application for the grant or renewal of a licence is made to them, send a copy of the application to the chief constable and, where the activity is wholly or mainly to be carried on
- [<sup>F4</sup>(a) in premises to which Part 3 of the [Fire \(Scotland\) Act 2005 \(asp 5\)](#) applies, the enforcing authority;
- (b) in any other premises], the [<sup>F5</sup>Scottish Fire and Rescue Service] .
- (2) Where an application is for the grant or renewal of a licence in relation to an activity wholly or mainly to be carried on in premises, the applicant shall, for a period of 21 days beginning with the date on which the application was submitted to the licensing authority, display a notice complying with sub-paragraph (3) below at or near the premises so that it can conveniently be read by the public.
- (3) The notice shall state—
- (a) that application has been made for a licence;
- (b) the particulars required under paragraph 1(2) above to be specified in the application [<sup>F6</sup> (other than the date and place of birth of any person)] ;
- (c) that objections and representations in relation to the application may be made to the licensing authority in accordance with paragraph 3 below;
- (d) the effect of paragraph 3(1) to (3) below.
- (4) Where an application contains a declaration that the applicant is complying with sub-paragraph (2) above, the applicant shall, as soon as possible after the expiry of the period of 21 days referred to in that sub-paragraph, submit to the licensing authority a certificate stating that he has so complied.
- (5) An applicant shall not be treated as having failed to comply with sub-paragraph (2) above if the notice was, without any fault or intention of his, removed, obscured or defaced before the 21 days referred to in that sub-paragraph have elapsed, so long as he has taken reasonable steps for its protection and, if need be, replacement; and if he has cause to rely on this sub-paragraph, his certificate under sub-paragraph (4) above shall state the relevant circumstances.
- (6) Where an application contains a declaration that the applicant is complying with sub-paragraph (2) above, and—
- (a) he fails to submit the certificate required by sub-paragraph (4) above;
- (b) in the circumstances referred to in sub-paragraph (5) above, he has not, in the opinion of the licensing authority, taken reasonable steps for the protection or, as the case may require, replacement of the notice; or

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- (c) the licensing authority is, at any time before they reach a final decision on the application, satisfied that the notice was not displayed in accordance with this paragraph,

they may require the applicant to display the notice again for a period of 21 days beginning with such date as they may specify and the provisions of this paragraph shall apply in respect of such display as they apply in respect of display under sub-paragraph (2) above.

- (7) The licensing authority—

- (a) shall, in accordance with sub-paragraph (8) below, cause public notice to be given of every application made to them for the grant or renewal of a licence falling within a prescribed class;
- (b) shall, in accordance with sub-paragraph (8) below, cause public notice to be given of an application made to them for the grant or renewal of a licence in relation to an activity wholly or mainly to be carried on in premises if the application contains a declaration that the applicant has been unable to comply with the requirements of sub-paragraph (2) above;
- (c) may, if they think fit, cause public notice to be given, in accordance with sub-paragraph (8) below, of any application for the grant or renewal of a licence which is made to them and notice of which they are not obliged to give under this sub-paragraph.

- (8) Public notice of an application shall be given for the purposes of sub-paragraph (7) above by publication of a notice in a newspaper or newspapers circulating in the area of the authority stating—

- (a) the particulars required under paragraph 1(2) above to be specified in the application [<sup>F7</sup> (other than the date and place of birth of any person)] ;
- (b) that objections or representations in relation to the application may be made to the licensing authority in accordance with paragraph 3 below; and
- (c) the effect of paragraph 3(1) to (3) below.

- (9) The Secretary of State may, by order made by statutory instrument subject to annulment in pursuance of a resolution of either House of Parliament, prescribe a class or classes of licences for the purposes of sub-paragraph (7) above.

#### Textual Amendments

- F4** Words in Sch. 1 para. 2(1) substituted (1.10.2006) by [The Fire \(Scotland\) Act 2005 \(Consequential Modifications and Savings\) Order 2006 \(S.S.I. 2006/475\)](#), art. 1, [sch. 1 para. 11\(6\)\(a\)](#)
- F5** Words in Sch. 1 para. 2(1)(b) substituted (1.4.2013) by [Police and Fire Reform \(Scotland\) Act 2012 \(asp 8\)](#), s. 129(2), [sch. 7 para. 53\(6\)](#); S.S.I. 2013/51, art. 2 (with transitional provisions and savings in S.S.I. 2013/121)
- F6** Words in Sch. 1 para. 2(3)(b) inserted (28.2.2011) by [Criminal Justice and Licensing \(Scotland\) Act 2010 \(asp 13\)](#), [ss. 178\(2\)\(c\)](#), 206(1); S.S.I. 2010/413, art. 2, sch. (with sch.)
- F7** Words in Sch. 1 para. 2(8)(a) inserted (28.2.2011) by [Criminal Justice and Licensing \(Scotland\) Act 2010 \(asp 13\)](#), [ss. 178\(2\)\(d\)](#), 206(1); S.S.I. 2010/413, art. 2, sch. (with sch.)

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### *Objections and representations*

- 3 (1) Any objection or representation relating to an application for the grant or renewal of a licence shall, subject to sub-paragraph (2) below, be entertained by the licensing authority if, but only if, the objection or representation—
- (a) is in writing;
  - (b) specifies the grounds of the objection or, as the case may be, the nature of the representation;
  - (c) specifies the name and address of the person making it;
  - (d) is signed by him or on his behalf;
  - (e) was made to them within [<sup>F8</sup>28] days of whichever is the later or, as the case may be, latest of the following dates—
    - (i) where public notice of the application was given under paragraph 2(7) above, the date when it was first so given;
    - (ii) where the application relates to a licence for an activity which is wholly or mainly to be carried out in premises and the authority have specified a date under paragraph 2(6) above, that date;
    - (iii) in any other case, the date when the application was made to them.
- (2) Notwithstanding sub-paragraph (1)(e) above, it shall be competent for a licensing authority to entertain an objection or representation received by them before they take a final decision upon the application to which it relates if they are satisfied that there is sufficient reason why it was not made in the time required under that sub-paragraph.
- (3) An objection or representation shall be made for the purposes of sub-paragraph (1) above if it is delivered by hand within the time there specified to the licensing authority or posted (by registered or recorded delivery post) so that in the normal course of post it might be expected to be delivered to them within that time.
- [<sup>F9</sup>3A) Where a licensing authority have determined to accept objections and representations by means of an electronic communication under paragraph 16A, an objection or representation is made for the purpose of sub-paragraph (1) of this paragraph if it is sent—
- (a) to the authority by means of an electronic communication which complies with the determination, and
  - (b) within the time specified in sub-paragraph (1).
- (3B) Sub-paragraph (3A) is without prejudice to sub-paragraph (3).]
- (4) The licensing authority shall send a copy of any relevant objection or representation (within the meaning of paragraph 19 below) to the applicant to whose application it relates.

#### **Textual Amendments**

- F8** Word in Sch. 1 para. 3(1)(e) substituted (28.2.2011) by [Criminal Justice and Licensing \(Scotland\) Act 2010 \(asp 13\)](#), **ss. 178(2)(e)**, 206(1); S.S.I. 2010/413, art. 2, sch. (with sch.)
- F9** Sch. 1 para. 3(3A)(3B) inserted (1.11.2016) by [Air Weapons and Licensing \(Scotland\) Act 2015 \(asp 10\)](#), **ss. 83(2)(a)**, 88(2); S.S.I. 2016/307, art. 2, sch.

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*Disposal of applications for the grant and renewal of licences*

- 4 (1) In considering an application for the grant or renewal of a licence, a licensing authority may make such reasonable inquiries as they think fit and include the results of these inquiries in matters they take into account, but where they intend so to include any of these results they shall notify the applicant of that intention.
- (2) A licensing authority may, before reaching a final decision upon such an application, give the applicant and any person who has made a relevant objection or representation (within the meaning of paragraph 19 below) in relation to the application an opportunity to be heard by the authority and, where they propose to do so, shall, within such reasonable period (not being less than <sup>[F10]</sup>14 days) of the date of the hearing, notify the applicant and each such person of that date.
- (3) A licensing authority shall not reach a final decision upon such an application—
- (a) in relation to which a relevant objection or representation (within the meaning of paragraph 19 below) has been made to them or in relation to which they intend to take into account any result of their inquiries under sub-paragraph (1) above; and
  - (b) in respect of which they have not, under this paragraph, given the applicant and any person who has made any such objection or representation an opportunity to be heard,
- unless they have given the applicant an opportunity to notify them in writing of his views on such objection or representation or, as the case may be, result within such reasonable period (not being less than 7 days) as they may specify.
- (4) The period referred to in sub-paragraphs (2) and (3) above shall begin with the date when the notification given by the licensing authority for the purpose of sub-paragraph (2) or, as the case may be, (3) is delivered to the person concerned and, when it is sent by post, it shall be treated as being delivered at the time when it might be expected to be delivered in the normal course of post.

