



# F1 Civic Government (Scotland) Act 1982

## 1982 CHAPTER 45

### S

An Act to make provision as regards Scotland for the licensing and regulation of certain activities; for the preservation of public order and safety and the prevention crime; for prohibiting the taking of and dealing with indecent photographs of children; as to certain powers of constables and others; as to lost and abandoned property and property in the possession of persons taken into police custody; as to the rights and duties of the owners and users of certain land, buildings and other structures; as to the making by local authorities of byelaws; and to enable them to make management rules applying to land or premises under their control; as to certain other functions of local authorities and their officers; as to the time when the Burgh Police (Scotland) Acts 1892 to 1911 and certain local statutory provisions cease to have effect; and for connected purposes.] [28th October 1982]

#### Textual Amendments

- F1** Pt. I amendment to earlier affecting provision S.S.I. 2000/177, sch. (1.10.2003) by [The Civic Government \(Scotland\) Act 1982 \(Licensing of Houses in Multiple Occupation\) Amendment Order 2003 \(S.S.I. 2003/463\)](#), arts. 1, 6 (as amended (1.10.2003) by S.S.I. 2003/463, art. 6)

#### Extent Information

- E1** Act (except s. 16 which applies to England and Wales) applies to Scotland only see [s. 137\(9\)](#).

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

- C1** Act excluded (19. 12. 1991) by City of Edinburgh District Council Order Confirmation Act (c. xix), ss. 1, 12(2), Sch. Pt. V

#### Commencement Information

- I1** Act partly in force at Royal Assent see [s. 137\(2\)](#); Act wholly in force at 1. 1. 1985 see [S.I. 1983/201](#) as amended by [S.I. 1984/573](#) and 744.

*Status: Point in time view as at 27/11/2009.*

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## PART I S

### LICENSING—GENERAL PROVISIONS

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

- C2 Pt. 1 modified (3.6.1991) by S.I. 1991/1253, art. 3(2), Sch. (which S.I. was revoked (7.6.2000) by S.S.I. 2000/177, art. 9)
- C3 Pt. 1 applied (with modifications) (7.6.2000) by S.S.I. 2000/177, art. 4, Sch. (as amended (1.10.2003) by S.S.I. 2003/463, art. 6)
- C4 Pt. 1 applied (with modifications) (2.2.2006) by The Civic Government (Scotland) Act 1982 (Licensing of Skin Piercing and Tattooing) Order 2006 (S.S.I. 2006/43), arts. 1(1), 3, sch.
- C5 Pt. 1 applied (with modifications) (3.4.2009) by The Civic Government (Scotland) Act 1982 (Licensing of Booking Offices) Order 2009 (S.S.I. 2009/145), arts. 1(1), 3, sch.
- C6 Pt. 1 modified (27.11.2009) by The Local Services (Operation by Licensed Hire Cars) Regulations 2009 (S.I. 2009/2863), regs. 1, 5 (with reg. 3)

#### 1 Application of Parts I and II of this Act. S

This Part of this Act shall have effect with respect to the licensing of the activities for which licences are required under Part II of this Act.

#### 2 Licensing authorities. S

- (1) For the administration of licensing in relation to the activities in connection with which licences are required under Part II of this Act there shall be a licensing authority for [<sup>F2</sup>the area of each local authority].
- (2) The licensing authority shall be the [<sup>F3</sup>local authority] within whose area the activity is, or is to be, carried on.
- (3) Notwithstanding subsection (2) above, a [<sup>F3</sup>local authority] shall not be exempt from any requirement to have a licence or any other obligation under this Part or Part II of this Act and a licensing authority shall have power to entertain and dispose of an application by a [local authority] for a licence or in respect of a licence held by them.

#### Textual Amendments

- F2 Words in s. 2(1) substituted (1.4.1996) by 1994 c. 39, s. 180(1), Sch. 13 para. 129(2)(a); S.I. 1996/323, art. 4(1)(c)
- F3 Words in s. 2(2)(3) substituted (1.4.1996) by 1994 c. 39, s. 180(1), Sch. 13 para. 129(2)(b); S.I. 1996/323, art. 4(1)(c)

#### 3 Discharge of functions of licensing authorities. S

- (1) For the purpose of the discharge of their functions under this Part of this Act, every licensing authority shall consider, within 3 months of its having been made to them under paragraph 1 of Schedule 1 to this Act, each application so made and, subject to the following provisions of this section, reach a final decision on it within 6 months.

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- (2) On summary application by the licensing authority within the 6 month period referred to in subsection (1) above, the sheriff may, if it appears to him that there is good reason to do so, extend that period as he thinks fit.
- (3) The applicant shall be entitled to be a party to a summary application under subsection (2) above.
- (4) Where the licensing authority have failed to reach a final decision on the application before the expiry of—
  - (a) the 6 month period referred to in subsection (1) above, or
  - (b) such further period as the sheriff may have specified on application under subsection (2) above,the licence applied for shall be deemed to have been granted or, as the case may be, renewed unconditionally on the date of such expiry and shall remain in force for one year, but this subsection is without prejudice to the powers of revocation under section 7(6)(a) of this Act, of variation under paragraph 10 of Schedule 1 to this Act and of suspension under paragraphs 11 and 12 of that Schedule and to the provisions of paragraph 8(5) of that Schedule.
- (5) The licensing authority shall make out and deliver the licence to the applicant to whom it has been deemed to have been granted under subsection (4) above.

#### **4 Further provisions as to licensing. S**

Schedule 1 to this Act (which contains further provisions as to licensing and regulation in relation to the activities in connection with which licences are required under Part II of this Act) shall have effect.

#### **5 Rights of entry and inspection. S**

- (1) Without prejudice to any other provision of this Act, an authorised officer of the licensing authority<sup>F4</sup>... or a constable may, for the purposes specified in subsection (2) below, at any reasonable time—
  - (a) enter and inspect any premises, vehicle or vessel used or to be used for an activity in relation to which a licence is in force or has been applied for under this Act;
  - (b) require production of and inspect any equipment, plant, apparatus or stock-in-trade which is or is to be kept or used in connection with any such activity;
  - (c) require production of and inspect any records or other documents required by or under this Part or Part II of this Act to be kept by the holder of the licence and take copies of or extracts from any such record or document.
- (2) The purposes referred to in subsection (1) above are—
  - (a) where a licence is in force—
    - (i) seeing whether the terms of the licence are being complied with and, if they are not, obtaining information in respect of such non-compliance;
    - (ii) obtaining information relevant to the question whether the terms of the licence should be varied under paragraph 10 of Schedule 1 to this Act or whether the licence should be renewed or, under paragraph 11 or 12 of that Schedule, suspended; or

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- (b) where the grant of a licence has been applied for, obtaining information relevant to the question whether the application should be granted.
- (3) Any person who—
- (a) being a person for the time being in charge of any premises, vehicle or vessel, fails without reasonable excuse to permit a constable or an authorised officer of a licensing authority<sup>F5</sup>... who, in pursuance of subsection (1) above, demands to do so to enter or inspect the premises, vehicle or vessel or obstructs the entry thereto of a constable or such an officer, in pursuance of that subsection;
  - (b) being a person in respect of whom powers are exercised under subsection (1) above, on being required under that subsection to do so by a constable or an authorised officer of the licensing authority<sup>F6</sup>... , fails without reasonable excuse to produce any equipment, plant, apparatus or stock-in-trade or to permit a constable or such an officer, in pursuance of that subsection, to inspect any equipment, plant, apparatus or stock-in-trade;
  - (c) being a holder of a licence, on being required by a constable or an authorised officer of the licensing authority<sup>F7</sup>... , in pursuance of subsection (1) above, to produce any records or other document required by or under this Part or Part II of this Act to be kept by the holder of a licence, fails without reasonable excuse to produce them;
- shall be guilty of an offence and liable, on summary conviction, to a fine not exceeding [<sup>F8</sup>level 3 on the standard scale].
- (4) An authorised officer of a licensing authority or a constable may require any person who the officer or constable has reasonable ground to believe is carrying on an activity which requires to be licensed to produce his licence within 5 days of being required to do so.
- (5) Any person who, having been required under subsection (4) above to produce a licence, fails without reasonable excuse to do so within the period of 5 days specified in that subsection shall be guilty of an offence and liable, on summary conviction, to a fine not exceeding [<sup>F8</sup>level 1 on the standard scale].
- (6) An authorised officer of a licensing authority<sup>F9</sup>... shall not be entitled to exercise the powers which he may exercise under subsection (1) or (4) above until he has produced his authorisation—
- (a) in relation to the exercise of powers under subsection (1)(a) above, to the person for the time being in charge of the premises, vehicle or vessel; and
  - (b) in any other case, to the person in respect of whom the powers are to be exercised.
- (7) A constable who is not in uniform shall not be entitled to exercise the powers which he may exercise under subsection (1) or (4) above until he has produced his identification—
- (a) in relation to the exercise of powers under subsection (1)(a) above, to the person for the time being in charge of the premises, vehicle or vessel; and
  - (b) in any other case, to the person in respect of whom the powers are to be exercised.

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#### Textual Amendments

- F4** Words in s. 5(1) repealed (1.10.2006) by [The Fire \(Scotland\) Act 2005 \(Consequential Modifications and Savings\) Order 2006 \(S.S.I. 2006/475\)](#), art. 1, [sch. 2](#)
- F5** Words in s. 5(3)(a) repealed (1.10.2006) by [The Fire \(Scotland\) Act 2005 \(Consequential Modifications and Savings\) Order 2006 \(S.S.I. 2006/475\)](#), art. 1, [sch. 2](#)
- F6** Words in s. 5(3)(b) repealed (1.10.2006) by [The Fire \(Scotland\) Act 2005 \(Consequential Modifications and Savings\) Order 2006 \(S.S.I. 2006/475\)](#), art. 1, [sch. 2](#)
- F7** Words in s. 5(3)(c) repealed (1.10.2006) by [The Fire \(Scotland\) Act 2005 \(Consequential Modifications and Savings\) Order 2006 \(S.S.I. 2006/475\)](#), art. 1, [sch. 2](#)
- F8** Words substituted by virtue of [Criminal Procedure \(Scotland\) Act 1975 \(c. 21, SIF 39:1\)](#), [s. 289G](#)
- F9** Words in s. 5(6) repealed (1.10.2006) by [The Fire \(Scotland\) Act 2005 \(Consequential Modifications and Savings\) Order 2006 \(S.S.I. 2006/475\)](#), art. 1, [sch. 2](#)

## 6 Powers of entry to and search of unlicensed premises. **S**

- (1) If a justice of the peace or sheriff is satisfied by evidence on oath that there is reasonable ground for suspecting that—
  - (a) an activity in respect to which a licence under this Act is required is being carried on in any premises, vehicle, or vessel; and
  - (b) no such licence is in force,he may grant a warrant authorising any constable to enter and search the premises, vehicle or vessel specified in the warrant.
- (2) A constable may use reasonable force in executing a warrant granted under subsection (1) above.
- (3) A constable who is not in uniform shall produce his identification if required to do so by any person in or upon any premises, vehicle or vessel which the constable is about to enter, is entering or has entered under the powers conferred under subsection (1) above, and if he has been so required to produce his identification, he shall not be entitled to enter or search the premises, vehicle or vessel or, as the case may be, remain there or continue to search the premises, vehicle or vessel until he has produced it.
- (4) Any person who fails without reasonable excuse to permit a constable in pursuance of a warrant granted under this section to enter and search any premises, vehicle or vessel or who obstructs the entry thereto or search thereof by a constable shall be guilty of an offence and liable, on summary conviction, to a fine not exceeding [<sup>F10</sup>level 3 on the standard scale].

#### Textual Amendments

- F10** Words substituted by virtue of [Criminal Procedure \(Scotland\) Act 1975 \(c. 21, SIF 39:1\)](#), [s. 289G](#)

## 7 Offences, etc. **S**

- (1) Any person who without reasonable excuse does anything for which a licence is required under Part II of this Act without having such a licence shall be guilty of an offence and liable, on summary conviction

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- [<sup>F11</sup>(a) in a case where the licence so required is a public entertainment licence, to a fine not exceeding £20,000 or to imprisonment for a term not exceeding six months or to both; and
- (b) in any other case,] to a fine not exceeding [<sup>F12</sup>level 4 on the standard scale].
- (2) If a condition attached to a licence is not complied with, the holder of the licence shall, subject to subsection (3) below, be guilty of an offence and liable, on summary conviction
- [<sup>F13</sup>(a) in a case where the licence is a public entertainment licence and the condition is attached under section 41(3)(b) of this Act, to such fine or imprisonment as is mentioned in subsection (1)(a) above (or to both); and
- (b) in any other case,] to a fine not exceeding [<sup>F12</sup>level 3 on the standard scale].
- (3) It shall be a defence for a person charged with an offence under subsection (2) above to prove that he used all due diligence to prevent the commission of the offence.
- (4) Any person who, in making an application under this Part of this Act to the licensing authority, makes any statement which he knows to be false or recklessly makes any statement which is false in a material particular shall be guilty of an offence and liable, on summary conviction,
- [<sup>F14</sup>(a) in a case where the application is for a knife dealer's licence, to a fine not exceeding level 5 on the standard scale; and
- (b) in any other case,] to a fine not exceeding [<sup>F12</sup>level 4 on the standard scale].
- (5) Any person who, being the holder of a licence—
- (a) fails without reasonable excuse to notify the licensing authority of a material change of circumstances in accordance with paragraph 9(1) of Schedule 1 to this Act;
- (b) without reasonable excuse makes or causes or permits to be made any material change in any premises, vehicle or vessel in contravention of paragraph 9(2) of Schedule 1 to this Act;
- (c) fails without reasonable excuse to deliver his licence to the licensing authority in accordance with paragraph 13(2) of Schedule 1 to this Act,
- shall be guilty of an offence and liable, on summary conviction, to a fine not exceeding, in the case of an offence under paragraph (a) or (b) above, [<sup>F12</sup>level 3 on the standard scale], and in the case of an offence under paragraph (c) above, [<sup>F12</sup>level 1 on the standard scale].
- (6) Where a holder of a licence is convicted of an offence under section 5 (other than subsection (5) thereof), 6 or this section, the court by which he is convicted may, in addition to any other penalty which the court may impose, make an order in accordance with one or both of the following paragraphs—
- (a) that the licence shall be revoked;
- (b) that the holder of the licence shall be disqualified from holding a licence for a period not exceeding 5 years.
- (7) Where the holder of a licence is convicted of an offence under this section, an extract of such conviction and sentence (if any) shall, within 6 days after the date of the conviction, be transmitted by the clerk of the court to the licensing authority which granted the licence.

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- (8) A person may appeal against an order under subsection (6) above in the same manner as against sentence and the court which made the order may, pending the appeal, suspend the effect of the order.
- (9) A person may, at any time after the expiry of the first year of his disqualification under subsection (6) above, apply to the court which ordered the disqualification to remove it, and, on such application, the court may by order remove the disqualification as from such date as may be specified in the order or refuse the application, and, in either case, may order the applicant to pay the whole or any part of the expenses of such application.
- (10) Where an offence is alleged to have been committed under subsection (2) above by an employee or agent named in a licence, proceedings in respect of that offence may be instituted against the joint licence holder who is the employer of the employee or principal of the agent, whether or not proceedings have been instituted against the employee or agent.

#### Textual Amendments

- F11** S. 7(1)(a)(b) inserted by [Entertainments \(Increased Penalties\) Act 1990 \(c. 20, SIF 45A\), s. 2\(1\)](#)
- F12** Words substituted by virtue of [Criminal Procedure \(Scotland\) Act 1975 \(c. 21, SIF 39:1\), s. 289G](#)
- F13** S. 7(2)(a)(b) inserted by [Entertainments \(Increased Penalties\) Act 1990 \(c. 20, SIF 45A\), s. 2\(2\)](#)
- F14** S. 7(4)(a)(b) inserted (1.9.2009) by [Custodial Sentences and Weapons \(Scotland\) Act 2007 \(asp 17\), ss. 59\(3\)\(d\), 67\(2\); S.S.I. 2009/197, art. 2, sch.](#)

## 8 Interpretation of Parts I and II. **S**

In this Part and in Part II of this Act except where the context otherwise requires—

[<sup>F15</sup>“appropriate relevant authority”, in relation to a licensing authority’s area, means the authority discharging in that area the functions of a relevant authority as defined in section 6 of the [Fire \(Scotland\) Act 2005 \(asp 5\)](#);.]

“chief constable” means, in relation to a licensing authority’s area, the chief constable for the area which includes the area of the licensing authority;

<sup>F16</sup>  
...

“licence” means a licence granted under this Part and Part II of this Act, and cognate expressions shall be construed accordingly;

“premises” includes land.

#### Textual Amendments

- F15** Words in s. 8 inserted (2.8.2005) by [The Fire \(Scotland\) Act 2005 \(Consequential Modifications and Amendments\) Order 2005 \(S.S.I. 2005/383\), art. 1, sch. 1 para. 7\(7\)](#)
- F16** Words in s. 8 repealed (2.8.2005) by [The Fire \(Scotland\) Act 2005 \(Consequential Modifications and Amendments\) Order 2005 \(S.S.I. 2005/383\), art. 1, sch. 2](#)



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## PART II E+W+S

### LICENSING AND REGULATION—PARTICULAR ACTIVITIES

#### 9 **Application of sections 10 to 27 and 38 to 44.** S

- (1) Sections 10 to 27 (except section 20), any regulations made under the said section 20, and sections 38 to 43 [<sup>F17</sup>(except section 41A)] of this Act and any order made under section 44(1)(a) of this Act (which sections regulations and order are in this section called the “optional provisions”) shall have effect in the area of a licensing authority only if and insofar as the authority have so resolved in accordance with subsections (2) to (8) below.
- (2) A licensing authority may, in accordance with this section, resolve that, as from a day specified in the resolution (which must not be before the expiration of the period of nine months beginning with the day on which the resolution was made) any activity provision for the licensing and regulation of which is made by the optional provisions shall require to be licensed in accordance with the provisions of this Act relating to that activity and shall be regulated by those provisions.
- (3) Subject to subsections (4) and (5) below, a resolution under this section may be made—
  - (a) in relation to all or any of the activities referred to in subsection (2) above;
  - (b) in relation to the whole or any part of the area of the licensing authority;
  - (c) in relation to—
    - (i) all classes of an activity referred to in any of the optional provisions;
    - or
    - (ii) all such classes subject to exceptions; or
    - (iii) any particular such class or classes.
- (4) A licensing authority may not make a resolution under this section relating to any of the activities provision for the licensing and regulation of which is made in sections 10 to 23 of this Act (that is to say the operation of a vehicle as a taxi, the operation of a vehicle as a hire car, the driving of a taxi and the driving of a hire car) unless it relates to all these activities.
- (5) A resolution made under this section by the licensing authority relating to—
  - (a) the activity provision for the licensing and regulation of which is made in sections 24 to 27 of this Act (that is to say the carrying on of business as a second-hand dealer) shall specify the particular class or classes of that activity which shall thereby fall to be licensed and regulated;
  - (b) the activity provision for the licensing of which is made in section 41 of this Act (that is to say the use of premises as a place of public entertainment) shall specify the place or places, or class or classes thereof, which shall thereby fall to be licensed.
- (6) A licensing authority shall not make a resolution under this section unless they have—
  - (a) published in a newspaper or newspapers circulating in their area the terms of the proposed resolution together with a notice stating—
    - (i) that they intend to make the resolution; and
    - (ii) that representations about the resolution may be made in writing to the authority within 28 days of the first publication of the notice; and
  - (b) considered any representations so made.



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- (7) A licensing authority, before proceeding to make a resolution under this section, may make such modifications to the proposed resolution as they think fit in the light of representations made to them about it provided such modifications do not extend its scope.
- (8) The licensing authority shall, as soon as they have made a resolution under subsection (2) above, publish in a newspaper or newspapers circulating in their area—
- (a) the terms of the resolution so made; together with
  - (b) a notice stating—
    - (i) that with effect from the date specified as that on which the resolution comes into effect it will be an offence under section 7(1) of this Act to do without a licence whatever the resolution specifies as being an activity requiring to be licensed; and
    - (ii) that applications for licences in respect of the activity will be considered by the authority after the expiry of one month after the date of the making of the resolution.
- (9) A resolution under this section may be varied or rescinded by a subsequent resolution made in like manner except that, in relation to the time when it takes effect, a resolution under this subsection—
- (a) varying a resolution under this section so as to reduce its scope; or
  - (b) rescinding a resolution under this section
- shall take effect on such date as may be specified in it being any date subsequent to the making of the resolution.
- (10) Anything which must or may be done under or by virtue of Part I or this Part of this Act may, at any time after the making by the licensing authority of the resolution, be done so far as may be necessary or expedient for the purpose of giving full effect to the resolution at or after the time it takes effect but no application for a licence in respect of an activity requiring to be licensed in consequence of the resolution shall be considered by the authority until the expiry of one month after the making of the resolution.

#### Textual Amendments

F17 Words inserted by [Fire Safety and Safety of Places of Sport Act 1987 \(c. 27, SIF 81:2\)](#), s. 44(4)

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

C7 S. 9 applied (until 1.4.1996) by [S.I. 1995/1878](#), art. 3

C8 S. 9(9) modified (until 1.4.1996) by [S.I. 1995/1878](#), art. 3

### *Licensing and regulation of taxis and private hire cars*

## 10 **Taxi and private hire car licences.** **S**

- (1) A licence, to be known as a “taxi licence” or, as the case may be, a “private hire car licence”, shall be required for the operation of a vehicle as—
- (a) a taxi; or
  - (b) a private hire car.

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- (2) A licensing authority shall not grant or renew a taxi licence or private hire car licence unless they are satisfied that the vehicle to which the licence is to relate is suitable in type, size and design for use as a taxi or private hire car, as the case may be, and is safe for that use, and that there is in force in relation to the vehicle such a policy of insurance or such security as complies with Part VI of the <sup>M1</sup>Road Traffic Act 1972.
- [<sup>F18</sup>(3) Without prejudice to paragraph 5 of Schedule 1 to this Act, the grant of a taxi licence may be refused by a licensing authority for the purpose of limiting the number of taxis in respect of which licences are granted by them if, but only if, they are satisfied that there is no significant demand for the services of taxis in their area which is unmet.]
- (4) A vehicle shall, for the purposes of subsection (2) above, be treated by a licensing authority [<sup>F19</sup>—
- (a)] as being suitable in type, size and design if it complies with regulations in that regard made by the Secretary of State under section 20(2) of this Act in respect of their area<sup>F20</sup>; and
- (b) as not being so suitable if it does not so comply.]
- (5) A taxi licence or private hire car licence shall extend to the operation of a vehicle substituted for the vehicle in respect of which the licence was granted or, as the case may be, last renewed if the licensing authority are as respects the substitute vehicle satisfied as to the matters specified in subsection (2) above, and where a taxi licence or private hire car licence extends under this subsection to a substitute vehicle, subsection (6) below shall not apply in respect of the vehicle replaced by the substitute vehicle.
- (6) Subject to subsection (5) above, the holder of a taxi or private hire car licence shall within 28 days of his selling or otherwise disposing of the vehicle to which the licence relates deliver to the licensing authority his licence and any licence plate or other thing which has been issued by the licensing authority for the purpose of indicating that the vehicle is a taxi or, as the case may be, private hire car, and if without reasonable excuse he fails to do so he shall be guilty of an offence and liable, on summary conviction, to a fine not exceeding [<sup>F21</sup>level 2 on the standard scale].

#### Textual Amendments

- F18** S. 10(3) substituted by [Transport Act 1985 \(c. 67, SIF 126\)](#), s. 139(2), **Sch. 7 para. 23(5)**
- F19** Words in s. 10(4) renumbered as s. 10(4)(a) (5.2.2003) by [Disability Discrimination Act 1995 \(c. 50\)](#), **ss. 39(2)(a)**, 70(3) (with [ss. 59, 64, 65](#)); S.I. 2003/215, art. 2
- F20** S. 10(4)(b) and word added (5.2.2003) by [Disability Discrimination Act 1995 \(c. 50\)](#), **ss. 39(2)(b)**, 70(3) (with [ss. 59, 64, 65](#)); S.I. 2003/215, art. 2
- F21** Words substituted by virtue of [Criminal Procedure \(Scotland\) Act 1975 \(c. 21, SIF 39:1\)](#), **s. 289G**

#### Marginal Citations

- M1** 1972 c. 20.

## 11 Inspection and testing of vehicles. **S**

- (1) The holder of a taxi or private hire car licence shall present the taxi or private hire car for inspection and testing by or on behalf of the licensing authority within such period and at such place as they may by notice reasonably require.

*Status: Point in time view as at 27/11/2009.*

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- (2) An authorised officer of a licensing authority (as respects a taxi or private hire car licensed for the area of the authority) or a constable shall have power at any reasonable time to inspect and test, for the purpose of ascertaining its fitness, a licensed taxi or private hire car or, for the purpose of testing its fitness or accuracy, any taximeter and if he is not satisfied as to the safety of the taxi or private hire car for the carriage of passengers or as to the fitness or accuracy of the taximeter he may by notice in writing—
- (a) require the holder of the taxi or private hire car licence to make the taxi, private hire car or taximeter, as the case may be, available for further inspection at such reasonable time and place as may be specified in the notice;
  - (b) suspend the licence until such time as an authorised officer of the licensing authority or a constable is so satisfied:

Provided that, if an authorised officer or constable is not so satisfied before the expiration of a period of 28 days from the date of the suspension of the licence, the said licence shall, by virtue of this subsection, be deemed to have been suspended by the licensing authority under paragraph 11 of Schedule 1 to this Act.

## 12 Fees for taxi and private hire car licences. **S**

A licensing authority shall charge such fees in respect of taxi and private hire car licences and applications for such licences as may be resolved by them from time to time and shall seek to ensure that the total amount of such fees is sufficient to meet the expenses incurred by them in carrying out their functions under sections 10 to 23 (other than section 19) of this Act in relation to such licences.

## 13 Taxi and private hire car driving licences. **S**

- (1) A licence, to be known as a “taxi driver’s licence” or, as the case may be, a “private hire car driver’s licence”, shall, subject to subsection (2) below, be required for driving or otherwise having charge of a taxi or private hire car.
- (2) A private hire car driver’s licence shall not be required by the holder of a taxi driver’s licence for driving or otherwise having charge of a private hire car whilst in operation as such.
- (3) A licensing authority shall not grant a licence to any person under this section unless that person has held, during any continuous period of 12 months prior to the date of his application, a licence authorising him to drive a motor car issued under Part III of the <sup>M2</sup>Road Traffic Act 1972 or a licence which would at the time of his application entitle him to such a licence without taking a test, not being a provisional licence.
- (4) A licensing authority may, at any time, for the purposes of satisfying themselves that he is physically fit to drive a taxi or, as the case may be, private hire car, require an applicant for or holder of a taxi driver’s licence or private hire car driver’s licence to submit to medical examination, at their expense, by a medical practitioner nominated by them.
- (5) A licensing authority may require an applicant for a taxi driver’s licence to take a test of his knowledge of the area to which the licence is to relate, of the layout of roads in that area and such other matters relating to the operation of a taxi as the authority consider desirable, and the authority may refuse to grant a licence to a person who does not satisfy them that he has adequate knowledge of any of these matters.

*Status: Point in time view as at 27/11/2009.*

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- (6) If a person holding a licence under this section ceases for any reason to be authorised by law to drive on a road . . . <sup>F22</sup> the vehicle to which the licence relates, the licence shall cease to have effect.

**Textual Amendments**

**F22** Words repealed by [Roads \(Scotland\) Act 1984 \(c. 54, SIF 108\)](#), s. 156(3), **Sch. 11**

**Marginal Citations**

**M2** 1972 c. 20.

**14 Signs on vehicles other than taxis. S**

- (1) Subject to subsection (2) below, there shall not be displayed on or in a private hire car any word, sign, notice, mark, illumination or other feature which may suggest that the vehicle is available for hire as a taxi.
- (2) Subsection (1) above does not apply in relation to any licence plate or other thing issued by the licensing authority for the purpose of indicating that the vehicle to which it relates is a private hire car or in relation to any sign required by virtue of section 21 of the <sup>M3</sup>Vehicles (Excise) Act 1971.
- (3) Any person who—
- (a) drives a vehicle in respect of which subsection (1) is contravened; or
  - (b) causes or knowingly permits that subsection to be contravened in respect of any vehicle,
- shall be guilty of an offence and liable, on summary conviction, to a fine not exceeding [<sup>F23</sup>level 3 on the standard scale].

**Textual Amendments**

**F23** Words substituted by virtue of [Criminal Procedure \(Scotland\) Act 1975 \(c. 21, SIF 39:1\)](#), s. 289G

**Marginal Citations**

**M3** 1971 c. 10.

**15 Operation of taxis outside licensing areas. S**

- (1) A licensing authority, with the agreement of another licensing authority, may name destinations or classes of destinations in the area of the other authority and, with the agreement aforesaid, fix scales under section 17 of this Act for journeys from their area by taxis licensed by them to such destinations or classes thereof.
- (2) The conditions to which a taxi or taxi driver's licence are subject shall continue to apply while the taxi or its driver is engaged in such a journey.
- (3) Nothing in this section or in Part I of this Act enables a condition to be imposed in a taxi driver's licence requiring him to make any journey to a destination outside the area in respect of which he is licensed.

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## 16 Journeys in England and Wales by vehicles and drivers licensed under this Act.

**E+W+S**

In section 75 of the <sup>M4</sup> Local Government (Miscellaneous Provisions) Act 1976 (saving for certain vehicles from requirements of Part II of that Act as to private hire vehicles), after subsection (2) there shall be inserted—

“(2A) Where a vehicle is being used as a taxi or private hire car, paragraphs (a), (b) and (c) of section 46(1) of this Act shall not apply to the use or driving of the vehicle or the employment of a person to drive it if—

- (a) a licence issued under section 10 of the Civic Government (Scotland) Act 1982 for its use as a taxi or, as the case may be, private hire car is then in force, and
- (b) the driver holds a licence issued under section 13 of that Act for the driving of taxis or, as the case may be, private hire cars.

In this subsection, “private hire car” and “taxi” have the same meaning as in sections 10 to 22 of the Civic Government (Scotland) Act 1982”

### Modifications etc. (not altering text)

- C9** The text of ss. 16, 18(11), 51(7) and 52(6) is in the form in which it was originally enacted: it was not reproduced in Statutes in Force and does not reflect any amendments or repeals which may have been made prior to 1.2.1991.

### Marginal Citations

- M4** 1976 c. 57.