**Textual Amendments**

**F10** Word in Sch. 1 para. 4(2) substituted (28.2.2011) by [Criminal Justice and Licensing \(Scotland\) Act 2010](#) (asp 13), ss. 178(2)(f), 206(1); S.S.I. 2010/413, art. 2, sch. (with sch.)

- 5 (1) Where an application for the grant or renewal of a licence has been made to a licensing authority they shall, in accordance with this paragraph—
- (a) grant or renew the licence <sup>F11</sup>...;
  - <sup>F12</sup>(b) .....
  - (c) refuse to grant or renew the licence.
- <sup>F13</sup>(1A) In granting or renewing a licence under sub-paragraph (1)(a), a licensing authority may (either or both)—
- (a) disapply or vary any standard conditions so far as applicable to the licence,
  - (b) impose conditions in addition to any mandatory or standard conditions to which the licence is subject.]
- (2) <sup>F14</sup>Subject to sub-paragraph (2A),] the conditions referred to in sub-paragraph <sup>F15</sup>(1A)(b)] above shall be such reasonable conditions as the licensing authority think fit and, without prejudice to that generality, may include—

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- (a) conditions restricting the validity of a licence to an area or areas specified in the licence; and
- (b) in relation to the grant of a licence, where that licence is intended to replace an existing licence, a condition requiring the holder of the existing licence to surrender it in accordance with paragraph 13 below.

[<sup>F16</sup>(2A) The conditions referred to in sub-paragraph (1)(b) above shall not relate to any matter in relation to which requirements or prohibitions are or could be imposed by virtue of Part 3 of the [Fire \(Scotland\) Act 2005 \(asp 5\)](#).]

[<sup>F17</sup>(2A) A variation made under sub-paragraph (1A)(a) or condition imposed under sub-paragraph (1A)(b) has no effect so far as it is inconsistent with any mandatory condition to which the licence is subject.]

- (3) A licensing authority shall refuse an application to grant or renew a licence if, in their opinion—
  - (a) the applicant or, where the applicant is not a natural person, any director of it or partner in it or any other person responsible for its management, is either—
    - (i) for the time being disqualified under section 7(6) of this Act, or
    - (ii) not a fit and proper person to be the holder of the licence;
  - (b) the activity to which it relates would be managed by or carried on for the benefit of a person, other than the applicant, who would be refused the grant or renewal of such a licence if he made the application himself;
  - (c) where the licence applied for relates to an activity consisting of or including the use of premises or a vehicle or vessel, those premises are not or, as the case may be, that vehicle or vessel is not suitable or convenient for the conduct of the activity having regard to—
    - (i) the location, character or condition of the premises or the character or condition of the vehicle or vessel;
    - (ii) the nature and extent of the proposed activity;
    - (iii) the kind of persons likely to be in the premises, vehicle or vessel;
    - (iv) the possibility of undue public nuisance; or
    - (v) public order or public safety; or
  - (d) there is other good reason for refusing the application;
 and otherwise shall grant the application.
- (4) A licensing authority shall not, in a case where a certificate falls to be submitted to them under paragraph 2(4) above, reach a final decision under this paragraph in respect of the application to which the certificate relates until it has been so submitted.
- (5) A licensing authority shall in accordance with sub-paragraph (6) below, notify their decision under sub-paragraph (1) above to—
  - (a) the applicant;
  - (b) the chief constable;
  - (c) any person who made a relevant objection or representation (within the meaning of paragraph 19 below) in relation to the application; and
  - (d) where the application was for a licence for an activity wholly or mainly to be carried on
    - [<sup>F18</sup>(a) in premises to which Part 3 of the [Fire \(Scotland\) Act 2005 \(asp 5\)](#) applies, the enforcing authority;



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(b) in any other premises], the [<sup>F19</sup>Scottish Fire and Rescue Service] .

- (6) Notification shall be made under sub-paragraph (5)(a), (b) or (d) above within 7 days of the decision to be notified by sending to the person concerned written notice of the decision and under sub-paragraph (5)(c) above either by so doing or by publishing, within that time, in a newspaper circulating in the area of the licensing authority, notice of the decision.
- (7) A licensing authority shall make out and deliver a licence to every person to whom a licence is granted or whose licence is renewed by the authority, and shall when requested by any such person and on payment of such fee as they may charge under paragraph 15 below, make out a duplicate of any licence issued under this sub-paragraph and certify such duplicate to be a true copy of that original licence; and any document purporting to be so certified by the proper officer of the authority shall be sufficient evidence of the terms of that licence.
- (8) Where a licensing authority grant a licence in respect of which an employee or agent has been named under paragraph 1(2)(b) or (c)(iv) above, the licence shall be granted jointly in the names of the applicant and of the employee or agent, and in such a case any reference in this Schedule or in Part I or II of this Act to the holder of a licence includes a reference to one or both of those persons, as the case may require.

#### Textual Amendments

- F11** Word in Sch. 1 para. 5(1)(a) repealed (28.3.2011) by [Criminal Justice and Licensing \(Scotland\) Act 2010 \(asp 13\)](#), [ss. 172\(6\)\(a\)\(i\)](#), 206(1); S.S.I. 2011/178, art. 2, sch. (with sch.)
- F12** Sch. 1 para. 5(1)(b) repealed (28.3.2011) by [Criminal Justice and Licensing \(Scotland\) Act 2010 \(asp 13\)](#), [ss. 172\(6\)\(a\)\(ii\)](#), 206(1); S.S.I. 2011/178, art. 2, sch. (with sch.)
- F13** Sch. 1 para. 5(1A) inserted (28.3.2011) by [Criminal Justice and Licensing \(Scotland\) Act 2010 \(asp 13\)](#), [ss. 172\(6\)\(b\)](#), 206(1); S.S.I. 2011/178, art. 2, sch. (with sch.)
- F14** Words in Sch. 1 para. 5(2) inserted (1.10.2006) by [The Fire \(Scotland\) Act 2005 \(Consequential Modifications and Savings\) Order 2006 \(S.S.I. 2006/475\)](#), art. 1, [sch. 1 para. 11\(6\)\(b\)\(i\)](#)
- F15** Word in Sch. 1 para. 5(2) substituted (28.3.2011) by [Criminal Justice and Licensing \(Scotland\) Act 2010 \(asp 13\)](#), [ss. 172\(6\)\(c\)](#), 206(1); S.S.I. 2011/178, art. 2, sch. (with sch.)
- F16** Sch. 1 para. 5(2A) inserted (1.10.2006) by [The Fire \(Scotland\) Act 2005 \(Consequential Modifications and Savings\) Order 2006 \(S.S.I. 2006/475\)](#), art. 1, [sch. 1 para. 11\(6\)\(b\)\(ii\)](#)
- F17** Sch. 1 para. 5(2A) inserted by virtue of (28.3.2011) by [Criminal Justice and Licensing \(Scotland\) Act 2010 \(asp 13\)](#), [ss. 172\(6\)\(d\)](#), 206(1); S.S.I. 2011/178, art. 2, sch. (with sch.)
- F18** Words in Sch. 1 para. 5(5)(d) substituted (1.10.2006) by [The Fire \(Scotland\) Act 2005 \(Consequential Modifications and Savings\) Order 2006 \(S.S.I. 2006/475\)](#), art. 1, [sch. 1 para. 11\(6\)\(b\)\(iii\)](#)
- F19** Words in Sch. 1 para. 5(5)(d) substituted (1.4.2013) by [Police and Fire Reform \(Scotland\) Act 2012 \(asp 8\)](#), s. 129(2), [sch. 7 para. 53\(6\)](#); S.S.I. 2013/51, art. 2 (with transitional provisions and savings in S.S.I. 2013/121)

#### *Restriction on successive applications*

- 6 Where a licensing authority have refused an application for the grant or renewal of a licence they shall not, within one year of their refusal, entertain a subsequent application from the same applicant for the grant of the same kind of licence in respect of the same activity in the same area or, where the activity consists of or includes the use of premises or a vehicle or vessel, in respect of an activity consisting of or including the same use of the same premises, vehicle or vessel

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unless in their opinion there has been, since their refusal, a material change of circumstances.

#### *Temporary licences*

- 7 (1) A licensing authority may grant a licence to have effect for such period not exceeding 6 weeks from its being granted as they may determine, and such a licence shall be known as a “temporary licence”.
- (2) This Schedule shall apply with the modifications specified in sub-paragraphs (3) to (5) below in relation to applications for temporary licences.
- (3) Paragraphs 1(3), 2 to 4, and 5(1), (2) [<sup>F20</sup>, (2A)] and (4) to (6) shall not apply, but in relation to each application for a temporary licence the licensing authority—
- (a) shall consult the chief constable and, where the application relates to an activity wholly or mainly to be carried on
    - [<sup>F21</sup>(i) in premises to which Part 3 of the [Fire \(Scotland\) Act 2005 \(asp 5\)](#) applies, the enforcing authority;
    - (ii) in any other premises] , the [<sup>F22</sup>Scottish Fire and Rescue Service] ;
 and
  - (b) may [<sup>F23</sup>, subject to sub-paragraph (3A) below,] grant it subject to such conditions as they think fit.
- [<sup>F24</sup>(3A) The conditions referred to in paragraph (b) of sub-paragraph (3) above shall not relate to any matter in relation to which requirements or prohibitions are or could be imposed by virtue of Part 3 of the [Fire \(Scotland\) Act 2005 \(asp 5\)](#).]
- (4) Paragraph 6 shall not apply so as to prevent a licensing authority from entertaining an application for the grant of a licence where they have, within one year, refused an application from the same applicant for a temporary licence for the same activity.
- (5) Paragraphs 8, 9, 10 and 18 shall not apply.
- (6) A temporary licence shall not be capable of being renewed but, where the holder of or the applicant for a temporary licence has also made an application for a licence under paragraph 1 above in respect of the same activity, the temporary licence, if granted, shall continue to have effect until—
- (a) the licence applied for under paragraph 1 has been granted, whether as a result of an appeal under paragraph 18 below or not, or has been deemed to have been granted; or
  - (b) where the licensing authority have refused that application, the time within which an appeal under paragraph 18 below against that decision may be made has elapsed; or
  - (c) when such an appeal has been lodged, it has been abandoned or determined.

#### **Textual Amendments**

- F20** Words in Sch. 1 para. 7(3) inserted (1.10.2006) by [The Fire \(Scotland\) Act 2005 \(Consequential Modifications and Savings\) Order 2006 \(S.S.I. 2006/475\)](#), art. 1, **sch. 1 para. 11(6)(c)(i)**
- F21** Words in Sch. 1 para. 7(3)(a) substituted (1.10.2006) by [The Fire \(Scotland\) Act 2005 \(Consequential Modifications and Savings\) Order 2006 \(S.S.I. 2006/475\)](#), art. 1, **sch. 1 para. 11(6)(c)(ii)**



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- F22** Words in Sch. 1 para. 7(3)(a)(ii) substituted (1.4.2013) by [Police and Fire Reform \(Scotland\) Act 2012 \(asp 8\)](#), s. 129(2), [sch. 7 para. 53\(6\)](#); S.S.I. 2013/51, art. 2 (with transitional provisions and savings in S.S.I. 2013/121)
- F23** Words in Sch. 1 para. 7(3)(b) inserted (1.10.2006) by [The Fire \(Scotland\) Act 2005 \(Consequential Modifications and Savings\) Order 2006 \(S.S.I. 2006/475\)](#), art. 1, [sch. 1 para. 11\(6\)\(c\)\(iii\)](#)
- F24** Sch. 1 para. 7(3A) inserted (1.10.2006) by [The Fire \(Scotland\) Act 2005 \(Consequential Modifications and Savings\) Order 2006 \(S.S.I. 2006/475\)](#), art. 1, [sch. 1 para. 11\(6\)\(d\)](#)

### *Duration of licences*

- 8 (1) Subject to and in accordance with the provisions of this paragraph, a licence shall come into force on being granted by a licensing authority or on such later date as they may specify as a condition of the licence and shall continue in force on being renewed by them.
- (2) Subject to the provisions of this paragraph, a licence shall have effect—
- for a period of three years from the date when it comes into force; or
  - for such shorter period as the licensing authority may decide at the time when they grant or renew the licence.
- (3) In the event of the death of a holder of a licence (except in the case of a licence referred to in section 13 of this Act) that licence shall be deemed to have been granted to his executor and shall, unless previously revoked, suspended or surrendered, remain in force until the end of the period of 3 months beginning with the death and shall then expire; but the licensing authority may from time to time, on the application of the executor, extend or further extend that period if they are satisfied that the extension is necessary for the purpose of winding up the deceased's estate and that no other circumstances make it undesirable.
- (4) Where one of the joint holders of a licence ceases to be such, the licence shall continue in force as if held by its remaining holder for a period of six weeks from the date of such cessation but, where the remaining holder has made an application under paragraph 1 above for a licence in respect of the same activity within that period of six weeks, that period shall be extended until the time specified in sub-paragraph (6) below.
- (5) If an application for the renewal of a licence is made before its expiry, the existing licence shall continue to have effect until the time specified in sub-paragraph (6) below.
- [<sup>F25</sup>(5A) On good cause being shown, a licensing authority may, for the purposes of sub-paragraph (5), deem an application for renewal of a licence made up to 28 days after the expiry of the licence to be an application made before the expiry.]
- (6) The time referred to in sub-paragraphs (4) and (5) above is—
- the time when the licence applied for under paragraph 1 above is granted or renewed, whether as a result of an appeal under paragraph 18 below or not, or has been deemed to have been granted or renewed; or
  - where the licensing authority have refused that application, the time within which an appeal under paragraph 18 below against that decision may be made has elapsed; or
  - where such an appeal has been lodged, the time when it has been abandoned or determined.

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- (7) Where a relevant objection or representation (within the meaning of paragraph 19 below) has been made in relation to an application for the grant of a licence, that licence shall not, unless it has been deemed to have been granted under section 3(4) of this Act, come into force until—
- (a) the time within which an appeal under paragraph 18 below against the grant of the licence may be made has elapsed; or
  - (b) where such an appeal has been lodged, it has been abandoned or determined in favour of the applicant.
- (8) This paragraph is subject to paragraphs [<sup>F26</sup>8A and] 11 to 14 below.

#### Textual Amendments

- F25** Sch. 1 para. 8(5A) inserted (28.2.2011) by [Criminal Justice and Licensing \(Scotland\) Act 2010 \(asp 13\)](#), [ss. 178\(2\)\(g\)](#), 206(1); [S.S.I. 2010/413](#), art. 2, sch. (with sch.)
- F26** Words in Sch. 1 para. 8(8) inserted (1.12.2016) by [Immigration Act 2016 \(c. 19\)](#), s. 94(1), [Sch. 5 para. 32\(2\)](#) (with [Sch. 5 para. 54](#)); [S.I. 2016/1037](#), reg. 5(i)

#### Modifications etc. (not altering text)

- C2** Sch. 1 para. 8(3) extended by [S.I. 1984/922](#), [art. 5](#)

*[<sup>F27</sup>Taxi etc driving licences for persons subject to immigration control*

#### Textual Amendments

- F27** Sch. 1 para. 8A and cross-heading inserted (1.12.2016) by [Immigration Act 2016 \(c. 19\)](#), s. 94(1), [Sch. 5 para. 32\(3\)](#) (with [Sch. 5 para. 54](#)); [S.I. 2016/1037](#), reg. 5(i)

- 8A (1) Sub-paragraph (2) applies if—
- (a) a taxi driver's licence or private hire car driver's licence is to be granted to a person who has been granted leave to enter or remain in the United Kingdom for a limited period (“the leave period”),
  - (b) the person's leave has not been extended by virtue of section 3C of the Immigration Act 1971 (continuation of leave pending variation decision), and
  - (c) apart from sub-paragraph (2), the period for which the licence would have had effect would have ended after the end of the leave period.
- (2) The licensing authority which grants the licence must specify a period in the licence as the period for which it has effect; and that period must end at or before the end of the leave period.
- (3) Sub-paragraph (4) applies if—
- (a) a taxi driver's licence or private hire car driver's licence is to be granted to a person who has been granted leave to enter or remain in the United Kingdom for a limited period, and
  - (b) the person's leave has been extended by virtue of section 3C of the Immigration Act 1971 (continuation of leave pending variation decision).