## 17 Taxi fares. **S**

- (1) The fares for the hire of taxis in any area and all other charges in connection with the hire of a taxi or with the arrangements for its hire shall be not greater than those fixed for that area under this section and section 18 of this Act.
- (2) It shall be the duty of the licensing authority to fix from time to time scales for the fares and other charges mentioned in subsection (1) above and to review these scales at intervals not exceeding 18 months from the date on which the scales came into effect (whether proceeding upon a review under this section or not).
- (3) Before fixing any scales or carrying out any review under this section the licensing authority shall—
  - (a) consult with persons or organisations appearing to them to be, or be representative of, the operators of taxis operating within their area; and
  - (b) give notice of their intention by advertisement in a newspaper circulating in their area stating—
    - (i) the general effect of the proposals and the date when they propose that their decision will take effect; and
    - (ii) that any person may lodge representations in writing with respect to the proposals within a period of one month after the date of the first publication of the notice; and
  - (c) consider any such representations duly lodged with them.

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- (4) Where, under this section, the licensing authority fix any scale or carry out any review they shall forthwith give notice in writing of their decision (including, in the case of a review, a decision to do nothing) to such persons and organisations as they have consulted under subsection (3)(a) above and inform them of the general effect of section 18(1) of this Act.
- (5) Notice shall be given for the purposes of subsection (4) above by—
- (a) its being sent by recorded delivery letter to the last known addresses of the persons and organisations referred to in subsection (4) above so as to arrive there, in the normal course of post, not later than five days after the decision referred to in subsection (4) above; or
  - (b) personal service of the notice upon those persons within that time.

## 18 Appeals in respect of taxi fares. **S**

- (1) Any person who operates a taxi in an area for which scales have been fixed or in respect of which a review has been carried out under section 17 of this Act may, within 14 days after the decision upon the scales or, as the case may be, upon the review, appeal against these scales to the traffic [<sup>F24</sup>commissioner] for the Scottish Traffic Area as constituted for the purpose of the <sup>M5</sup>Public Passenger Vehicles Act 1981.
- (2) The traffic [<sup>F24</sup>commissioner] may hear an appeal under this section notwithstanding that it was not lodged with [<sup>F25</sup>him] within the time mentioned in subsection (1) above.
- (3) On an appeal to them under subsection (1) above, the traffic [<sup>F24</sup>commissioner] may—
- (a) confirm or alter the scales; or
  - (b) may decline to proceed—
    - (i) at any stage in the appeal, on the grounds that [<sup>F26</sup>he considers] the case for the appellant is not representative of the view of a substantial proportion of the operators of taxis operating in the area of the licensing authority;
    - (ii) if less than two years have elapsed since [<sup>F26</sup>he decided] an appeal against a decision of the same authority in respect of the same scale, and [<sup>F26</sup>he considers] it inappropriate that [<sup>F26</sup>he should consider] the matter again.
- (4) An appeal under this section shall have the effect of suspending the decision referred to in subsection (1) above until the date when the appeal is abandoned or, as the case may be, when notice is given to the appellant advising him of its disposal.
- (5) Where [<sup>F27</sup>he alters] scales under subsection (3)(a) above, the traffic [<sup>F24</sup>commissioner] may substitute a different date for the coming into effect of these scales.
- (6) The Secretary of State may [<sup>F28</sup>by order made by statutory instrument] make rules as to procedure in relation to appeals under this section.
- (7) The decision of the traffic [<sup>F24</sup>commissioner] on an appeal under this section shall be final.
- (8) The traffic [<sup>F24</sup>commissioner] shall give notice of [<sup>F29</sup>his] decision in writing to the appellant and to the licensing authority and notice shall be given to the appellant by—



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- (a) its being sent by recorded delivery letter to his last known address or, as the case may be, to them so as to arrive, in the normal course of post, not later than five days after [<sup>F29</sup>his] decision; or
  - (b) personal service of the notice on the appellant within that time.
- (9) As soon as practicable after the expiration of the period of 14 days referred to in subsection (1) above or, where an appeal has been lodged, on the date when it is abandoned or when notice is given to the appellant of its disposal, the licensing authority shall, by advertisement in a newspaper circulating in their area, give public notice of the scales which have been determined under section 17 of this Act and this section and the date when they come into effect which shall be not earlier than seven days after the date of the advertisement.
- (10) A licensing authority shall pay the expenses incurred under this section by the traffic commissioners in relation to appeals under this section.

<sup>F30</sup>(11) .....

**Textual Amendments**

- F24** Word substituted by [Transport Act 1985 \(c. 67, SIF 126\)](#), s. 3, [Sch. 2 Pt. II para. 5\(a\)](#)
- F25** Word substituted by [Transport Act 1985 \(c. 67, SIF 126\)](#), s. 3, [Sch. 2 Pt. II para. 5\(b\)](#)
- F26** Words substituted as provided by [Transport Act 1985 \(c. 67, SIF 126\)](#), s. 3, [Sch. 2 para. 5\(c\)](#)
- F27** Words substituted by [Transport Act 1985 \(c. 67, SIF 126\)](#), s. 3, [Sch. 2 para. 5\(d\)](#)
- F28** Words inserted by [Transport Act 1985 \(c. 67, SIF 126\)](#), s. 139(2), [Sch. 7 para. 23\(2\)](#)
- F29** Word substituted by [Transport Act 1985 \(c. 67, SIF 126\)](#), s. 3, [Sch. 2 Pt. II para. 5\(e\)](#)
- F30** S. 18(11) repealed (1.10.1992) by [Tribunals and Inquiries Act 1992 \(c. 53\)](#), ss. 18(2), 19(2), [Sch. 4 PtI](#).

**Marginal Citations**

- M5** 1981 c. 14.

**19 Taxi stances. S**

- (1) A licensing authority may, after consultation with persons or organisations appearing to them to be, or be representative of, the operators of taxis operating in their area, appoint stances for taxis for the whole or any part of a day in any road within their area or on any land owned by the authority, or, with the consent of the owner, on any land owned by him.
- (2) A licensing authority may—
  - (a) erect and illuminate signs;
  - (b) cause lines or marks to be made on roads;indicating the limits of taxi stances.
- (3) A licensing authority may from time to time, after consultation as mentioned in subsection (1) above, vary the number of taxis permitted to be at each stance and alter the position of such stances or revoke the appointment thereof.
- (4) Before appointing any stance for taxis or varying the number of taxis permitted to be at each stance, the licensing authority shall give notice to the chief constable of the area in which the stance is situated and shall also give public notice of the proposal by advertisement in at least one newspaper circulating in their area and shall take into



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consideration any objections or representations in respect of such proposal which may be made to them in writing within 28 days of the first publication of such notice.

- (5) Nothing in this section shall empower a licensing authority to appoint any taxi stance so as unreasonably to prevent access to any premises or, without the consent of the [<sup>F31</sup>roads authority], to appoint any taxi stance on any [<sup>F32</sup>road] or erect or illuminate any sign there or cause any line or mark to be made on any road . . . <sup>F33</sup>

#### Textual Amendments

- F31** Words substituted by Roads (Scotland) Act 1984 (c. 54, SIF 108), s. 156(1), **Sch. 9 para. 87(2)(a)**  
**F32** Word by Roads (Scotland) Act 1984 (c. 54, SIF 108), s. 156(1), **Sch. 9 para. 87(2)(b)**  
**F33** Words repealed by Roads (Scotland) Act 1984 (c. 54, SIF 108), s. 156(1)(3), **Sch. 9 para. 87(2)(c)**, Sch. 11

## 20 Regulations relating to taxis and private hire cars and their drivers. **S**

- (1) Notwithstanding paragraph 5(2) of Schedule 1 to this Act, the Secretary of State may by regulations provide that licensing authorities shall, in relation to taxi, private hire car, taxi drivers' or private hire car drivers' licences, impose such conditions or classes of conditions as may be prescribed in the regulations and shall not impose such other conditions or classes of conditions as may be so prescribed [<sup>F34</sup>and may provide that such conditions shall be imposed or, as the case may be, shall not be imposed for different areas or classes of areas; and different conditions or classes of conditions may be prescribed in relation to different categories of taxi or private hire car.]
- (2) The Secretary of State may by regulations <sup>F35</sup>... prescribe types, sizes and designs of vehicles for the purposes of section 10(4) of this Act and, in doing so, may prescribe different types, sizes or designs of vehicles in respect of different areas.
- [<sup>F36</sup>(2A) Without prejudice to the generality of subsections (1) and (2) above, regulations under those subsections may make such provision as appears to the Secretary of State to be necessary or expedient in relation to the carrying in taxis of disabled persons (within the meaning of section 1(2) of the Disability Discrimination Act 1995) and such provision may in particular prescribe—
- (a) requirements as to the carriage of wheelchairs, guide dogs, hearing dogs and other categories of dog;
  - (b) a date from which any such provision is to apply and the extent to which it is to apply; and
  - (c) the circumstances in which an exemption from such provision may be granted in respect of any taxi or taxi driver,
- and in this subsection—
- “guide dog” means a dog which has been trained to guide a blind person;  
“hearing dog” means a dog which has been trained to assist a deaf person;  
and  
“other categories of dog” means such other categories of dog as the Secretary of State may prescribe, trained to assist disabled persons who have disabilities of such kinds as he may prescribe.]
- [<sup>F37</sup>(2AA) The Scottish Ministers may by regulations make such provision as appears to them to be necessary or expedient in relation to the carrying in private hire cars of disabled

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persons (within the meaning of section 1 (2) of the Disability Discrimination Act 1995 (c. 50)) and such provision may in particular prescribe—

- (a) requirements as to the carriage of guide dogs, hearing dogs and other categories of dogs;
- (b) a date from which any such provision is to apply and the extent to which it is to apply; and
- (c) the circumstances in which an exemption from such provision may be granted in respect of any private hire car or private hire car driver,

and in this subsection “guide dog”, “hearing dog” and “other categories of dog” have the same meaning as in subsection (2A) above.

(2AB) Regulations under subsection (2AA) above may provide for the creation of offences and for making offenders liable on summary conviction to a fine not exceeding level 3 on the standard scale.

(2AC) Regulations under subsection (2AA) above shall be made by statutory instrument subject to annulment in pursuance of a resolution of the Scottish Parliament.]

(3) Regulations under [<sup>F38</sup>subsection (1) or (2) above] shall be made by statutory instrument subject to annulment in pursuance of a resolution of either House of Parliament.

#### Textual Amendments

**F34** Words added by [Transport Act 1985 \(c. 67, SIF 126\)](#), s. 139(2), **Sch. 7 para. 23(3)**

**F35** Words in s. 20(2) repealed (1.4.2003) by [Local Government in Scotland Act 2003 \(asp 1\)](#), **ss. 49(a), 62(2)**; S.S.I. 2003/134, art. 2(1), sch.

**F36** S. 20(2A) inserted (5.2.2003) by [Disability Discrimination Act 1995 \(c. 50\)](#), **ss. 39(3), 70(3)** (with ss. 59, 64, 65); S.I. 2003/215, art. 2

**F37** S. 20(2AA)-(2AC) inserted (31.3.2004) by [Private Hire Vehicles \(Carriage of Guide Dogs etc.\) Act 2002 \(c. 37\)](#), **ss. 2, 6(2)**; S.S.I. 2004/57, art. 2

**F38** Words in s. 20(3) substituted (1.4.2003) by [Local Government in Scotland Act 2003 \(asp 1\)](#), **ss. 49(b), 62(2)**; S.S.I. 2003/134, art. 2(1), sch.

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

**C10** S. 20: transfer of certain functions (1.7.1999) by S.I. 1999/1750, arts. 1, 2, **Sch. 1** (with art. 7); S.I. 1998/3178, **art. 3**

## 21 Offences. **S**

(1) If any person—

- (a) operates, or permits the operation of, a taxi within an area in respect of which its operation requires to be but is not licensed or the driver requires to be but is not licensed, or
- (b) picks up passengers in, or permits passengers to be picked up by, a private hire car within an area in respect of which its operation requires to be but is not licensed or the driver requires to be but is not licensed,

that person shall be guilty of an offence and liable, on summary conviction, to a fine not exceeding [<sup>F39</sup>level 4 on the standard scale].

(2) Subsection (1) above does not apply to the operation of a taxi or private hire car within an area in respect of which its operation or its driver is not licensed if the request for its

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hiring was received by its driver [<sup>F40</sup>(otherwise than in a public place from the person to be conveyed in it, or a person acting on his behalf, for a journey beginning there and then)] whilst—

- (a) in the area or in that part thereof in respect of which its operation and its driver are licensed;
- (b) engaged on hire on a journey which began in that area or part or will end there; or
- (c) returning to that area or part immediately following completion of a journey on hire.

(3) Subsection (1)(b) above does not apply to the operation of a vehicle within an area in respect of which its operation or its driver is not licensed if there are in force—

- (i) in respect of the vehicle, a licence under section 37 of the <sup>M6</sup>Town Police Clauses Act 1847 (licensing of hackney carriages) or section 48 of the <sup>M7</sup>Local Government (Miscellaneous Provisions) Act 1976 (licensing of private hire vehicles); and
- (ii) in respect of its driver, a licence under section 46 of the said Act of 1847 (licensing of hackney carriage drivers) or, as the case may be, section 51 of the said Act of 1976 (licensing of drivers of private hire vehicles).

[<sup>F41</sup>(3A) Subsection (1)(b) above does not apply to the operation of a vehicle within an area in respect of which its operation or its driver is not licensed if there are in force—

- (a) in respect of the vehicle, a licence under section 7 of the Private Hire Vehicles (London) Act 1998; and
- (b) in respect of its driver, a licence under section 13 of that Act.]

(4) If any person, being the holder of a taxi licence or private hire car licence in respect of a vehicle, permits another person who does not have a current taxi driver's licence or private hire car driver's licence, as the case may be, to operate the vehicle as a taxi or, as the case may be, a private hire car he shall be guilty of an offence and liable, on summary conviction, to a fine not exceeding [<sup>F39</sup>level 4 on the standard scale].

(5) If any person demands fares or other charges in respect of the hire of a taxi or for the hire of a private hire car which is fitted with a taximeter in excess of the scales established under sections 17 and 18 of this Act, he shall be guilty of an offence and liable on summary conviction, to a fine not exceeding [<sup>F39</sup>level 4 on the standard scale].

(6) If any person without good cause breaks the seal on a taximeter or operates or drives a taxi or private hire car knowing that the seal on its meter has been broken, he shall be guilty of an offence and liable, on summary conviction, to a fine not exceeding [<sup>F39</sup>level 4 on the standard scale] or to imprisonment for a period not exceeding 60 days or to both.

(7) If any person, without reasonable excuse, causes or permits any vehicle other than a taxi to wait on any stance for taxis during any period for which that stance has been appointed by a licensing authority under section 19 of this Act, he shall be guilty of an offence and liable, on summary conviction, to a fine not exceeding [<sup>F39</sup>level 2 on the standard scale].

(8) Notice of the effect of subsection (7) above shall be indicated by such traffic signs as may be prescribed as authorised for the purpose by the Secretary of State in pursuance of his powers under section 54 of the <sup>M8</sup>Road Traffic Regulation Act 1967.

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#### Textual Amendments

- F39** Words substituted by virtue of [Criminal Procedure \(Scotland\) Act 1975 \(c. 21, SIF 39:1\)](#), **s. 289G**  
**F40** Words inserted by [Transport Act 1985 \(c. 67, SIF 126\)](#), s. 139(2), **Sch. 7 para. 23(4)**  
**F41** S. 21(3A) inserted (8.6.2004) by [Private Hire Vehicles \(London\) Act 1998 \(c. 34\)](#), s. 40(2), **Sch. 1 para. 3** (with s. 29); [S.I. 2004/241](#), art. 2(2)

#### Marginal Citations

- M6** 1847 c. 89.  
**M7** 1976 c. 57.  
**M8** 1967 c. 76.

## 22 Saving for certain vehicles etc. **S**

Nothing in sections 10 to 21 (with the exception of subsection (7) of section 21) of this Act shall—

- (a) apply to a vehicle used for bringing passengers or goods within and taking them out of an area in respect of which the vehicle is not licensed as a taxi or a private hire car in pursuance of a contract for the hire of the vehicle made outside the area if the vehicle is not made available for hire within the area;
- (b) apply to a vehicle while it is being used in connection with a funeral or wedding;
- (c) apply to any vehicle while it is being used for carrying passengers under a contract for its exclusive hire for a period of not less than 24 hours.

## 23 Interpretation of sections 10 to 22. **S**

(1) In sections 10 to 22 of this Act—

“taxi” means a hire car which is engaged, by arrangements made in a public place between the person to be conveyed in it (or a person acting on his behalf) and its driver for a journey beginning there and then; and

“private hire car” means a hire car other than a taxi within the meaning of this subsection.

(2) In subsection (1) above, “hire car” means a motor vehicle with a driver (other than a vehicle being a public service vehicle within the meaning of section 1(1)(a) of the <sup>M9</sup>Public Passenger Vehicles Act 1981) which is, with a view to profit, available for hire by the public for personal conveyance.

(3) Notwithstanding that a vehicle in respect of which there is a licence for its operation as a taxi is, on any occasion, engaged as a hire car otherwise than in the manner referred to in subsection (1) above, the enactments relating to its operation as a taxi, and to the driving of it as such (including any such enactments in this Act) shall nonetheless apply in relation to it; and that other manner of engagement on that occasion shall not of itself cause the operation or driving of the licensed taxi to be regarded for the purposes of this Act as the operation or driving of a private hire car within the meaning of subsection (1) above.

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#### Marginal Citations

M9 1981 c. 14.

### *Licensing and regulation of second-hand dealers*

#### 24 Second-hand dealers' licences. **S**

- (1) Subject to subsection (3) below, a licence, to be known as a “second-hand dealer’s licence”, shall be required for carrying on business as a second-hand dealer.
- (2) In this section and in sections 25 to 27 and 36 of this Act “second-hand dealer” means a person carrying on a business as a dealer in second-hand goods or articles of any description.
- (3) A second-hand dealer’s licence shall not be required for carrying on—
  - (a) the business of a pawnbroker (that is to say, a person who, under a regulated agreement under the <sup>M10</sup>Consumer Credit Act 1974, takes an article in pawn);
  - (b) a business as a wholesale dealer purchasing exclusively from second-hand dealers licensed under this Act;
  - [<sup>F42</sup>(c) the business of a charity (that is to say, a body which is entered in the Scottish Charity Register);]
  - (d) a business as a dealer in second-hand goods or articles incidentally to another business not being that of a dealer in such goods or articles;
  - (e) a business either of financing the acquisition of goods by means of hire-purchase agreements, conditional sale agreements or credit sale agreements (as defined in section 189(1) of the <sup>M11</sup>Consumer Credit Act 1974) or of financing the use of goods by means of hiring agreements.
- (4) Without prejudice to paragraph 5 of Schedule 1 to this Act, a licensing authority may, after consultation with the chief constable, attach conditions to a second-hand dealer’s licence requiring the keeping of records in relation to the dealer’s stock-in-trade; and conditions so attached may, without prejudice to the authority’s power under this subsection, include provision as to—
  - (a) the information to be included in these records;
  - (b) their form;
  - (c) the premises where they are to be kept; and
  - (d) the period for which they are to be kept.
- (5) A second-hand dealer acquiring a second-hand motor vehicle for the purpose of its re-sale in the course of his business shall keep a record of the mileage reading on the vehicle’s odometer when he acquired it.
- (6) Any person who contravenes subsection (5) above shall be guilty of an offence and liable, on summary conviction, to a fine not exceeding [<sup>F43</sup>level 3 on the standard scale].
- (7) It shall be a defence for a person charged with an offence under subsection (6) above to prove that he used all due diligence to prevent the commission of the offence.

*Status: Point in time view as at 27/11/2009.*

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#### Textual Amendments

- F42** S. 24(3)(c) substituted (1.4.2006) by [Charities and Trustee Investment \(Scotland\) Act 2005 \(asp 10\)](#), s. 107(2), [sch. 4 para. 5\(a\)](#); S.S.I. 2006/189, art. 2(1), sch. Pt. 1
- F43** Words substituted by virtue of [Criminal Procedure \(Scotland\) Act 1975 \(c. 21, SIF 39:1\)](#), [s. 289G](#)

#### Marginal Citations

- M10** 1974 c. 39.
- M11** 1974 c. 39.

## 25 Disposal of stock-in-trade. **S**

- (1) Subject to subsections (2) and (3) below and section 27 of this Act, a second-hand dealer shall not dispose of any item of his stock-in-trade until the expiry of 48 hours (excluding any time on Saturdays or Sundays) after he acquired it.
- (2) Subsection (1) above shall not apply to any article acquired by the dealer in a public roup and disposed of by him without being brought to his place of business.
- (3) A licensing authority may, on granting a second-hand dealer's licence or at any time thereafter, on application by the dealer and after consultation with the chief constable, order that subsection (1) above shall not apply to the disposal by the dealer of any item, or any specified item or class of items, of his stock-in-trade or any specified part of it.
- (4) An order under subsection (3) above may—
  - (a) be made subject to such conditions as the authority think fit;
  - (b) relate to stock-in-trade or items thereof still to be acquired by the dealer to whom the order relates; or
  - (c) be varied or revoked at any time by the licensing authority.
- (5) In subsection (3) above, “specified” means specified in an order under that subsection.
- (6) A holder of a second-hand dealer's licence may appeal to the sheriff against a decision of the licensing authority under this section and paragraph 24(3) to (9) and (11) and (12) of Schedule 1 to this Act shall, with any necessary modifications, apply to an appeal under this subsection.
- (7) Any person who contravenes subsection (1) above shall be guilty of an offence and liable, on summary conviction, to a fine not exceeding [<sup>F44</sup>level 3 on the standard scale].

#### Textual Amendments

- F44** Words substituted by virtue of [Criminal Procedure \(Scotland\) Act 1975 \(c. 21, SIF 39:1\)](#), [s. 289G](#)

## 26 Sellers of second-hand goods: offences etc. **S**

- (1) Any person who, when selling anything to a second-hand dealer, gives the dealer a false name or address shall be guilty of an offence and liable, on summary conviction, to a fine not exceeding [<sup>F45</sup>level 3 on the standard scale].

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- (2) If anything is offered to a second-hand dealer in the course of his business and he has reason to believe that it has been stolen or otherwise unlawfully obtained he may, subject to subsection (3) below, detain the person offering it and a constable may arrest that person and take possession of it.
- (3) Nothing in subsection (2) above authorises a second-hand dealer to detain a person longer than is reasonably necessary for obtaining the attendance of a constable.
- (4) No civil liability shall arise as a result only of the detention in good faith of a person under subsection (2) above.

#### Textual Amendments

**F45** Words substituted by virtue of [Criminal Procedure \(Scotland\) Act 1975 \(c. 21, SIF 39:1\)](#), **s. 289G**

## 27 **Functions of the court in relation to second-hand dealers convicted of offences.** **S**

- (1) Where a second-hand dealer is convicted of an offence relating to second-hand dealing, the court by which he is convicted may make any order which it is competent to make under section 7(6) of this Act and an extract of such conviction and sentence (if any) shall, within 6 days after the date of the conviction, be transmitted by the clerk of the court to the licensing authority which granted the licence.
- (2) Where a second-hand dealer is convicted—
  - (a) of an offence relating to second-hand dealing; or
  - (b) of an offence which in the opinion of the court is an offence involving dishonesty,
 the court may, in addition to any other order which it is competent to make, order that he shall not dispose of any second-hand goods acquired by him until the expiry of a period of 7 days after their acquisition.
- (3) In making an order under subsection (2) above, the court shall specify a period not exceeding 2 years for which it is to remain in force, but the court may revoke such an order at any time on the application of the person to whom it relates.
- (4) Any person who fails to comply with an order made in relation to him under subsection (2) above shall be guilty of an offence and liable, on summary conviction, to a fine not exceeding [<sup>F46</sup>level 4 on the standard scale] or to imprisonment for a period not exceeding 60 days or to both.

#### Textual Amendments

**F46** Words substituted by virtue of [Criminal Procedure \(Scotland\) Act 1975 \(c. 21, SIF 39:1\)](#), **s. 289G**

<sup>F47</sup>*Licensing and regulation of knife dealers*

#### Textual Amendments

**F47** Ss. 27A-27S and cross-heading inserted (1.11.2007 for specified purposes, 1.6.2009 for specified purposes, 1.9.2009 for specified purposes, 1.6.2010 in so far as not already in force) by [Custodial](#)



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Sentences and Weapons (Scotland) Act 2007 (asp 17), ss. 58, 67(2); S.S.I. 2007/431, art. 3, sch., S.S.I. 2009/197, art. 2, Sch.

## 27A Knife dealers' licences **E+W+S**

- (1) A licence, to be known as a “knife dealer's licence”, is required for carrying on business as a dealer in any article mentioned in subsection (2).
- (2) Those articles are—
  - (a) knives (other than [<sup>F48</sup>folding pocket knives whose blades do not exceed 3.5 inches (8.91 centimetres) in length or knives] designed for domestic use);
  - <sup>F49</sup>(aa) [dagger (other than kirpan or skean dhus whose blades do not exceed exceed 3.5 inches (8.91 centimetres) in length);]
  - (b) knife blades (other than those designed for domestic use);
  - (c) swords;
  - (d) any other article—
    - (i) which has a blade; or
    - (ii) which is sharply pointed,and which is made or adapted for use for causing injury to the person.
- (3) A knife dealer's licence shall, in addition to specifying the activity which the dealer engages in, specify the premises in or from which the activity is to be carried on.
- (4) In subsections (1) and (3), “dealer” means a person carrying on a business which consists wholly or partly of—
  - (a) selling;
  - (b) hiring;
  - (c) offering for sale or hire;
  - (d) exposing for sale or hire;
  - (e) lending; or
  - (f) giving,to persons not acting in the course of a business or profession any article mentioned in subsection (2) (whether or not the activities mentioned in paragraphs (a) to (f) are carried out incidentally to a business which would not, apart from this section, require a knife dealer's licence).
- (5) In subsection (4), “selling”, in relation to an article mentioned in subsection (2)—
  - (a) includes—
    - (i) selling such an article by auction;
    - (ii) accepting goods or services in payment (whether in part or in full) for such an article; but
  - (b) does not include selling (by auction or otherwise) such an article by one person on behalf of another;and “sale” is to be construed accordingly.
- (6) For the purposes of subsection (4), an article is not to be treated as being exposed for sale if it is exposed for sale (by auction or otherwise) by a person other than the owner.
- (7) The Scottish Ministers may by order modify subsection (2) so as to—
  - (a) add articles or classes of article;

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- (b) amend descriptions of articles or classes of article;
  - (c) remove articles or classes of article.
- (8) The Scottish Ministers may by order—
- (a) modify subsection (4) so as to modify the definition of “dealer”;
  - (b) specify descriptions of activity which are not to be taken to be businesses for the purposes of that subsection (or that subsection as modified).
- (9) The power in subsection (8)(a) includes in particular power to add descriptions of business.

#### Textual Amendments

**F48** Words in s. 27A(2)(a) substituted (1.9.2009) by [The Knife Dealers \(Exceptions\) Order 2009 \(S.S.I. 2009/218\)](#), arts. 1, **2(a)**

**F49** S. 27A(2)(aa) inserted (1.9.2009) by [The Knife Dealers \(Exceptions\) Order 2009 \(S.S.I. 2009/218\)](#), arts. 1, **2(b)**

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

**C11** S. 27A(4) modified (1.9.2009) by [The Knife Dealers \(Exceptions\) Order 2009 \(S.S.I. 2009/218\)](#), arts. 1, 3

### 27B Applications for knife dealers' licences: notice **E+W+S**

- (1) A licensing authority must cause public notice to be given of every application made to them for the grant or renewal of a knife dealer's licence.
- (2) Sub-paragraph (8) of paragraph 2 of Schedule 1 applies to the giving of public notice under subsection (1) as it applies to the giving of public notice under sub-paragraph (7) of that paragraph.

### 27C Knife dealers' licences: conditions **E+W+S**

- (1) In granting or renewing a knife dealer's licence, a licensing authority—
  - (a) must attach to the licence such conditions as are specified (in particular or in general) by order by the Scottish Ministers;
  - (b) may, without prejudice to paragraph 5 of Schedule 1, attach to the licence different conditions in relation to different articles or different classes of article;
  - (c) may, without prejudice to that paragraph, attach to the licence conditions for or in connection with—
    - (i) the keeping of records by the holder of the licence;
    - (ii) the storage of articles mentioned in section 27A(2); and
    - (iii) the display of such articles.
- (2) An order under subsection (1)(a) may provide for different conditions to apply to different articles or different classes of article.

### 27D Provision of information to holder of knife dealer's licence **E+W+S**

- (1) Subsection (2) applies where the holder of a knife dealer's licence (“the dealer”)—

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- (a) is required by the licence to obtain information of a type specified in the licence from a person; and
  - (b) the dealer requests (whether orally, in writing or otherwise) the information from the person.
- (2) A person, or any person acting on behalf of the person, who knowingly or recklessly provides false information in response to a request under subsection (1)(b) is guilty of an offence and liable on summary conviction to a fine not exceeding level 3 on the standard scale.

#### **27E Knife dealers' licences: warrants to enter, search and seize articles** E+W+S

- (1) Subsection (2) applies if a justice of the peace or sheriff is satisfied by evidence on oath that—
  - (a) subsection (3) applies; and
  - (b) subsection (4) or (5) applies.
- (2) The justice of the peace or sheriff may grant a warrant authorising a constable or an authorised officer—
  - (a) to enter and search the premises specified in the warrant; and
  - (b) to seize and remove any relevant article.
- (3) This subsection applies if there are reasonable grounds for suspecting that a person (the “suspect”) is carrying on in any premises an activity in respect of which a knife dealer's licence is required under section 27A.
- (4) This subsection applies if no knife dealer's licence is in force in respect of the activity.
- (5) This subsection applies if a knife dealer's licence is in force in respect of the activity but there are reasonable grounds for suspecting that the suspect has failed, or is failing, to comply with a condition of the licence.