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- (4) The licensing authority which grants the licence must specify a period in the licence as the period for which it has effect; and that period must not exceed six months.
- (5) A taxi driver's licence or private hire car driver's licence ceases to have effect if the person to whom it was granted becomes disqualified by reason of the person's immigration status from driving a taxi or private hire car.
- (6) Section 13A (persons disqualified by reason of immigration status) applies for the purposes of sub-paragraph (5) as it applies for the purposes of section 13(3A).
- (7) If a licence granted in accordance with sub-paragraph (2) or (4) expires, the person to whom it was granted must, within the period of 7 days beginning with the day after that on which it expired, return the licence to the licensing authority.
- (8) If sub-paragraph (5) applies to a licence, the person to whom it was granted must, within the period of 7 days beginning with the day after the day on which the person first became disqualified, return the licence to the licensing authority which granted the licence.
- (9) A person who, without reasonable excuse, contravenes sub-paragraph (7) or (8) is guilty of an offence and liable on summary conviction to a fine not exceeding level 3 on the standard scale.
- (10) This paragraph applies in relation to the renewal of a licence as it applies in relation to the grant of a licence.]

#### *Notification of changes and alterations*

- 9 (1) Where there is a material change of circumstances affecting a holder of a licence, or the activity to which the licence relates, the holder of the licence shall, in accordance with this paragraph, notify the licensing authority of the change as soon as reasonably practicable after it has taken place.
- (2) The holder of a licence which relates to an activity consisting of or including the use of premises, a vehicle or a vessel shall not, unless in accordance with a requirement imposed by or in pursuance of any enactment other than Parts I or II of this Act, make or cause to be made or permit there to be made any material change in the premises or, as the case may be, the vehicle or vessel without the prior consent of the licensing authority.
- (3) A notification under sub-paragraph (1) above or application for consent under sub-paragraph (2) above shall be accompanied by such fee as the licensing authority may charge under paragraph 15 below.
- (4) A licensing authority, before considering whether or not to give their consent under sub-paragraph (2) above, shall be entitled to require the holder of the licence to furnish them with specifications, including plans, of the proposed changes.
- (5) A licensing authority, before deciding whether or not to give their consent under sub-paragraph (2) above, shall consult with the chief constable and, in the case of a change <sup>F28</sup>(a) in premises to which Part 3 of the [Fire \(Scotland\) Act 2005 \(asp 5\)](#) applies, the enforcing authority;  
(b) any other premises] , with the <sup>F29</sup>Scottish Fire and Rescue Service] .

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- (6) Where the licensing authority have given their consent under sub-paragraph (2) above to a change in premises or a vehicle or vessel, it shall not be necessary for the holder of the licence relating to those premises or that vehicle or vessel to notify the licensing authority of that change under sub-paragraph (1) above.
- (7) A licensing authority shall, within 7 days of their decision under sub-paragraph (2) above, send written notice of their decision to the holder of the licence and the chief constable and, where the change is
- [<sup>F30</sup>(a) to premises to which Part 3 of the [Fire \(Scotland\) Act 2005 \(asp 5\)](#) applies, the enforcing authority;
  - (b) to any other premises] , to the [<sup>F31</sup>Scottish Fire and Rescue Service] .
- (8) In this paragraph, a “material change” includes any material change in the particulars given or referred to in the application for the grant, or, where the licence has been renewed, the most recent application for the renewal, of the licence.

#### Textual Amendments

- F28** Words in Sch. 1 para. 9(5) substituted (1.10.2006) by [The Fire \(Scotland\) Act 2005 \(Consequential Modifications and Savings\) Order 2006 \(S.S.I. 2006/475\)](#), art. 1, **sch. 1 para. 11(6)(e)(i)**
- F29** Words in Sch. 1 para. 9(5)(b) substituted (1.4.2013) by [Police and Fire Reform \(Scotland\) Act 2012 \(asp 8\)](#), s. 129(2), **sch. 7 para. 53(6)**; S.S.I. 2013/51, art. 2 (with transitional provisions and savings in S.S.I. 2013/121)
- F30** Words in Sch. 1 para. 9(7) substituted (1.10.2006) by [The Fire \(Scotland\) Act 2005 \(Consequential Modifications and Savings\) Order 2006 \(S.S.I. 2006/475\)](#), art. 1, **sch. 1 para. 11(6)(e)(ii)**
- F31** Words in Sch. 1 para. 9(7)(b) substituted (1.4.2013) by [Police and Fire Reform \(Scotland\) Act 2012 \(asp 8\)](#), s. 129(2), **sch. 7 para. 53(6)**; S.S.I. 2013/51, art. 2 (with transitional provisions and savings in S.S.I. 2013/121)

#### Modifications etc. (not altering text)

- C3** Sch. 1 para. 9(1)(8) extended by [S.I. 1984/922](#), **art. 6**

### *[<sup>F32</sup>Variation, suspension and revocation of licences]*

#### Textual Amendments

- F32** Sch. 1 para. 10 cross-heading substituted (1.11.2016) by [Air Weapons and Licensing \(Scotland\) Act 2015 \(asp 10\)](#), **ss. 78(3)(a)**, 88(2); S.S.I. 2016/307, art. 2, **sch.** (with art. 5)

- 10 (1) A licensing authority may, at any time, whether or not upon an application made to them by the holder of the licence, vary the terms of a licence on any grounds they think fit.
- (2) A licensing authority, before proceeding to vary the terms of a licence under sub-paragraph (1) above—
- (a) shall, not later than 7 days before the day on which the proposed variation is to be considered, notify the holder of the licence, the chief constable and, where the licence relates to an activity wholly or mainly carried on in premises, the [<sup>F33</sup>Scottish Fire and Rescue Service] of the proposed variation; and

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- (b) shall give each of the persons [<sup>F34</sup>required to be notified under] sub-sub-paragraph (a) above an opportunity to be heard by the authority on that day.
- [<sup>F35</sup>(2A) Where the premises mentioned in sub-paragraph (2)(a) above are premises to which Part 3 of the [Fire \(Scotland\) Act 2005 \(asp 5\)](#) applies, that sub-paragraph applies as if the reference to the [<sup>F36</sup>Scottish Fire and Rescue Service] were a reference to the enforcing authority]
- (3) A licensing authority shall have complied with sub-paragraph (2)(b) above if they have invited each of the persons whom they must notify under that sub-paragraph to attend and to be heard by the authority when the variation of the licence is to be considered.
- (4) A licensing authority shall, within 7 days of their decision under sub-paragraph (1) above, send written notice of their decision to the holder of the licence and the chief constable and, where the licence relates to an activity wholly or mainly carried on
- [<sup>F37</sup>(a) in premises to which Part 3 of the [Fire \(Scotland\) Act 2005 \(asp 5\)](#) applies, the enforcing authority;
- (b) in any other premises] , to the [<sup>F38</sup>Scottish Fire and Rescue Service] .
- (5) A variation in the terms of a licence shall come into force—
- (a) when the time within which an appeal under paragraph 18 below may be made has elapsed; or
- (b) where such an appeal has been lodged, when the appeal has been abandoned or determined in favour of the variation.