#### **27F Powers of constables and authorised officers** E+W+S

- (1) A constable or an authorised officer may use reasonable force in executing a warrant granted under section 27E(2).
- (2) Where a constable who is not in uniform is about to enter, is entering or has entered any premises under the powers conferred under section 27E(2) he must, if required to do so by a person in or upon the premises, produce his identification.
- (3) Where an authorised officer is about to enter, is entering or has entered any premises under the powers conferred under section 27E(2) he must, if required to do so by a person in or upon the premises, produce his authorisation.
- (4) If a constable has been required to produce his identification under subsection (2) he is not entitled to enter or search the premises or, as the case may be, remain there or continue to search the premises until he has produced it.
- (5) If an authorised officer has been required to produce his authority under subsection (3), he is not entitled to enter or search the premises or, as the case may be, remain there or continue to search the premises until he has produced it.
- (6) Any person who—

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- (a) fails without reasonable excuse to permit a constable, or an authorised officer, acting in pursuance of a warrant granted under section 27E(2) to enter and search any premises; or
  - (b) obstructs the entry to, or search of, any premises by a constable or an authorised officer so acting,
- is guilty of an offence and liable on summary conviction to a fine not exceeding level 3 on the standard scale.
- (7) Any relevant article which has been seized and removed under a warrant granted under section 27E(2) may be retained until the conclusion of proceedings against the suspect.
- (8) For the purposes of subsection (7), proceedings in relation to a suspect are concluded if—
- (a) he is found guilty and sentenced or otherwise dealt with for the offence;
  - (b) he is acquitted;
  - (c) proceedings for the offence are discontinued;
  - (d) it is decided not to prosecute him.
- (9) In this section, “suspect” is to be construed in accordance with section 27E(3).

## **27G Power to inspect documents** E+W+S

- (1) Subsection (2) applies where—
- (a) a constable or an authorised officer has reasonable grounds for suspecting that an activity in respect of which a knife dealer's licence is required under section 27A is being carried on; and
  - (b) no such licence is in force in respect of the activity.
- (2) The constable or authorised officer may—
- (a) require a relevant person to produce any records or other documents connected with the activity,
  - (b) inspect any such records or documents, and
  - (c) take copies of, or extracts from, any such records or documents.
- (3) A relevant person who—
- (a) is required under subsection (2) to produce records or documents; and
  - (b) fails without reasonable excuse to do so,
- is guilty of an offence and liable on summary conviction to a fine not exceeding level 3 on the standard scale.
- (4) Before exercising the power conferred by subsection (2)—
- (a) a constable who is not in uniform must produce his identification to the relevant person;
  - (b) an authorised officer must produce his authorisation to the relevant person.
- (5) For the purposes of this section, a person is “relevant” if the constable or authorised officer has reasonable grounds for believing that the person has access to the records or documents.

## **27H Sections 27E to 27G: interpretation** E+W+S

- (1) In sections 27E and 27F—

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“premises” includes a vehicle or vessel;

“relevant article” means an article mentioned in any of paragraphs (a) to (d) of subsection (2) of section 27A.

(2) In sections 27E to 27G, “authorised officer” means an officer of a licensing authority authorised by the authority for the purposes of section 27E, 27F or, as the case may be, 27G.

## **27J Forfeiture orders** **E+W+S**

(1) Subsection (2) applies where a person (“the offender”) is convicted of an offence under subsection (A1) or (2) of section 7 in relation to a relevant article—

- (a) seized by virtue of a warrant granted under section 27E(2); or
- (b) in the offender's possession or control at the relevant time.

(2) The court by which the offender is convicted may make an order for forfeiture (a “forfeiture order”) in respect of the relevant article.

(3) The court may make a forfeiture order—

- (a) whether or not it also deals with the offender in respect of the offence in any other way; and
- (b) without regard to any restrictions on forfeiture in any enactment.

(4) In considering whether to make a forfeiture order, the court must have regard to—

- (a) the value of the relevant article; and
- (b) the likely financial and other effects on the offender of the making of the order (taken together with any other order that the court contemplates making).

(5) In this section—

“relevant article” means an article mentioned in any of paragraphs (a) to (d) of subsection (2) of section 27A;

“relevant time” means—

- (a) the time of the offender's arrest for the offence; or
- (b) the time of his being cited as an accused in respect of the offence.

## **27K Effect of forfeiture order** **E+W+S**

(1) A forfeiture order under section 27J(2) operates to deprive the offender of any rights he has in the property to which it relates.

(2) The property to which a forfeiture order relates must be taken into the possession of the police.

(3) The court by which the offender is convicted may, on the application of a person who—

- (a) claims property to which a forfeiture order relates; but
- (b) is not the offender from whom it was forfeited,

make an order (a “recovery order”) for delivery of the property to the applicant if it appears to the court that he owns it.

(4) An application under subsection (3) must be made—

- (a) in such manner as may be prescribed by Act of Adjournal; and

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- (b) before the end of the period of 6 months beginning with the date on which the forfeiture order was made.
- (5) An application may be granted only if the applicant satisfies the court that—
  - (a) he had not consented to the offender's having possession of the property; or
  - (b) he did not know, and had no reason to suspect, that the offence was likely to be committed.
- (6) If a person has a right to recover property which, by virtue of a recovery order, is in the possession of another, that right—
  - (a) is not affected by the making of the recovery order at any time before the end of the period of 6 months beginning with the day on which the order is made;
  - (b) is lost at the end of that period.
- (7) The Scottish Ministers may by order make provision for or in connection with the disposal of property forfeited under a forfeiture order in cases where—
  - (a) no application under subsection (3) has been made before the end of the 6 month period beginning with the day on which the forfeiture order was made; or
  - (b) no such application has succeeded.
- (8) An order under subsection (7) may in particular make provision for—
  - (a) dealing with any proceeds from the disposal;
  - (b) investing money; and
  - (c) auditing accounts.

#### **27L Offences by partnerships** E+W+S

Where an offence committed by a partnership under—

- (a) section 5 (in so far as the offence relates to a knife dealer's licence);
- (b) section 7 (in so far as the offence so relates);
- (c) section 27D;
- (d) section 27F; or
- (e) section 27G,

is proved to have been committed with the consent or connivance of, or to be attributable to any neglect on the part of, a partner, the partner as well as the partnership is guilty of the offence and is liable to be proceeded against and punished accordingly.

#### **27M Appropriate licence required** E+W+S

Where a person carries on a business which—

- (a) by virtue of section 24 requires a second-hand dealer's licence; and
- (b) by virtue of section 27A requires a knife dealer's licence,

the person requires the appropriate licence in respect of each activity.

#### **27N Remote sales of knives etc.** E+W+S

- (1) This section applies where, in connection with the sale of an article mentioned in section 27A(2)—

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- (a) the premises (the “relevant premises”) from which the article is dispatched in pursuance of the sale are not the same as those where the order for the article is taken (the “sale premises”),
  - (b) the relevant premises are in Scotland, and
  - (c) the sale premises are not in Scotland.
- (2) For the purposes of this Act the sale of the article is to be treated as taking place on the relevant premises.

#### **27P Sales and dispatches in different local authority areas** E+W+S

- (1) Subsection (2) applies where, in connection with the sale of an article mentioned in section 27A(2)—
  - (a) the relevant premises are situated in the area of a local authority, and
  - (b) the sale premises are situated in the area of another local authority which, by virtue of section 2(2), is the licensing authority in respect of the taking of the order for the article.
- (2) For the purposes of this Act, the sale of the article is to be treated as taking place—
  - (a) on the relevant premises, and
  - (b) on the sale premises.
- (3) In this section, “relevant premises” and “sale premises” have the same meanings as in section 27N.

#### **27Q Duty to avoid conflict between conditions of licences** E+W+S

- (1) Subsection (2) applies where an application is made to a licensing authority for the grant or renewal of a second-hand dealer's licence by the holder of a knife dealer's licence issued by that authority.
- (2) In granting the application, the licensing authority must not impose any condition which conflicts, or is inconsistent, with a condition of the knife dealer's licence.
- (3) Subsection (4) applies where an application is made to a licensing authority for the grant or renewal of a knife dealer's licence by the holder of a second-hand dealer's licence issued by that authority.
- (4) In granting the application, the licensing authority must, in accordance with paragraph 10 of Schedule 1, vary the terms and conditions of the second-hand dealer's licence to avoid any conflict or inconsistency with the terms or conditions of the knife-dealer's licence.

#### **27R Offences in relation to knife dealers' licences: exceptions** E+W+S

The Scottish Ministers may by order provide that an offence under—

- (a) section 5 (in so far as the offence relates to a knife dealer's licence);
- (b) section 7 (in so far as the offence so relates);
- (c) section 27D;
- (d) section 27F; or
- (e) section 27G,

is subject to such exceptions as may be specified in the order.



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## **27S Orders under sections 27A to 27R** E+W+S

- (1) Any power conferred by section 27A(7), 27A(8), 27C(1)(a), 27K(7) or 27R to make orders is exercisable by statutory instrument.
- (2) Subject to subsection (3), a statutory instrument containing an order under any of those sections is subject to annulment in pursuance of a resolution of the Scottish Parliament.
- (3) A statutory instrument containing an order under section 27R may not be made unless a draft of the instrument has been laid before, and approved by resolution of, the Scottish Parliament.]

### *Licensing and regulation of metal dealers*

## **28 Metal dealers: licensing and regulation.** S

- (1) Subject to subsection (2) below, a licence, to be known as a “metal dealer’s licence”, shall be required for carrying on business as a metal dealer.
- (2) A metal dealer’s licence shall not be required by a person in relation to whom there is in force a warrant under section 29(1) or (4) of this Act (referred to in subsection (3) below and in sections 30 to 37 of this Act respectively as “an exemption warrant” and “a temporary exemption warrant”).
- (3) Sections 30 to 36 of this Act shall not apply to a person in relation to whom an exemption warrant or temporary exemption warrant is in force.
- (4) A metal dealer’s licence shall, in addition to specifying the activity which he engages in, specify the premises in or from which the activity is to be carried on.

## **29 Metal dealers’ exemption warrants.** S

- (1) A licensing authority shall, on application by a metal dealer, issue an exemption warrant in relation to him if there is produced to them a certificate by the auditor of the metal dealer’s business stating that, in a financial year ending in the period of 18 months immediately preceding the production to them of the certificate, the total amount received by the dealer as a principal in the ordinary course of his business in respect of metal sold or supplied by him, without any deduction being made, exceeded £100,000 or such other sum as may be substituted for that sum by order made by the Secretary of State.
- (2) An order made for the purposes of subsection (1) above shall be made by statutory instrument subject to annulment in pursuance of a resolution of either House of Parliament.
- (3) An exemption warrant shall remain in force for 3 years from the date of its issue.
- (4) A licensing authority may, on application by a metal dealer, issue a temporary exemption warrant in relation to him if they are satisfied that he has not been carrying on business as a metal dealer.
- (5) A temporary exemption warrant in relation to a metal dealer shall remain in force from the date of its issue or such later date as the licensing authority may specify—
  - (a) for a period of 18 months; or

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- (b) until (if earlier than the expiry of that period) the date of the grant to that dealer of an exemption warrant; or
  - (c) if a metal dealer's licence has been applied for by him within that period, until the date when it is granted or is deemed to have been granted or, if it is refused, until the expiry of the time within which he may lodge an appeal under paragraph 18 of Schedule 1 to this Act against that refusal or, where he has lodged such an appeal, until it has been abandoned or determined against him.
- (6) It shall be a condition of a temporary exemption warrant that the dealer to whom it relates shall acquire metal only from persons selling or otherwise disposing of it in the course of trade or business.
- (7) A licensing authority may revoke a temporary exemption warrant on the grounds that the metal dealer to whom it relates has contravened the condition specified in subsection (6) above.
- (8) An authorised officer of a licensing authority or a constable may require any person who the officer or constable has reasonable ground to believe is carrying on business as a metal dealer without having a metal dealer's licence to produce his exemption warrant or temporary exemption warrant within a reasonable time of being required to do so; and any person who does not have a metal dealer's licence and who, having been so required to produce his exemption warrant or temporary exemption warrant within that time, fails, without reasonable excuse, to do so shall be guilty of an offence and liable, on summary conviction, to a fine not exceeding [<sup>F50</sup>level 1 on the standard scale].
- (9) An officer of a licensing authority or a constable who is not in uniform shall not be entitled to exercise the powers which he may exercise under subsection (8) above until he has produced his authorisation or, as the case may be, identification to the person in respect of whom they are to be exercised.
- (10) In this section—
- “auditor” means a person who is [<sup>F51</sup>eligible for appointment as a statutory auditor under Part 42 of the Companies Act 2006] ; and
  - “financial year”, in relation to a metal dealer, means the financial year of his business or, if it has no financial year, the year beginning on 6th April.

#### Textual Amendments

**F50** Words substituted by virtue of [Criminal Procedure \(Scotland\) Act 1975 \(c. 21, SIF 39:1\)](#), **s. 289G**

**F51** Words in s. 29(10) substituted (6.4.2008) by [The Companies Act 2006 \(Consequential Amendments etc\) Order 2008 \(S.I. 2008/948\)](#), art. 2(2), **Sch. 1 para. 9** (with arts. 6, 11, 12)

### 30 Keeping of records. **S**

- (1) This section applies to metal acquired by or disposed of by the holder of a metal dealer's licence in the course of his business as a metal dealer.
- (2) A metal dealer shall keep the following records, containing the particulars required by this section—
- (a) in relation to each place occupied by him for the purposes of his business as a metal dealer—

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- (i) records of all metal to which this section applies received at that place;
  - (ii) records of all such metal processed at or despatched or otherwise disposed of from that place;
  - (b) records of all metal to which this section applies received or processed at or despatched or otherwise disposed of from any place other than a place occupied by him for the purposes of his business as a metal dealer,  
and separate records shall be kept of the particulars with respect to metal received and metal despatched, processed or otherwise disposed of, respectively.
- (3) A metal dealer shall keep records for the purposes of this section either by—
- (a) keeping, at each place occupied by him for the purposes of his business as a metal dealer, books with serially numbered pages recording all metal to which this section applies received or processed at or despatched or otherwise disposed of from that place; or
  - (b) the use of a device for storing and processing information,
- but—
- (i) where he keeps books under paragraph (a) above, he shall not have in use at any one place and at any one time more than one book for recording particulars with respect to metal received at that place and more than one book for recording particulars with respect to metal processed at, or despatched or otherwise disposed of from, that place; and
  - (ii) where he uses a device for storing and processing information under paragraph (b) above, he shall, by means of that device or otherwise, keep particulars of all modifications made in the records kept by the device.
- (4) Records kept under subsection (3) above shall be retained by the dealer for a period of two years from the day on which the last entry was made in it.
- (5) The said particulars, in the case of metal received or acquired, are—
- (a) the description and weight of the metal;
  - (b) the date and time of the receipt of the metal;
  - (c) if the metal is received or acquired from another person, the name and address of that person;
  - (d) the price, if any, payable in respect of the receipt or acquisition of the metal, if that price has been ascertained at the time when the entry in the record relating to that metal is to be made;
  - (e) where paragraph (d) above does not apply, the value of the metal at the time when the entry is to be made as estimated by the dealer;
  - (f) in the case of metal delivered at the place in question by means of a mechanically propelled vehicle bearing a registration mark (whether the vehicle belongs to the dealer or not), the registration mark borne by the vehicle.
- (6) The said particulars, in the case of metal despatched, processed or otherwise disposed of are—
- (a) the description and weight of the metal immediately before its despatch, processing or other disposal;
  - (b) the date of despatch, processing or other disposal of the metal and, in the case of processing, the process applied;

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- (c) in the case of metal disposed of on sale or exchange, the name and address of the person to whom the metal is sold or with whom it is exchanged, and the consideration for which it is sold or exchanged;
  - (d) in the case of metal disposed of otherwise than on sale or exchange, its value immediately before its disposal as estimated by the dealer.
- (7) Particulars required under this section to be recorded in respect of metal received or otherwise acquired shall be so recorded immediately after the receipt or acquisition; and particulars so required to be recorded in respect of metal disposed of shall be so recorded immediately after the disposal.
- (8) Any person who fails to comply with any requirement imposed upon him by this section shall be guilty of an offence and liable, on summary conviction, to a fine not exceeding [<sup>F52</sup>level 3 on the standard scale].