#### Textual Amendments

- F33** Words in Sch. 1 para. 10(2)(a) substituted (1.4.2013) by [Police and Fire Reform \(Scotland\) Act 2012 \(asp 8\)](#), s. 129(2), [sch. 7 para. 53\(6\)](#); S.S.I. 2013/51, art. 2 (with transitional provisions and savings in S.S.I. 2013/121)
- F34** Words in Sch. 1 para. 10(2)(b) substituted (1.10.2006) by [The Fire \(Scotland\) Act 2005 \(Consequential Modifications and Savings\) Order 2006 \(S.S.I. 2006/475\)](#), art. 1, [sch. 1 para. 11\(6\)\(f\)\(i\)](#)
- F35** Sch. 1 para. 10(2A) inserted (1.10.2006) by [The Fire \(Scotland\) Act 2005 \(Consequential Modifications and Savings\) Order 2006 \(S.S.I. 2006/475\)](#), art. 1, [sch. 1 para. 11\(6\)\(f\)\(ii\)](#)
- F36** Words in Sch. 1 para. 10(2A) substituted (1.4.2013) by [Police and Fire Reform \(Scotland\) Act 2012 \(asp 8\)](#), s. 129(2), [sch. 7 para. 53\(6\)](#); S.S.I. 2013/51, art. 2 (with transitional provisions and savings in S.S.I. 2013/121)
- F37** Words in Sch. 1 para. 10(4) substituted (1.10.2006) by [The Fire \(Scotland\) Act 2005 \(Consequential Modifications and Savings\) Order 2006 \(S.S.I. 2006/475\)](#), art. 1, [sch. 1 para. 11\(6\)\(f\)\(iii\)](#)
- F38** Words in Sch. 1 para. 10(4)(b) substituted (1.4.2013) by [Police and Fire Reform \(Scotland\) Act 2012 \(asp 8\)](#), s. 129(2), [sch. 7 para. 53\(6\)](#); S.S.I. 2013/51, art. 2 (with transitional provisions and savings in S.S.I. 2013/121)

- 11 (1) A licensing authority may, whether upon a complaint made to them or not, suspend [<sup>F39</sup>or revoke] a licence in accordance with the provisions of this paragraph.
- (2) A licensing authority may order the suspension [<sup>F40</sup>or revocation] of a licence if in their opinion—
- (a) the holder of the licence or, where the holder is not a natural person, any director of it or partner in it or any other person responsible for its management, is not or is no longer a fit and proper person to hold the licence;

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- (b) the activity to which the licence relates is being managed by or carried on for the benefit of a person, other than the licence holder, who would have been refused the grant or renewal of the licence under paragraph 5(3) above;
  - (c) the carrying on of the activity to which the licence relates has caused, is causing or is likely to cause undue public nuisance or a threat to public order or public safety;
  - (d) a condition of the licence has been contravened.
- [<sup>F41</sup>(2A) A licensing authority may order the suspension or revocation of a taxi driver's licence or a private hire car driver's licence if the holder of the licence has, since its grant, been convicted of an immigration offence or required to pay an immigration penalty (see paragraph 20).
- (2B) Sub-paragraph (2A) does not apply if—
- (a) in a case where the holder of the licence has been convicted of an immigration offence, the conviction is a spent conviction within the meaning of the Rehabilitation of Offenders Act 1974, or
  - (b) in a case where the holder of the licence has been required to pay an immigration penalty—
    - (i) more than three years have elapsed since the date on which the penalty was imposed, and
    - (ii) the amount of the penalty has been paid in full.]
- (3) A licensing authority may make an order under sub-paragraph (2)(d) above in respect of a contravention of a condition of a licence notwithstanding that there has been no conviction in that respect.
- (4) In considering whether to suspend [<sup>F42</sup>or revoke] a licence the licensing authority may—
- (a) have regard to—
    - (i) any misconduct on the part of the holder of the licence, whether or not constituting a breach of any provision of Part I or II of this Act or this Schedule, which in the opinion of the authority has a bearing on his fitness to hold a licence;
    - (ii) where the licence relates to an activity consisting of or including the use of premises or a vehicle or vessel, any misconduct on the part of persons frequenting or using the premises, vehicle or vessel occurring there or any misconduct in the immediate vicinity of the premises, vehicle or vessel which is attributable to those persons;
  - (b) make such reasonable inquiries as they think fit and, subject to sub-paragraph (5) below, include the results of their inquiries in the matters to which they have regard in such consideration.
- (5) Where a licensing authority intend to include any of the results of their inquiries under sub-paragraph (4)(b) above in the matters to which they have regard for the purposes of sub-paragraph (4) above, they shall notify the holder of the licence of that intention.
- (6) A licensing authority may, whether upon an application made to them or not, recall an order [<sup>F43</sup>to suspend a licence] made under this paragraph.
- (7) A licensing authority in considering whether or not to suspend [<sup>F44</sup>or revoke] a licence may, but before deciding to do so shall, give—



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- (a) the holder of the licence;
  - (b) any person who has made a complaint relevant to the matters to be considered at the hearing;
  - (c) the chief constable; and
  - (d) where the licence relates to an activity wholly or mainly carried on
    - [<sup>F45</sup>(a) in premises to which Part 3 of the [Fire \(Scotland\) Act 2005 \(asp 5\)](#) applies, the enforcing authority;
    - (b) in any other premises], the [<sup>F46</sup>Scottish Fire and Rescue Service] ,an opportunity to be heard by the licensing authority.
- (8) The licensing authority shall have complied with their duty under sub-paragraph (7) above if they have caused to be sent to the persons entitled under that sub-paragraph to an opportunity to be heard, not later than [<sup>F47</sup>14] days before the hearing, notice in writing that the authority propose to hold a hearing, together with a copy of any complaints relevant to the matters to be considered at the hearing and a note of the grounds upon which the suspension [<sup>F48</sup>or revocation] of the licence is to be considered and, where they decide to exercise their power under that sub-paragraph, they shall cause such notice, copy and note to be sent to those persons not later than that time.
- (9) Where a licensing authority decide to order the suspension [<sup>F49</sup>or revocation] of a licence, the suspension [<sup>F50</sup>or, as the case may be, revocation] shall not, subject to sub-paragraph (10) below, take effect until the expiry of the time within which the holder of the licence may appeal under paragraph 18 below against the suspension [<sup>F50</sup>or, as the case may be, revocation] or, if such an appeal has been lodged, until it has been abandoned or determined in favour of the suspension [<sup>F50</sup>or, as the case may be, revocation] .
- (10) If, in deciding to order the suspension [<sup>F51</sup>or revocation] of a licence, a licensing authority determine that the circumstances of the case justify immediate suspension they may, without prejudice to their other powers under this paragraph, order that the licence shall be suspended immediately.
- (11) The period of suspension of a licence under this paragraph shall be the unexpired portion of the duration of the licence, or such shorter period as the licensing authority may fix; and the effect of suspension shall be that the licence shall cease to have effect during the period of the suspension.
- (12) A licensing authority shall, within 7 days of their decision under sub-paragraph (1) above, send written notice of their decision to the persons referred to in sub-paragraph (7)(a), (c) and (d) above in relation to the licence and to any person who, in pursuance of sub-paragraph (7)(b) above, was heard by the authority before they reached that decision.

#### Textual Amendments

- F39** Words in Sch. 1 para. 11(1) inserted (1.11.2016) by [Air Weapons and Licensing \(Scotland\) Act 2015 \(asp 10\)](#), **ss. 78(3)(b)(i)**, 88(2); S.S.I. 2016/307, art. 2, sch. (with art. 5)
- F40** Words in Sch. 1 para. 11(2) inserted (1.11.2016) by [Air Weapons and Licensing \(Scotland\) Act 2015 \(asp 10\)](#), **ss. 78(3)(b)(ii)**, 88(2); S.S.I. 2016/307, art. 2, sch. (with art. 5)
- F41** Sch. 1 para. 11(2A)(2B) inserted (1.12.2016) by [Immigration Act 2016 \(c. 19\)](#), s. 94(1), **Sch. 5 para. 32(4)** (with [Sch. 5 para. 55](#)); S.I. 2016/1037, reg. 5(i)

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- F42** Words in Sch. 1 para. 11(4) inserted (1.11.2016) by [Air Weapons and Licensing \(Scotland\) Act 2015 \(asp 10\)](#), **ss. 78(3)(b)(iii)**, 88(2); S.S.I. 2016/307, art. 2, sch. (with art. 5)
- F43** Words in Sch. 1 para. 11(6) inserted (1.11.2016) by [Air Weapons and Licensing \(Scotland\) Act 2015 \(asp 10\)](#), **ss. 78(3)(b)(iv)**, 88(2); S.S.I. 2016/307, art. 2, sch. (with art. 5)
- F44** Words in Sch. 1 para. 11(7) inserted (1.11.2016) by [Air Weapons and Licensing \(Scotland\) Act 2015 \(asp 10\)](#), **ss. 78(3)(b)(v)**, 88(2); S.S.I. 2016/307, art. 2, sch. (with art. 5)
- F45** Words in Sch. 1 para. 11(7)(d) substituted (1.10.2006) by [The Fire \(Scotland\) Act 2005 \(Consequential Modifications and Savings\) Order 2006 \(S.S.I. 2006/475\)](#), art. 1, **sch. 1 para. 11(6)(g)**
- F46** Words in Sch. 1 para. 11(7)(d) substituted (1.4.2013) by [Police and Fire Reform \(Scotland\) Act 2012 \(asp 8\)](#), s. 129(2), **sch. 7 para. 53(6)**; S.S.I. 2013/51, art. 2 (with transitional provisions and savings in S.S.I. 2013/121)
- F47** Word in Sch. 1 para. 11(8) substituted (28.2.2011) by [Criminal Justice and Licensing \(Scotland\) Act 2010 \(asp 13\)](#), **ss. 178(2)(h)**, 206(1); S.S.I. 2010/413, art. 2, sch. (with sch.)
- F48** Words in Sch. 1 para. 11(8) inserted (1.11.2016) by [Air Weapons and Licensing \(Scotland\) Act 2015 \(asp 10\)](#), **ss. 78(3)(b)(vi)**, 88(2); S.S.I. 2016/307, art. 2, sch. (with art. 5)
- F49** Words in Sch. 1 para. 11(9) inserted (1.11.2016) by [Air Weapons and Licensing \(Scotland\) Act 2015 \(asp 10\)](#), **s. 78(3)(b)(vii)(A)**, 88(2); S.S.I. 2016/307, art. 2, sch. (with art. 5)
- F50** Words in Sch. 1 para. 11(9) inserted (1.11.2016) by [Air Weapons and Licensing \(Scotland\) Act 2015 \(asp 10\)](#), **s. 78(3)(b)(vii)(B)**, 88(2); S.S.I. 2016/307, art. 2, sch. (with art. 5)
- F51** Words in Sch. 1 para. 11(10) inserted (1.11.2016) by [Air Weapons and Licensing \(Scotland\) Act 2015 \(asp 10\)](#), **ss. 78(3)(b)(viii)**, 88(2); S.S.I. 2016/307, art. 2, sch. (with art. 5)

- 12 (1) A licensing authority shall, whether upon a complaint made to them or not, order the suspension under this paragraph of a licence if they are of the opinion that the carrying on of the activity to which the licence relates is causing or is likely to cause a serious threat to public order or public safety.
- (2) In considering whether to suspend a licence under this paragraph, a licensing authority may make such reasonable inquiries as they think fit and include the results of their inquiries in the matters to which they have regard in such consideration.
- (3) Where a licensing authority intend to include any of the results of their inquiries under sub-paragraph (2) above in the matters to which they have regard for the purposes of this paragraph they shall notify the holder of the licence of that intention.
- (4) A licensing authority shall, before reaching a decision on the question whether or not to suspend a licence under this paragraph, consult the chief constable and, where the licence relates to an activity wholly or mainly carried on
- [<sup>F52</sup>(a) in premises to which Part 3 of the [Fire \(Scotland\) Act 2005 \(asp 5\)](#) applies, the enforcing authority;
- (b) in any other premises], the [<sup>F53</sup>Scottish Fire and Rescue Service] .
- (5) An order under this paragraph suspending a licence shall have effect from the date on which it is made until whichever is the earlier of the following two dates—
- (a) a date six weeks after the order was made;
- (b) the date of any decision of the licensing authority whether or not to suspend [<sup>F54</sup>or revoke] the licence under paragraph 11 above.
- (6) A licensing authority may, whether upon an application made to them or not, recall an order made under this paragraph.
- (7) A licensing authority shall, within 7 days of their decision under sub-paragraph (1) or (6) above, send written notice of their decision to the holder of the licence, the chief constable and, where the licence relates to an activity wholly or mainly carried on

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- [<sup>F55</sup>(a) in premises to which Part 3 of the [Fire \(Scotland\) Act 2005 \(asp 5\)](#) applies, the enforcing authority;
- (b) in any other premises] , to the [<sup>F56</sup>Scottish Fire and Rescue Service] .

#### Textual Amendments

- F52** Words in Sch. 1 para. 12(4) substituted (1.10.2006) by [The Fire \(Scotland\) Act 2005 \(Consequential Modifications and Savings\) Order 2006 \(S.S.I. 2006/475\)](#), art. 1, **sch. 1 para. 11(6)(h)(i)**
- F53** Words in Sch. 1 para. 12(4)(b) substituted (1.4.2013) by [Police and Fire Reform \(Scotland\) Act 2012 \(asp 8\)](#), s. 129(2), **sch. 7 para. 53(6)**; S.S.I. 2013/51, art. 2 (with transitional provisions and savings in S.S.I. 2013/121)
- F54** Words in Sch. 1 para. 12(5)(b) inserted (1.11.2016) by [Air Weapons and Licensing \(Scotland\) Act 2015 \(asp 10\)](#), **ss. 78(3)(c)**, 88(2); S.S.I. 2016/307, art. 2, sch. (with art. 5)
- F55** Words in Sch. 1 para. 12(7) substituted (1.10.2006) by [The Fire \(Scotland\) Act 2005 \(Consequential Modifications and Savings\) Order 2006 \(S.S.I. 2006/475\)](#), art. 1, **sch. 1 para. 11(6)(h)(ii)**
- F56** Words in Sch. 1 para. 12(7)(b) substituted (1.4.2013) by [Police and Fire Reform \(Scotland\) Act 2012 \(asp 8\)](#), s. 129(2), **sch. 7 para. 53(6)**; S.S.I. 2013/51, art. 2 (with transitional provisions and savings in S.S.I. 2013/121)

#### Supplementary

- 13 (1) A holder of a licence may at any time surrender the licence to the licensing authority and it shall thereupon cease to have effect.
- (2) A holder of a licence shall deliver the licence to the licensing authority—
- (a) within 7 days after the coming into effect of a decision of a licensing authority to suspend [<sup>F57</sup>, revoke] or vary the terms of the licence or of a court, under section 7(6)(a) of this Act, to revoke it;
- (b) where the licence relates to an activity which he has given up.
- (3) A licensing authority shall, on making an order suspending [<sup>F58</sup>or revoking] a licence or on deciding to vary the terms of a licence, cause notice in writing to be given to the holder of the licence of his duty to deliver it under sub-paragraph (2) above.
- (4) Where a licence has been surrendered under this paragraph on its revocation under section 7(6)(a) of this Act or its suspension [<sup>F59</sup>or revocation] under this Schedule and the revocation or suspension is quashed or recalled the licensing authority shall re-issue the licence.

#### Textual Amendments

- F57** Word in Sch. 1 para. 13(2)(a) inserted (1.11.2016) by [Air Weapons and Licensing \(Scotland\) Act 2015 \(asp 10\)](#), **ss. 78(3)(d)(i)**, 88(2); S.S.I. 2016/307, art. 2, sch. (with art. 5)
- F58** Words in Sch. 1 para. 13(3) inserted (1.11.2016) by [Air Weapons and Licensing \(Scotland\) Act 2015 \(asp 10\)](#), **ss. 78(3)(d)(ii)**, 88(2); S.S.I. 2016/307, art. 2, sch. (with art. 5)
- F59** Words in Sch. 1 para. 13(4) inserted (1.11.2016) by [Air Weapons and Licensing \(Scotland\) Act 2015 \(asp 10\)](#), **ss. 78(3)(d)(iii)**, 88(2); S.S.I. 2016/307, art. 2, sch. (with art. 5)

- 14 (1) A licensing authority shall cause to be kept a register of applications under this Schedule (in this paragraph referred to as “the register”) and shall, as soon as reasonably practicable after—

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- (a) the receipt of each application, cause details of such receipt; and
  - (b) their final decision on each application, cause details of that decision
- to be entered in the register.
- (2) The register shall include—
- (a) a note of the kind and terms of each licence granted by the licensing authority;
  - (b) a note of any suspension, variation of the terms, [<sup>F60</sup>revocation] or surrender, of a licence.
- (3) The register shall be open to the inspection of any member of the public at such reasonable times and places as may be determined by the licensing authority and any member of the public may make a copy thereof or an extract therefrom.
- (4) A licensing authority may, on payment of such fee as they may charge under paragraph 15 below, issue a certified true copy of any entry in the register; and any document purporting to be certified by the proper officer of the licensing authority as a true copy of an entry shall be sufficient evidence of the terms of the original entry.