#### Textual Amendments

**F52** Words substituted by virtue of [Criminal Procedure \(Scotland\) Act 1975 \(c. 21, SIF 39:1\)](#), **s. 289G**

### 31 Retention of metal. **S**

- (1) Subject to subsection (2) below and section 35 of this Act, no metal dealer shall dispose of or process any metal acquired by him in the course of business until the expiry of a period of 48 hours (excluding any time on Saturdays or Sundays) after its acquisition.
- (2) A licensing authority may, on granting a metal dealer's licence or at any time thereafter, on application by the dealer and after consultation with the chief constable, order that subsection (1) above shall not apply to such metal or classes of metal as may be specified in the order.
- (3) An order under subsection (2) above may—
- (a) be made subject to such conditions as the licensing authority think fit;
  - (b) relate to metal still to be acquired by the metal dealer to whom the order relates;
  - (c) be varied or revoked by the licensing authority.
- (4) The holder of a metal dealer's licence may appeal to the sheriff against a decision of the licensing authority under this section and paragraphs 18(3) to (9) and (11) and (12) of Schedule 1 to this Act shall, with any necessary modifications, apply to an appeal under this subsection.
- (5) Any person who fails to comply with subsection (1) above shall be guilty of an offence and liable, on summary conviction, to a fine not exceeding [<sup>F53</sup>level 3 on the standard scale].

#### Textual Amendments

**F53** Words substituted by virtue of [Criminal Procedure \(Scotland\) Act 1975 \(c. 21, SIF 39:1\)](#), **s. 289G**

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### 32 Itinerant metal dealers. **S**

- (1) A licence, to be known as an “itinerant metal dealer’s licence” shall be required for carrying on business as an itinerant metal dealer.
- (2) An itinerant metal dealer’s licence shall have effect so as to permit the licence holder to carry on business as an itinerant metal dealer anywhere in Scotland.

### 33 Receipts and invoices: itinerant metal dealers. **S**

- (1) An itinerant metal dealer shall obtain from each person who buys metal from him a receipt showing the weight and description of the metal, the name and address of the buyer and the price paid for the metal.
- (2) Any such receipt shall be kept by the dealer for a period of 6 months from its date of issue.
- (3) An itinerant metal dealer shall keep a record in respect of each sale to him of metal showing the weight and description of the metal, the name and address of the seller and the price paid for the metal.
- (4) Any such record shall be kept by the dealer for a period of 6 months from the date of the sale to which it relates.
- (5) Any person who fails to comply with any provision of this section shall be guilty of an offence and liable, on summary conviction, to a fine not exceeding [<sup>F54</sup>level 3 on the standard scale].

#### Textual Amendments

**F54** Words substituted by virtue of [Criminal Procedure \(Scotland\) Act 1975 \(c. 21, SIF 39:1\)](#), s. 289G

### 34 Offences relating to metal dealing. **S**

- (1) Any metal dealer or itinerant metal dealer who disposes of metal to a person apparently under the age of 16 or who acquires metal from such a person, whether that person is acting on his own behalf or on behalf of another person, shall be guilty of an offence and liable, on summary conviction, to a fine not exceeding [<sup>F55</sup>level 3 on the standard scale].
- (2) In any proceedings for an offence under subsection (1) above, it shall be a defence to prove that the person to whom it is alleged the metal was disposed of or from whom it is alleged it was acquired was 16 years of age or over at the time.
- (3) Any metal dealer or itinerant metal dealer who knowingly or recklessly furnishes false particulars under section 30 of this Act or, as the case may be, false information on any record or receipt which he is required by section 33 of this Act to keep shall be guilty of an offence and liable, on summary conviction, to a fine not exceeding [<sup>F55</sup>level 4 on the standard scale].
- (4) Any person who, when selling metal to or purchasing metal from a metal dealer or itinerant metal dealer, gives the dealer a false name or address shall be guilty of an offence and liable, on summary conviction, to a fine not exceeding [<sup>F55</sup>level 3 on the standard scale].

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#### Textual Amendments

**F55** Words substituted by virtue of [Criminal Procedure \(Scotland\) Act 1975 \(c. 21, SIF 39:1\)](#), s. 289G

### 35 Functions of the court in relation to metal dealers convicted of offences. **S**

- (1) Where a metal dealer or itinerant metal dealer is convicted of an offence relating to his business as such, the court by which he is convicted may make any order which it is competent to make under section 7(6) of this Act and an extract of such conviction and sentence (if any) shall, within 6 days after the date of the conviction, be transmitted by the clerk of the court to the licensing authority which granted the licence.
- (2) Where a metal dealer is convicted—
  - (a) of an offence relating to his business as such; or
  - (b) of any offence which in the opinion of the court is an offence involving dishonesty,the court may, in addition to any other order which it is competent to make, order that he shall not dispose of or process any metal acquired by him until the expiry of a period of 7 days after its acquisition.
- (3) In making an order under subsection (2) above, the court shall specify a period not exceeding 2 years for which it is to remain in force, but the court may revoke such an order at any time on the application of the person to whom it relates.
- (4) Any person who fails to comply with an order made in relation to him under subsection (2) above shall be guilty of an offence and liable, on summary conviction, to a fine not exceeding [<sup>F56</sup>level 4 on the standard scale] or to imprisonment for a period not exceeding 60 days or to both.
- (5) A licensing authority receiving, by virtue of subsection (1) above, an extract of conviction and sentence (if any) of an itinerant metal dealer shall notify all other licensing authorities of the particulars of the conviction.

#### Textual Amendments

**F56** Words substituted by virtue of [Criminal Procedure \(Scotland\) Act 1975 \(c. 21, SIF 39:1\)](#), s. 289G

### 36 Appropriate licence required. **S**

Where a person carries on business as a second-hand dealer and as a metal dealer and as an itinerant metal dealer or as any two of these kinds of dealer he shall require the appropriate licence in respect of each activity.

### 37 Interpretation of sections 28 to 36. **S**

- (1) In sections 28 to 36 of this Act—

“itinerant metal dealer” means a person who carries on a business which consists wholly or partly of buying and selling for scrap waste materials and old, broken, worn out, defaced or partly manufactured articles made wholly or partly of metal which he collects by means of visits from place to place and which he disposes of without causing them to be kept in a metal store or

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other premises (either by so keeping them himself, or by disposing of them or giving custody of them to a person who keeps a metal store);

“metal” means any metal (including any precious metal) and any alloy of any metals, whether old or new and includes manufactured articles, whether old or new, made wholly or partly of metal, of any of the materials commonly known as hard metal or of cemented or sintered metallic carbides;

“metal dealer” means a person carrying on business in terms of subsection (2) below but does not include an itinerant metal dealer within the meaning of this subsection;

“metal store” means a place where metal is received or kept in the course of a metal dealer’s business;

“processing”, in relation to metal, includes melting down and any process whereby the composition or form of the metal or of any article which is made of the metal is altered so as to make it substantially less identifiable than before the process, and “process” and “processed” shall be construed accordingly.

- (2) For the purposes of sections 28 to 36 of this Act a person carries on business as a metal dealer if he carries on a business which consists wholly or partly of buying and selling for scrap old, broken, worn out, defaced or partly manufactured articles made wholly or partly of metal (whether the metal sold is in the form in which it was bought or otherwise), other than a business in the course of which metal is not bought except as materials for the manufacture of other articles and is not sold except as a by-product of such manufacture or as surplus materials bought but not required for such manufacture.

#### *Miscellaneous licences*

### **38 Boat hire licences. S**

- (1) Subject to the provisions of this section, a licence under this Act, to be known as a “boat hire licence”, shall be required for the use of a vessel, in the course of a trade or business carried on in or from any place within the area of a licensing authority, for the purpose of—
- (a) letting it on hire; or
  - (b) carrying for reward 12 or fewer passengers,
- for pleasure, recreational, educational or sporting purposes.
- (2) A boat hire licence may relate to one or more vessels or classes of vessel and shall specify—
- (a) the vessels or the classes of vessels to which it relates; and
  - (b) the maximum number of vessels or of each class of vessel which may be used under the licence.
- (3) A boat hire licence shall extend to the use of any vessel added to or substituted for a vessel to which the licence relates if—
- (a) the additional or substitute vessel is of identical type to a vessel of a class to which the licence relates; and
  - (b) the maximum number referred to in subsection (2)(b) above is not exceeded.
- (4) A boat hire licence shall not be required in respect of the use—



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- (a) of any vessel in respect of which there is in force a passenger certificate, load line certificate or load line exemption certificate under the [<sup>F57</sup>Merchant Shipping Act 1995];
  - (b) for a continuous period of over 24 hours, of any vessel having overnight sleeping accommodation;
  - (c) of any vessel for the purpose of instruction or training in seamanship;
  - (d) of any vessel exclusively for fishing in non-tidal waters;
  - (e) of any vessel—
    - (i) on any inland waterway; or
    - (ii) at any harbour owned or managed by the British Waterways Board; or
  - (f) of any vessel with the consent of the harbour authority (within the meaning of the <sup>M12</sup>Harbours Act 1964) in any harbour owned or managed by them.
- (5) Before granting an application to grant or renew a boat hire licence a licensing authority may require the applicant to produce a certificate in respect of each vessel to which the application relates issued by a person appearing to the authority to be suitably qualified for the purpose of issuing such a certificate stating that the vessel is suitably designed, constructed, maintained and equipped and in a safe condition for the purpose for which, and the place or waters in which, it is to be used.
- (6) Without prejudice to paragraphs 5(3), 11 and 12 of Schedule 1 to this Act a licensing authority shall—
  - (a) refuse an application to grant or renew a boat hire licence;
  - (b) suspend a boat hire licence in accordance with the said paragraph 12,to the extent that it relates to any vessel which is in their opinion not in a safe condition for the purpose for which, and the place or waters in which, it is to be or, as the case may be, is being used.
- (7) Without prejudice to paragraph 5 of Schedule 1 to this Act, a licensing authority, on granting an application for the grant or renewal of a boat hire licence, shall attach conditions—
  - (a) fixing the maximum number of persons which may be carried in the vessel;
  - (b) specifying inland waters in their area, the inland waters adjacent to inland waters in their area and the tidal waters within which each vessel or class of vessel to which the application relates may be used.
- (8) The holder of a boat hire licence shall effect and maintain in force in relation to every vessel to which the licence relates a policy of insurance to the satisfaction of the licensing authority and complying with subsection (9) below, and shall not reduce the amount or extent of the cover specified in the policy without the prior approval of the authority.
- (9) A policy of insurance complies with this subsection if it insures such person, persons, or classes of persons as may be specified in the policy in respect of any liability which may be incurred by him or them in respect of the death of or bodily injury to any person caused by, or arising out of, the use of the vessel.
- (10) Any person who, being the holder of a boat hire licence, uses or causes or permits any other person to use a vessel to which the licence relates without having in force in relation to that vessel a policy of insurance in accordance with subsection (8) above

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shall be guilty of an offence and liable, on summary conviction, to a fine not exceeding [<sup>F58</sup>level 4 on the standard scale].

(11) Where—

- (a) a vessel in respect of which a boat hire licence is in force is used—
  - (i) within the territorial waters of the United Kingdom adjacent to Scotland; and
  - (ii) within any inland waters or waters specified in the licence under subsection (7)(b) above; but
  - (iii) outwith the area of the licensing authority which granted or last renewed the licence; and
- (b) all persons carried in the vessel embark initially from places within the area of the authority,

it shall not be necessary to have in force in respect of that use of the vessel a boat hire licence granted by any other licensing authority and the conditions subject to which the licence is held shall continue to apply to such use.

#### Textual Amendments

**F57** Words in s. 38(4)(a) substituted (1.1.1996) by 1995 c. 21, ss. 314(2), 316(2), **Sch. 13 para. 67** (with s. 312(1))

**F58** Words substituted by virtue of **Criminal Procedure (Scotland) Act 1975 (c. 21, SIF 39:1), s. 289G**

#### Marginal Citations

**M12** 1964 c. 40.

### 39 Street traders' licences. **S**

- (1) Subject to subsection (3) below, a licence, to be known as a “street trader’s licence”, shall be required for street trading by a person, whether on his own account or as an employee.
- (2) In this section “street trading” means doing any of the following things in a public place—
  - (a) hawking, selling or offering or exposing for sale any article;
  - (b) offering to carry out or carrying out for money or money’s worth any service, to any person in the public place and includes doing any of these things there in or from a vehicle or in or from a kiosk or moveable stall not entered in the valuation roll except where it is done in conjunction with or as part of a retail business being carried on in premises abutting the public place.
- (3) A street trader’s licence shall not be required for—
  - (a) the sale of newspapers only;
  - (b) the sale of milk by or on behalf of a person registered under [<sup>F59</sup>regulations made under section 19 of the Food Safety Act 1990];
  - (c) the sale of coal, coke or any solid fuel derived from coal or of which coal or coke is a constituent;
  - (d) any activity in respect of which a certificate under the <sup>M13</sup>Pedlars Act 1871 has been granted;

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- (e) any activity in respect of which a licence is required under this Act apart from this section; or
  - (f) organising or participating in a public charitable collection within the meaning of subsection (16) of section 119 of this Act in accordance with permission granted under that section.
- (4) Where an application for a street trader’s licence is made in respect of an activity which—
- (a) consists of or includes food business within the meaning of [F60]sections 1(3) of the Food Safety Act 1990]; and
  - (b) involves the use of a vehicle, kiosk or moveable stall,
- the licensing authority shall, without prejudice to paragraph 5(3) of Schedule 1 to this Act, refuse the application unless there is produced to them a certificate by the [F61]food authority (for the purposes of section 5 of the Food Safety Act 1990) stating that the vehicle, kiosk or moveable stall complies with the requirements of any relevant regulations made under [F62]section 16 of the Food Safety Act 1990].

#### Textual Amendments

- F59** Words substituted by [Food Safety Act 1990 \(c. 16, SIF 53:1, 2\), ss. 54, 59\(10\), Sch. 3 para. 25\(a\)](#)
- F60** Words substituted by [Food Safety Act 1990 \(c. 16, SIF 53:1, 2\), ss. 54, 59\(10\), Sch. 3 para. 25\(b\)\(i\)](#)
- F61** Words substituted by [Food Safety Act 1990 \(c. 16, SIF 53:1, 2\), ss. 54, 59\(10\), Sch. 3 para. 25\(b\)\(ii\)](#)
- F62** Words substituted by [Food Safety Act 1990 \(c. 16, SIF 53:1, 2\), ss. 54, 59\(10\), Sch. 3 para. 25\(b\)\(iii\)](#)

#### Marginal Citations

- M13** [1871 c. 96.](#)

## 40 Market operators’ licences. **S**

- (1) Subject to subsection (2) below, a licence, to be known as a “market operator’s licence”, shall be required for carrying on a private market.
- (2) A market operator’s licence shall not be required for carrying ; on either of the following—
- (a) functions held by charitable, religious, youth, recreational, community, political or similar organisations;
  - (b) markets held only for the sale of livestock, fodder or grain.
- (3) In addition to any other condition which may be included, a licence in respect of a private market shall include conditions as to—
- (a) the regulation of days and hours of opening;
  - (b) the provision of adequate toilet facilities;
  - (c) the layout of the site or premises on which the market is to be held;
  - (d) the maintenance of order and public safety.
- (4) In this section, “private market” means a market, whether covered or not, carried on by any person other than a local or public authority at which goods are offered by more than one seller for sale by retail to the public.