#### **Textual Amendments**

**F60** Word in Sch. 1 para. 14(2)(b) inserted (1.11.2016) by [Air Weapons and Licensing \(Scotland\) Act 2015 \(asp 10\)](#), **ss. 78(3)(e)**, 88(2); S.S.I. 2016/307, art. 2, sch. (with art. 5)

#### *Fees*

- 15 (1) A licensing authority shall, subject to sub-paragraph (2) below—
- (a) in respect of applications made to them under this Schedule;
  - (b) in respect of the issue of certified duplicate licences under paragraph 5(7) above;
  - (c) in respect of their consideration of a material change of circumstances or in premises or a vehicle or vessel under paragraph 9 above and their disposal of the matter;
  - (b) in respect of the issue under paragraph 14 above of certified true copies
- charge such reasonable fees as they may, in accordance with sub-paragraph (2) below, determine; and the authority may under this sub-paragraph determine different fees for different classes of business, and items of business may be classed for that purpose by reference to any factor or factors whatsoever.
- (2) Subject to sub-paragraph (3) below, in determining the amount of the different fees under sub-paragraph (1) above, the licensing authority shall seek to ensure that from time to time the total amount of fees receivable by the authority is sufficient to meet the expenses of the authority in exercising their functions under Parts I and II of this Act and this Schedule.
- (3) Sub-paragraph (2) above does not apply in respect of the fees and expenses in respect of which provision is made by section 12 of this Act.

#### **Modifications etc. (not altering text)**

**C4** Sch. 1 para. 15(1): power to prescribe fees conferred by [Salmon Act 1986 \(c. 62, SIF 52:2\)](#), **ss. 20(2)43(1)**

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### *Sending of notice by post*

- 16 When a licensing authority sends by post, for the purposes of paragraphs 5(6), 9(7), 10(4), 11(12), or 12(7), written notice of its decision, it shall be treated as having been sent within the time required if it was posted so that in the normal course of post it might be expected to be delivered to the person concerned within that time.

### *<sup>F61</sup>Electronic communications*

#### **Textual Amendments**

**F61** Sch. 1 para. 16A and cross-heading inserted (1.11.2016) by [Air Weapons and Licensing \(Scotland\) Act 2015 \(asp 10\)](#), **ss. 83(2)(b)**, 88(2); S.S.I. 2016/307, art. 2, sch.

- 16A (1) A licensing authority may determine to accept—
- (a) applications for the grant or renewal of a licence under paragraph 1,
  - (b) objections or representations under paragraph 3,
  - (c) notifications of a change to a licence under paragraph 9,
- by means of an electronic communication.
- (2) Where a licensing authority make a determination under sub-paragraph (1) they must—
- (a) specify in the determination—
    - (i) the form of electronic communication by which applications, objections, representations or notifications may be made or given,
    - (ii) the electronic address to be used for making or giving applications, objections, representations or notifications, and
    - (iii) any means of authentication (in addition to an electronic signature) that are acceptable, and
  - (b) publicise the determination as they consider appropriate.
- (3) In relation to an application, objection, representation or notification made or given by means of an electronic communication, any requirement of this Schedule for the application, objection, representation or notification—
- (a) to be in writing is satisfied if the communication is—
    - (i) in the form specified under sub-paragraph (2)(a)(i), and
    - (ii) sent to the address specified under sub-paragraph (2)(a)(ii),
  - (b) to be signed is satisfied if the communication includes an electronic signature or is authenticated by a means specified under sub-paragraph (2)(a)(iii).
- (4) A licensing authority may determine to—
- (a) give notices under paragraphs 5, 9, 10, 11 or 12, and
  - (b) give reasons under paragraph 17,
- by means of an electronic communication.
- (5) A licensing authority may only give a notice or reasons by means of an electronic communication if—
- (a) the person to whom the notice or reasons is or are to be given has agreed to receive notices and reasons by means of an electronic communication, and
  - (b) the communication is sent to an electronic address, and is in an electronic form, specified for that purpose by the person.

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- (6) In relation to any notice or reasons given by means of an electronic communication, any requirement of this Schedule for the notice or reasons to be given in writing is satisfied if the communication is sent in accordance with sub-paragraph (5).
- (7) When a licensing authority gives a notice or reasons by means of an electronic communication then, unless the contrary is proved, it is to be treated as having been received by the person to whom it was sent on the second working day after the day on which it was sent.
- (8) For the purposes of sub-paragraph (7), “working day” means a day which is not—
  - (a) a Saturday or Sunday,
  - (b) Christmas Eve or Christmas Day,
  - (c) a day which is a bank holiday in Scotland under the Banking and Financial Dealings Act 1971,
  - (d) a day appointed for public thanksgiving or mourning, or
  - (e) a day which is a local or public holiday in the area in which the electronic communication is to be sent.
- (9) A licensing authority may make different determinations for different purposes including, in particular, for different types of licence.
- (10) In this Schedule—
  - “electronic communication” is to be construed in accordance with section 15(1) of the Electronic Communications Act 2000,
  - “electronic signature” is to be construed in accordance with section 7(2) of the Electronic Communications Act 2000.]

*Notification of the decisions and giving of reasons*

- 17 (1) A licensing authority shall, within 10 days of being required to do so under sub-paragraph (2) below, give reasons in writing for arriving at any decision of theirs under this Schedule—
  - (a) to grant or renew a licence or to refuse to do so;
  - (b) to consent or to refuse to consent to a material change in any premises, vehicle or vessel;
  - (c) to vary or refuse to vary the terms of a licence;
  - (d) in relation to paragraph 11 above—
    - [<sup>F62</sup>(ai) to revoke a licence or to refuse to do so,]
    - (i) to suspend a licence or to refuse to do so;
    - (ii) as to the period of suspension;
    - (iii) ordering immediate suspension;
  - (e) to suspend a licence under paragraph 12 above or to refuse to do so.
- (2) Reasons for a decision referred to in sub-paragraph (1) above shall be given by the licensing authority on a request being made to the authority by a relevant person within [<sup>F63</sup>21] days of the date of the decision.
- (3) Nothing in this paragraph affects the power of the sheriff under paragraph 18 below to require a licensing authority to give reasons for a decision of the authority—
  - (a) which is being appealed to the sheriff under that paragraph; and
  - (b) for which reasons have not been given under this paragraph.



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- (4) In this paragraph, “relevant person” means—
- (a) in respect of a decision specified in sub-paragraph (1)(a) above, the applicant or any person who made a relevant objection or representation (within the meaning of paragraph 19 below) in relation to the application to which the decision relates;
  - (b) in respect of a decision specified in sub-paragraphs (1)(b) to (e) above, the holder of the licence or the chief constable;
  - (c) in respect of a decision specified in sub-paragraphs (1)(b) to (e) above which relates to an activity wholly or mainly carried on
    - [<sup>F64</sup>(i) in premises to which Part 3 of the [Fire \(Scotland\) Act 2005 \(asp 5\)](#) applies, the enforcing authority;
    - (ii) in any other premises], the [<sup>F65</sup>Scottish Fire and Rescue Service] ;
  - (d) in respect of a decision to consent or to refuse to consent to a material change
    - [<sup>F66</sup>(i) in premises to which Part 3 of the [Fire \(Scotland\) Act 2005 \(asp 5\)](#) applies, the enforcing authority;
    - (ii) in any other premises], the [<sup>F67</sup>Scottish Fire and Rescue Service] ;and
  - (e) in respect of a decision specified in sub-paragraph (1)(d) above, any person who, in pursuance of paragraph 11(7)(b) above, was heard by the licensing authority.