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## 41 Public entertainment licences. **S**

- (1) A licence, to be known as a “public entertainment licence”, shall be required for the use of premises as a place of public entertainment.
- (2) In this section, “place of public entertainment” means any place where, on payment of money or money’s worth, members of the public are admitted or may use any facilities for the purposes of entertainment or recreation but does not include—
  - (a) an athletic or sports ground while being used as such;
  - [<sup>F63</sup>(aa) premises in respect of which a licence is required under section 41A of this Act while such premises are being used for the purposes mentioned in that section;]
  - (b) an educational establishment while being used as such;
  - (c) premises belonging to or occupied by any religious body while being used wholly or mainly for purposes connected with that body;
  - (d) premises licensed under the <sup>M14</sup>Theatres Act 1968, [<sup>F64</sup>section 1 of the Cinemas Act 1985] or Part II of the <sup>M15</sup>Gaming Act 1968;
  - (e) premises in respect of which there is a permit under section 16 of the <sup>M16</sup>Lotteries and Amusements Act 1976 while being used in pursuance of the permit;
  - (f) licensed premises within the meaning of the Licensing (Scotland) Act [<sup>F65</sup>2005 (asp 16)] in which public entertainment is being provided during [<sup>F66</sup>licensed] hours within the meaning of that Act; or
  - (g) premises in which machines for entertainment or amusement are being provided incidentally to the main purpose or use of the premises where that main purpose or use is not as a place of public entertainment.
- (3) Without prejudice to paragraph 5 of Schedule 1 to this Act, a licensing authority may attach conditions to a public entertainment licence—
  - (a) restricting the use of the premises to a specified kind or specified kinds of entertainment or recreation;
  - (b) limiting the number of persons to be admitted to the premises;
  - (c) fixing the days and times when the premises may be open for the purposes of the entertainment or recreation.
- (4) In this section, “educational establishment” has the meaning given by paragraphs (i) and (ii) of the definition of that expression in section 135(1) of the <sup>M17</sup>Education (Scotland) Act 1980 but includes a university and a theological college.

### Textual Amendments

- F63** S. 41(2)(aa) inserted by [Fire Safety and Safety of Places of Sport Act 1987 \(c. 27, SIF 81:2\)](#), s. 44(5)
- F64** Words substituted by [Cinemas Act 1985 \(c. 13, SIF 45A\)](#), s. 24(1), [Sch. 2 para. 17](#)
- F65** Words in s. 41(2)(f) substituted (1.9.2009 at 5.00 a.m.) by [Licensing \(Scotland\) Act 2005 \(asp 16\)](#), s. 150(2), [sch. 6 para. 6\(2\)\(a\)](#) (with s. 143); S.S.I. 2007/472, art. 3
- F66** Word in s. 41(2)(f) substituted (1.9.2009 at 5.00 a.m.) by [Licensing \(Scotland\) Act 2005 \(asp 16\)](#), s. 150(2), [sch. 6 para. 6\(2\)\(b\)](#) (with s. 143); S.S.I. 2007/472, art. 3

### Marginal Citations

- M14** 1968 c. 54.
- M15** 1968 c. 65.
- M16** 1976 c. 32.

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M17 1980 c. 44.

[<sup>F67</sup> **41A Indoor sports entertainment licences.** **S**

- (1) Subject to subsection (2) below, a licence to be known as an “indoor sports entertainment licence” shall be required for the use of premises as a place of public sports entertainment.
- (2) Subsection (1) above shall not apply to any occasion on which the entertainment of the public by the sport is not the principal purpose for which the premises are used but this provision does not apply in relation to a sports complex.
- (3) Without prejudice to paragraph 5 of Schedule 1 to this Act, a licensing authority may attach conditions to an indoor sports entertainment licence—
  - (a) restricting the use of the premises to a specified kind or specified kinds of public sports entertainment;
  - (b) limiting the number of persons to be admitted to the premises;
  - (c) fixing the days and times when the premises may be open for the purposes of public sports entertainment.

(4) In this section—

“premises” means any permanent or temporary building and any tent or inflatable structure and includes a part of a building where the building is a sports complex but does not include a part of any other building;

“public sports entertainment” means any sporting event to which the public are invited as spectators;

“sporting event” means any contest, exhibition or display of any sport;

“sports complex” means a building—

- (a) which provides accommodation and facilities for both those engaging in sport and spectators; and
- (b) the parts of which are so arranged that one or more sports can be engaged in simultaneously in different parts of the building; and

“sport” includes any game in which physical skill is the predominant factor and any form of physical recreation which is also engaged in for purposes of competition or display, except dancing (in any form).]

**Textual Amendments**

**F67** S. 41A inserted by [Fire Safety and Safety of Places of Sport Act 1987 \(c. 27, SIF 81:2\)](#), [s. 44\(1\)](#)

**42 Late hours catering licences.** **S**

- (1) A licence, to be known as a “late hours catering licence”, shall be required for the use of premises between the hours of eleven o’clock in the evening and five o’clock the following morning for the sale to or consumption by the public of meals or refreshment.
- (2) The reference in subsection (1) above to the sale of meals or refreshment is a reference to the sale of meals or refreshment for consumption on as well as off the premises in which they are sold.

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- (3) Without prejudice to paragraph 5 of Schedule 1 to this Act, a licensing authority may attach conditions to a late hours catering licence fixing the days and hours during which the premises may be open for business, and different days and hours may be fixed for the sale of meals or refreshments for consumption on the premises from those fixed for the sale of meals or refreshments for consumption off the premises.
- (4) A late hours catering licence shall not be required in respect of—
  - (a) the use as such of licensed premises within the meaning of the Licensing (Scotland) Act [F68 2005 (asp 16)]; or
  - (b) premises being used in accordance with a public entertainment licence.
- (5) A licensing authority may, on application made to them, exempt the use of premises requiring a late hours catering licence from the requirement to have such a licence—
  - (a) in respect of any particular occasion; or
  - (b) during a specified period not exceeding 2 months in any period of 12 months.
- (6) The licensing authority may attach conditions to an exemption granted under subsection (5) above, and the provisions of Part I of this Act relating to the attaching of conditions to licences and subsection (3) above shall apply to the attaching of conditions to exemptions under this subsection.

#### Textual Amendments

**F68** Words in s. 42(4)(a) substituted (1.9.2009 at 5.00 a.m.) by [Licensing \(Scotland\) Act 2005 \(asp 16\)](#), s. 150(2), [sch. 6 para. 6\(3\)](#) (with s. 143); [S.S.I. 2007/472](#), art. 3

#### 43 Window cleaners' licences. **S**

A licence, to be known as a “window cleaner’s licence” shall be required for carrying on the trade of, or being employed as, a window cleaner.

#### 44 Additional activities. **S**

- (1) The Secretary of State may, by order made by statutory instrument, designate any activity other than one of those specified in this Part of this Act—
  - (a) as an activity for which, subject to a resolution of the licensing authority in relation to it under section 9 of this Act, a licence shall be required and which, subject to such a resolution, shall be regulated in accordance with the provisions specified in the order; or
  - (b) as an activity for which a licence shall be required and which shall be regulated in accordance with the provisions specified in the order.
- (2) An order made under this section may provide—
  - (a) that Part I of this Act, with such modifications if any as may be specified in the order, shall have effect for the purposes of the licensing of the activity designated by the order;
  - (b) for the regulation of the activity designated by the order;
  - (c) for the repeal or modification of any enactment which provides (whether consistently or not) for the same matter as the order;
  - (d) without prejudice to any provision of Part I of this Act which has effect, with or without modification, by virtue of paragraph (a) above, for the creation

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of offences and for making offenders liable, on summary conviction, to imprisonment for a period not exceeding 60 days or such lesser maximum period as may be specified in the order or to a fine not exceeding [<sup>F69</sup>level 3 on the standard scale] or such lesser maximum fine as may be so specified or to both such fine and such imprisonment.

- (3) No order shall be made under this section unless a draft of it has been laid before and approved by a resolution of each House of Parliament.

#### Subordinate Legislation Made

**P1** S. 44: s. 44 power exercised by [S.I. 1991/1253](#). For previous exercise of power see Index to Government Orders.

#### Textual Amendments

**F69** Words substituted by virtue of [Criminal Procedure \(Scotland\) Act 1975 \(c. 21, SIF 39:1\)](#), [s. 289G](#)

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

**C12** S. 44(1) extended by [Salmon Act 1986 \(c. 62, SIF 52:2\)](#), [ss. 20\(1\), 43\(1\)](#)

## PART III **S**

### CONTROL OF SEX SHOPS

#### 45 Control of sex shops. **S**

- (1) A [<sup>F70</sup>local authority] may resolve that Schedule 2 to this Act shall have effect in their area; and if they do so resolve that Schedule shall have such effect as from the day specified in that behalf in the resolution (which must not be before the expiration of the period of one month beginning with the day on which the resolution is passed).
- (2) A [<sup>F70</sup>local authority] shall, not later than 28 days before the day specified in the resolution for the coming into effect of Schedule 2 to this Act in the [<sup>F70</sup>authority's]area, publish notice that they have passed a resolution under this section in a newspaper circulating in their area.
- (3) The notice shall state the general effect of that Schedule.

#### Textual Amendments

**F70** Words in [s. 45\(1\)\(2\)](#) substituted (1.4.1996) by [1994 c. 39, s. 180\(1\)](#), [Sch. 13 para. 129\(3\)](#); [S.I. 1996/323, art. 4\(1\)\(c\)](#)



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## PART IV S

### OFFENCES, POWERS OF CONSTABLES, ETC.

#### *Offences of annoying, offensive, obstructive or dangerous behaviour*

#### 46 **Soliciting and importuning by prostitutes.** S

- (1) A prostitute (whether male or female) who for the purposes of prostitution—
- (a) loiters in a public place;
  - (b) solicits in a public place or in any other place so as to be seen from a public place; or
  - (c) importunes any person who is in a public place,
- shall be guilty of an offence and liable, on summary conviction, to a fine not exceeding [<sup>F71</sup>level 2 on the standard scale].
- (2) In subsection (1) above, “public place” has the same meaning as in section 133 of this Act but includes—
- (a) any place to which at the material time the public are permitted to have access, whether on payment or otherwise; and
  - (b) any public conveyance other than a taxi or hire car within the meaning of section 23 of this Act.

#### Textual Amendments

**F71** Words substituted by virtue of [Criminal Procedure \(Scotland\) Act 1975 \(c. 21, SIF 39:1\)](#), **s. 289G**

#### 47 **Urinating etc.** S

Any person who urinates or defecates in such circumstances as to cause, or to be likely to cause, annoyance to any other person shall be guilty of an offence and liable, on summary conviction, to a fine not exceeding [<sup>F72</sup>level 2 on the standard scale].

#### Textual Amendments

**F72** Words substituted by virtue of [Criminal Procedure \(Scotland\) Act 1975 \(c. 21, SIF 39:1\)](#), **s. 289G**

#### <sup>F73</sup>48 **Dogs: fouling of pavements.** S

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#### Textual Amendments

**F73** S. 48 repealed (22.10.2003) by [Dog Fouling \(Scotland\) Act 2003 \(asp 12\)](#), **ss. 17, 18(2)**

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#### 49 Dangerous and annoying creatures. **S**

- (1) Any person who suffers or permits any creature in his charge to cause danger or injury to any other person who is in a public place or to give such person reasonable cause for alarm or annoyance shall be guilty of an offence and liable, on summary conviction, to a fine not exceeding [<sup>F74</sup>level 2 on the standard scale].
- (2) A district court may, if satisfied that any creature kept in the vicinity of any place where a person resides is giving that person, while in that place, reasonable cause for annoyance, make an order requiring the person keeping the creature to take, within such period as may be specified in the order, such steps (short of destruction of the creature) to prevent the continuance of the annoyance as may be so specified.
- (3) An application to a district court for an order under subsection (2) above may be made by any person.
- (4) Any person who fails to comply with an order under subsection (2) above shall be guilty of an offence and liable, on summary conviction, to a fine not exceeding [<sup>F74</sup>level 3 on the standard scale].
- (5) The fact that there is a licence under the <sup>M18</sup>Dangerous Wild Animals Act 1976 in respect of a creature shall not of itself afford a defence in proceedings under this section relating to that creature.
- (6) Where a court convicts a person of an offence under this section or discharges him absolutely or makes a probation order in relation to him, it may, whether or not (in the case of conviction) it imposes a penalty under subsection (1) or (4) above—
  - (a) subject to subsection (8) below, make such order as it sees fit as to the disposal of the creature to which the proceedings relate;
  - (b) authorise a constable, in pursuance of such an order, to take possession of the creature.
- (7) An order under subsection (6) above may, subject to any enactment relating to the protection or conservation of living things, be for the destruction of the creature to which it relates.
- (8) No creature disposed of under an order under subsection (6) above shall be given or sold for the purposes of vivisection.

##### Textual Amendments

**F74** Words substituted by virtue of [Criminal Procedure \(Scotland\) Act 1975 \(c. 21, SIF 39:1\)](#), s. 289G

##### Marginal Citations

**M18** 1976 c. 38.

#### 50 Drunkenness. **S**

- (1) Any person who, while not in the care or protection of a suitable person, is, in a public place, drunk and incapable of taking care of himself shall be guilty of an offence and liable, on summary conviction, to a fine not exceeding [<sup>F75</sup>level 2 on the standard scale].

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- (2) Any person who is drunk in a public place while in charge of a child under the age of 10 shall be guilty of an offence and liable, on summary conviction, to a fine not exceeding [<sup>F75</sup>level 2 on the standard scale].
- (3) For the purposes of subsection (2) above, if a child appears to the court to be under the age of 10, the child shall be deemed to be under that age unless the contrary is proved.
- (4) A constable may arrest a person for contravening subsection (2) above if he has reasonable cause to believe that the child in the charge of that person is under the age of 10.
- (5) Any person who is drunk in a public place while in possession of a firearm (including a crossbow, airgun, air rifle or air pistol) shall be guilty of an offence and liable, on summary conviction, to a fine not exceeding [<sup>F75</sup>level 2 on the standard scale].
- (6) In this section, “public place” has the same meaning as in section 133 of this Act but includes—
  - (a) any place to which at the material time the public are permitted to have access, whether on payment or otherwise; and
  - (b) any public conveyance other than a taxi or hire car within the meaning of section 23 of this Act.