#### Textual Amendments

- F62** Sch. 1 para. 17(1)(d)(ai) inserted (1.11.2016) by [Air Weapons and Licensing \(Scotland\) Act 2015 \(asp 10\)](#), **ss. 78(3)(f)**, 88(2); S.S.I. 2016/307, art. 2, sch. (with art. 5)
- F63** Word in Sch. 1 para. 17(2) substituted (28.2.2011) by [Criminal Justice and Licensing \(Scotland\) Act 2010 \(asp 13\)](#), **ss. 178(2)(i)**, 206(1); S.S.I. 2010/413, art. 2, sch. (with sch.)
- F64** Words in Sch. 1 para. 17(4)(c) substituted (1.10.2006) by [The Fire \(Scotland\) Act 2005 \(Consequential Modifications and Savings\) Order 2006 \(S.S.I. 2006/475\)](#), art. 1, **sch. 1 para. 11(6)(i)(i)**
- F65** Words in Sch. 1 para. 17(4)(c)(ii) substituted (1.4.2013) by [Police and Fire Reform \(Scotland\) Act 2012 \(asp 8\)](#), s. 129(2), **sch. 7 para. 53(6)**; S.S.I. 2013/51, art. 2 (with transitional provisions and savings in S.S.I. 2013/121)
- F66** Words in Sch. 1 para. 17(4)(d) substituted (1.10.2006) by [The Fire \(Scotland\) Act 2005 \(Consequential Modifications and Savings\) Order 2006 \(S.S.I. 2006/475\)](#), art. 1, **sch. 1 para. 11(6)(i)(ii)**
- F67** Words in Sch. 1 para. 17(4)(d)(ii) substituted (1.4.2013) by [Police and Fire Reform \(Scotland\) Act 2012 \(asp 8\)](#), s. 129(2), **sch. 7 para. 53(6)**; S.S.I. 2013/51, art. 2 (with transitional provisions and savings in S.S.I. 2013/121)

#### Appeals

- 18 (1) Subject to sub-paragraph (2) below, a person who may, under this Schedule, require a licensing authority to give him reasons for their decision may appeal to the sheriff against that decision.
- (2) A person shall be entitled to appeal under this paragraph only if he has followed all such procedures under this Schedule for stating his case to the licensing authority as have been made available to him.
- (3) A licensing authority may be a party to an appeal under this paragraph.

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- (4) An appeal under this paragraph shall be made by way of summary application and shall be lodged with the sheriff clerk within 28 days from the date of the decision appealed against.
- (5) On good cause being shown, the sheriff may hear an appeal under this paragraph notwithstanding that it was not lodged within the time mentioned in sub-paragraph (4) above.
- (6) For the purposes of an appeal under this paragraph, the sheriff may, in the case of a decision of a licensing authority for which reasons have not been given by the authority under paragraph 17 above, require the authority to give reasons for that decision, and the authority shall comply with such a requirement.
- (7) The sheriff may uphold an appeal under this paragraph only if he considers that the licensing authority, in arriving at their decision—
  - (a) erred in law;
  - (b) based their decision on any incorrect material fact;
  - (c) acted contrary to natural justice; or
  - (d) exercised their discretion in an unreasonable manner.
- (8) In considering an appeal under this paragraph, the sheriff may hear evidence by or on behalf of any party to the appeal.
- [<sup>F68</sup>(8A) On an appeal under this paragraph relating to a taxi driver's licence or a private hire car driver's licence, the sheriff is not entitled to entertain any question as to whether—
  - (a) a person should be, or should have been, granted leave to enter or remain in the United Kingdom, or
  - (b) a person has, after the date of the decision being appealed against, been granted leave to enter or remain in the United Kingdom.]
  - (9) On upholding an appeal under this paragraph, the sheriff may—
    - (a) remit the case with the reasons for his decision to the licensing authority for reconsideration of their decision; or
    - (b) reverse or modify the decision of the authority,
 and on remitting a case under sub-sub-paragraph (a) above, the sheriff may—
    - (i) specify a date by which the reconsideration by the authority must take place;
    - (ii) modify any procedural steps which otherwise would be required in relation to the matter by or under any enactment (including this Act).
  - (10) In considering an appeal under this paragraph against suspension [<sup>F69</sup>or revocation] of a licence the sheriff may, pending his decision on the appeal, order the recall of any order by the licensing authority under paragraph 11(10) <sup>F70</sup>... or of any order made by the authority under paragraph 12 above but he shall not do so unless he is satisfied that all steps which in the circumstances were reasonable have been taken with a view to securing that notice of the appeal and an opportunity of being heard with respect to it have been given to the authority.
  - (11) The sheriff may include in his decision on an appeal under this paragraph such order as to the expenses of the appeal as he thinks proper.
  - (12) Any party to an appeal to the sheriff under this paragraph may appeal on a point of law from the sheriff's decision to the Court of Session within 28 days from the date of that decision.

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#### Textual Amendments

- F68** Sch. 1 para. 18(8A) inserted (1.12.2016) by [Immigration Act 2016 \(c. 19\)](#), s. 94(1), [Sch. 5 para. 32\(5\)](#); S.I. 2016/1037, reg. 5(i)
- F69** Words in Sch. 1 para. 18(10) inserted (1.11.2016) by [Air Weapons and Licensing \(Scotland\) Act 2015 \(asp 10\)](#), [ss. 78\(3\)\(g\)\(i\)](#), 88(2); S.S.I. 2016/307, art. 2, sch. (with art. 5)
- F70** Words in Sch. 1 para. 18(10) repealed (1.11.2016) by [Air Weapons and Licensing \(Scotland\) Act 2015 \(asp 10\)](#), [ss. 78\(3\)\(g\)\(ii\)](#), 88(2); S.S.I. 2016/307, art. 2, sch. (with art. 5)

#### <sup>F71</sup>Power to make provision about hearings

#### Textual Amendments

- F71** Sch. 1 para. 18A and cross-heading. inserted (1.12.2015) by [Air Weapons and Licensing \(Scotland\) Act 2015 \(asp 10\)](#), [ss. 79\(2\)](#), 88(2); S.S.I. 2015/382, art. 2, sch.

- 18A (1) The Scottish Ministers may by regulations make provision as to the procedure to be followed at, or in connection with, any hearing to be held by a licensing authority under this Schedule.
- (2) Regulations under this paragraph may, in particular, make provision—
- (a) for notice of the hearing to be given to such persons as may be prescribed in the regulations,
  - (b) about the rules of evidence which are to apply for the purposes of the hearing,
  - (c) about the representation of any party at the hearing,
  - (d) as to the times by which any step in the procedure must be taken, and
  - (e) as to liability for expenses.
- (3) Regulations under this paragraph may make different provision for different purposes including, in particular, different types of licence.
- (4) Regulations under this paragraph are subject to the negative procedure.]

#### Interpretation

- 19 In this Schedule, “relevant objection or representation” means—
- (a) in paragraphs 1 to 4, objection or representation which, under paragraph 3 above, the licensing authority are obliged to or intend to entertain; and
  - (b) in the other paragraphs, an objection or representation which, under the said paragraph 3, they were obliged to or intended to entertain.
- [<sup>F72</sup>20 (1) In this Schedule “immigration offence” means an offence under any of the Immigration Acts.
- (2) In this Schedule “immigration penalty” means a penalty under—
- (a) section 15 of the Immigration, Asylum and Nationality Act 2006 (“the 2006 Act”), or
  - (b) section 23 of the Immigration Act 2014 (“the 2014 Act”).

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- (3) For the purposes of this Schedule a person to whom a penalty notice under section 15 of the 2006 Act has been given is not to be treated as having been required to pay an immigration penalty if—
- (a) the person is excused payment by virtue of section 15(3) of that Act, or
  - (b) the penalty is cancelled by virtue of section 16 or 17 of that Act.
- (4) For the purposes of this Schedule a person to whom a penalty notice under section 15 of the 2006 Act has been given is not to be treated as having been required to pay an immigration penalty until such time as—
- (a) the period for giving a notice of objection under section 16 of that Act has expired and the Secretary of State has considered any notice given within that period, and
  - (b) if a notice of objection was given within that period, the period for appealing under section 17 of that Act has expired and any appeal brought within that period has been finally determined, abandoned or withdrawn.
- (5) For the purposes of this Schedule a person to whom a penalty notice under section 23 of the 2014 Act has been given is not to be treated as having been required to pay an immigration penalty if—
- (a) the person is excused payment by virtue of section 24 of that Act, or
  - (b) the penalty is cancelled by virtue of section 29 or 30 of that Act.
- (6) For the purposes of this Schedule a person to whom a penalty notice under section 23 of the 2014 Act has been given is not to be treated as having been required to pay an immigration penalty until such time as—
- (a) the period for giving a notice of objection under section 29 of that Act has expired and the Secretary of State has considered any notice given within that period, and
  - (b) if a notice of objection was given within that period, the period for appealing under section 30 of that Act has expired and any appeal brought within that period has been finally determined, abandoned or withdrawn.]

#### Textual Amendments

**F72** Sch. 1 para. 20 inserted (1.12.2016) by Immigration Act 2016 (c. 19), s. 94(1), Sch. 5 para. 32(6); S.I. 2016/1037, reg. 5(i)

**Status:**

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**Changes to legislation:**

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