#### Textual Amendments

**F75** Words substituted by virtue of [Criminal Procedure \(Scotland\) Act 1975 \(c. 21, SIF 39:1\)](#), s. 289G

## 51 Obscene material. **S**

- (1) Subject to subsection (4) below, any person who displays any obscene material in any public place or in any other place where it can be seen by the public shall be guilty of an offence under this section.
  - (2) Subject to subsection (4) below, any person who publishes, sells or distributes or, with a view to its eventual sale or distribution, makes, prints, has or keeps any obscene material shall be guilty of an offence under this section.
- [<sup>F76</sup>(2A) Subject to subsection (4) below, any person who—
- (a) is responsible for the inclusion of any obscene material in a programme included in a programme service; or
  - (b) with a view to its eventual inclusion in a programme so included, makes, prints, has or keeps any obscene material,
- shall be guilty of an offence under this section.]
- (3) A person guilty of an offence under this section shall be liable, on summary conviction, to a fine not exceeding the prescribed sum or to imprisonment for a period not exceeding [<sup>F77</sup>6 months]or to both or, on conviction on indictment, to a fine or to imprisonment for a period not exceeding [<sup>F77</sup>3 years]or to both.
  - (4) A person shall not be convicted of an offence under this section if he proves that he had used all due diligence to avoid committing the offence.
  - (5) Under an indictment for or on a complaint of a breach of subsection (1) above, the court may, if satisfied that the person accused is guilty of an offence under section 1(1)

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of the <sup>M19</sup>Indecent Displays (Control) Act 1981 (offence of public display of indecent matter), convict him of a breach of the said section 1(1).

(6) Nothing in this section applies in relation to any matter—

- (a) . . . . . <sup>F78</sup>
- (b) included in a performance of a play (within the meaning of the <sup>M20</sup>Theatres Act 1968).

(7) For section 5(4)(b) of the Indecent Displays (Control) Act 1981 (saving) there shall be substituted the following—

“(b) section 51 of the Civic Government (Scotland) Act 1982.”

(8) In this section—

“material” includes any book, magazine, bill, paper, print, film, tape, disc or other kind of recording (whether of sound or visual images or both), photograph, drawing, painting, representation, model or figure . . . <sup>F79</sup>;

“photograph” includes the negative as well as the positive version;

“public place” has the same meaning as in section 133 of this Act except that it includes any place to which at the material time the public are permitted to have access, whether on payment or otherwise;

“prescribed sum” has the same meaning as in [<sup>F80</sup>section 225(8) of the Criminal Procedure (Scotland) Act 1995];

[<sup>F81</sup>“programme” and “programme service” have the same meaning as in the Broadcasting Act 1990;]

and the reference to publishing includes a reference to . . . <sup>F82</sup> playing, projecting or otherwise reproducing [<sup>F83</sup>, or, where the material is data stored electronically, transmitting that data].

#### Textual Amendments

- F76** S. 51(2A) inserted by [Broadcasting Act 1990 \(c. 42, SIF 96\)](#), **ss. 4(6)**, 87(6), 163(2)
- F77** Words in s. 51(3) substituted (3.2.1995) by 1994 c. 33, **s. 8**; S.I. 1995/127, **art. 2(1)**
- F78** S. 51(6)(a) repealed by [Broadcasting Act 1990 \(c. 42, SIF 96\)](#), **ss. 163(3), 203(3)**, Sch. 21 (with **ss. 4(6), 87(6)**, **Sch. 12 Pt. II para. 1**)
- F79** Words added by [Cable and Broadcasting Act 1984 \(c. 46, SIF 96\)](#), **s. 26(b)** and repealed by [Broadcasting Act 1990 \(c. 42, SIF 96\)](#), **ss. 163(4)(a), 203(3)**, Sch. 21 (with **ss. 4(6), 87(6)**, **Sch. 12 Pt. II para. 1**)
- F80** S. 51(8): words in definition of “prescribed sum” substituted (1.4.1996) by 1995 c. 40, **ss. 5, 7(2)**, **Sch. 4 para. 44(2)**
- F81** Definitions inserted by [Broadcasting Act 1990 \(c. 42, SIF 96\)](#), **ss. 4(6)**, 87(6), 163(4)(b)
- F82** Word inserted by [Cable and Broadcasting Act 1984 \(c. 46, SIF 96\)](#), **s. 26(c)** and repealed by [Broadcasting Act 1990 \(c. 42, SIF 96\)](#), **ss. 163(4)(c), 203(3)**, Sch. 21 (with **ss. 4(6), 87(6)**, **Sch. 12 Pt. II para. 1**)
- F83** Words in s. 51(8) inserted (3.2.1995) by 1994 c. 33, **s. 168(1)**, **Sch. 9 para. 20**; S.I. 1995/127, **art. 2**

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

- C13** The text of **ss. 16, 18(11), 51(7) and 52(6)** is in the form in which it was originally enacted: it was not reproduced in Statutes in Force and does not reflect any amendments or repeals which may have been made prior to 1.2.1991.

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### Marginal Citations

M19 1981 c. 42.

M20 1968 c. 54.

## 52 Indecent photographs etc. of children. **S**

(1) Any person who—

- (a) takes, or permits to be taken [<sup>F84</sup>or makes], any indecent photograph [<sup>F85</sup>or pseudo-photograph of a child]
- (b) distributes or shows such an indecent photograph [<sup>F86</sup>or pseudo-photograph];
- (c) has in his possession such an indecent photograph [<sup>F86</sup>or pseudo-photograph] with a view to its being distributed or shown by himself or others:  
or
- (d) publishes or causes to be published any advertisement likely to be understood as conveying that the advertiser distributes or shows such an indecent photograph [<sup>F86</sup>or pseudo-photograph], or intends to do so

shall be guilty of an offence under this section.

(2) [<sup>F87</sup>In subsection (1) above “child” means, subject to subsection (2B) below, a person under the age of [<sup>F88</sup>18]; and] in proceedings under this section a person is to be taken as having been a child at any material time if it appears from the evidence as a whole that he was then under the age of [<sup>F88</sup>18].

[<sup>F89</sup>(2A) In this section, “pseudo-photograph” means an image, whether produced by computer-graphics or otherwise howsoever, which appears to be a photograph.

(2B) If the impression conveyed by a pseudo-photograph is that the person shown is a child, the pseudo-photograph shall be treated for all purposes of this Act as showing a child and so shall a pseudo-photograph where the predominant impression conveyed is that the person shown is a child notwithstanding that some of the physical characteristics shown are those of an adult.

(2C) In this section, references to an indecent pseudo-photograph include—

- (a) a copy of an indecent pseudo-photograph;
- (b) data stored on a computer disc or by other electronic means which is capable of conversion into a pseudo-photograph.]

(3) A person guilty of an offence under this section shall be liable—

- (a) on summary conviction, to imprisonment for a period not exceeding [<sup>F90</sup>6 months] or to a fine not exceeding the prescribed sum within the meaning of [<sup>F91</sup>section 225(8) of the Criminal Procedure (Scotland) Act 1995] (at the passing of this Act £1,000) or to both;
- (b) on conviction on indictment, to imprisonment for a period not exceeding [<sup>F92</sup>[<sup>F93</sup>10 years]] or to a fine or to both.

(4) For the purposes of this section, a person is to be regarded as distributing an indecent photograph [<sup>F94</sup> or pseudo-photograph] if he parts with possession of it to, or exposes or offers it for acquisition by, another person.

(5) Where a person is charged with an offence under subsection (1)(b) or (c) above, it shall be a defence for him to prove—

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- (a) that he had a legitimate reason for distributing or showing the photograph [<sup>F94</sup> or pseudo-photograph] or (as the case may be) having it in his possession; or
  - (b) that he had not himself seen the photograph [<sup>F94</sup> or pseudo-photograph] and did not know, nor had any cause to suspect, it to be indecent.
- (6) In paragraph 2 of the Schedule to the <sup>M21</sup> Visiting Forces Act 1952 (offences against the person in the case of which a member of a visiting force is in certain circumstances not liable to be tried by a United Kingdom court) the word “ and” immediately preceding sub-paragraph (b)(iii) shall be omitted and after the said sub-paragraph (b)(iii) there shall be added—
- “(iv) section 52(1)(a) of the Civic Government (Scotland) Act 1982.”
- (7) References in the <sup>M22</sup> Criminal Procedure (Scotland) Act 1975 (except in sections 171 and 368 thereof) [<sup>F95</sup> and in Part III of the Social Work (Scotland) Act 1968 (children in need of compulsory measures of care)] to the offences mentioned in Schedule 1 to that Act shall include an offence under subsection (1)(a) above.
- (8) In this section—
- (a) references to an indecent photograph include an indecent film, a copy of an indecent photograph or film and an indecent photograph comprised in a film;
  - (b) a photograph (including one comprised in a film) shall, if it shows a child and is indecent, be treated for all purposes of this section as an indecent photograph of a child;
  - <sup>F96</sup>(c) references to a photograph include—
    - (i) the negative as well as the positive version; and
    - (ii) data stored on a computer disc or by other electronic means which is capable of conversion into a photograph.]
  - (d) “film” includes any form of video-recording.

#### Textual Amendments

- F84** Words in s. 52(1)(a) inserted (3.2.1995) by 1994 c. 33, s. 84(6)(a)(i) (with Sch. 9 para. 17)
- F85** Words in s. 52(1)(a) substituted (3.2.1995) by 1994 c. 33, s. 84(6)(a)(ii) (with Sch. 9 para. 17)
- F86** Words in s. 52(1)(b)(c)(d) inserted (3.2.1995) by 1994 c. 33, s. 84(6)(b); S.I. 1995/127, art. 2(1), **Sch. 1**
- F87** Words in s. 52(2) inserted (3.2.1995) by 1994 c. 33, s. 84(6)(c); S.I. 1995/127, art. 2(1), **Sch. 1**
- F88** Word in s. 52(2) substituted (7.10.2005) by Protection of Children and Prevention of Sexual Offences (Scotland) Act 2005 (asp 9), ss. 16(2), 20(2); S.S.I. 2005/480, art. 2
- F89** S. 52(2A)-(2C) added (3.2.1995) by 1994 c. 33, s. 84(6)(d); S.I. 1995/127, art. 2(1), **Sch. 1**
- F90** Words in s. 52(3)(a) substituted (3.2.1995) by 1994 c. 33, s. 84(6)(e)(i); S.I. 1995/127, art. 2(1), **Sch. 1**
- F91** Words in s. 52(3) substituted (1.4.1996) by 1995 c. 40, ss. 5, 7(2), **Sch. 4 para. 44(3)**
- F92** Words in s. 52(3)(b) substituted (3.2.1995) by 1994 c. 33, s. 84(6)(e)(ii); S.I. 1995/127, art. 2(1), **Sch. 1**
- F93** Words in s. 52(3)(b) substituted (27.6.2003) by Criminal Justice (Scotland) Act 2003 (asp 7), ss. 19(1)(a), 89(2); S.S.I. 2003/288, art. 2, sch.
- F94** Words in s. 52(4)(5)(a) substituted (3.2.1995) by 1994 c. 33, s. 84(6)(f); S.I. 1995/127, art. 2(1), **Sch. 1**
- F95** Words inserted by Criminal Justice Act 1988 (c. 33, SIF 39:2), s. 170(1) **Sch. 15 para. 89**
- F96** S. 52(8)(c) substituted (3.2.1995) by 1994 c. 33, s. 84(6)(g); S.I. 1995/127, art. 2(1), **Sch. 1**



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

- C14** S. 52(2)-(2C) applied (1.5.2004) by [Sexual Offences Act 2003 \(c. 42\)](#), s. 141, **Sch. 3 para. 97(b)**; [S.S.I. 2004/138](#), art. 2; [S.I. 2004/874](#), art. 2
- C15** The text of ss. 16, 18(11), 51(7) and 52(6) is in the form in which it was originally enacted: it was not reproduced in Statutes in Force and does not reflect any amendments or repeals which may have been made prior to 1.2.1991.
- C16** S. 52(8) applied (1.5.2004) by [Sexual Offences Act 2003 \(c. 42\)](#), s. 141, **Sch. 3 para. 97(b)**; [S.S.I. 2004/138](#), art. 2; [S.I. 2004/874](#), art. 2

#### Marginal Citations

- M21** 1952 c. 67.
- M22** 1975 c. 21.

### [<sup>F97</sup> 52A Possession of indecent photographs of children. **S**

- (1) It is an offence for a person to have any indecent photograph [<sup>F98</sup>or pseudo-photograph of a child] in his possession.
- (2) Where a person is charged with an offence under subsection (1), it shall be a defence for him to prove—
- that he had a legitimate reason for having the photograph [<sup>F99</sup>or pseudo-photograph] in his possession; or
  - that he had not himself seen the photograph [<sup>F99</sup>or pseudo-photograph] and did not know, nor had any cause to suspect, it to be indecent; or
  - that the photograph [<sup>F99</sup>or pseudo-photograph] was sent to him without any prior request made by him or on his behalf and that he did not keep it for an unreasonable time.
- (3) A person shall be liable
- [<sup>F100</sup>(a)] on summary conviction of an offence under this section to [<sup>F101</sup>imprisonment for a period not exceeding 6 months or to] a fine not exceeding level 5 on the standard scale [<sup>F102</sup>“or to both.”].
  - [<sup>F103</sup>(b)] on conviction on indictment of such an offence to imprisonment for a period not exceeding 5 years or to a fine or to both.]
- (4) Subsections (2) [<sup>F104</sup>to (2C)] and (8) of section 52 of this Act shall have effect for the purposes of this section as they have for the purposes of that section.]

#### Textual Amendments

- F97** S. 52A inserted by [Criminal Justice Act 1988 \(c. 33, SIF 39:1, 2\)](#) s. 161(1)(2)
- F98** Words in s. 52A(1) substituted (3.2.1995) by 1994 c. 33, s. 84(7); [S.I. 1995/127](#), art. 2(1), **Sch. 1**
- F99** words in s. 52A(2)(a)-(c) inserted (3.2.1995) by 1994 c. 33, s. 84(7)(b); [S.I. 1995/127](#), art. 2(1), **Sch. 1**
- F100** Words in s. 52A(3) renumbered as s. 52A(3)(a) (27.6.2003) by [Criminal Justice \(Scotland\) Act 2003 \(asp 7\)](#), ss. 19(1)(b), 89(2); [S.S.I. 2003/288](#), art. 2, sch.
- F101** Words in s. 52A(3) inserted (3.2.1995) by 1994 c. 33, s. 84(7)(c)(i); [S.I. 1995/127](#), art. 2(1), **Sch. 1**
- F102** Words in s. 52A(3) added (3.2.1995) by 1994 c. 33, s. 84(7)(c)(ii); [S.I. 1995/127](#), art. 2(1), **Sch. 1**
- F103** S. 52A(3)(b) inserted (27.6.2003) by [Criminal Justice \(Scotland\) Act 2003 \(asp 7\)](#), ss. 19(1)(b), 89(2); [S.S.I. 2003/288](#), art. 2, sch.
- F104** Words in s. 52A(4) inserted (3.2.1995) by 1994 c. 33, s. 84(7)(d); [S.I. 1995/127](#), art. 2(1), **Sch. 1**



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**[<sup>F105</sup>52B Sections 52 and 52A: exceptions for photographs of 16 and 17 year olds S**

- (1) If subsection (2) below applies, the accused is not guilty of an offence under section 52(1)(a) of this Act of taking or making an indecent photograph of a child.
- (2) This subsection applies if—
  - (a) either—
    - (i) the photograph was of the child aged 16 or over; or
    - (ii) the accused reasonably believed that to be so;
  - (b) at the time of the offence charged or at the time when the accused obtained the photograph, the accused and the child were—
    - (i) married to or civil partners of each other; or
    - (ii) partners in an established relationship; and
  - (c) either—
    - (i) the child consented to the photograph being taken or made; or
    - (ii) the accused reasonably believed that to be so.
- (3) If subsection (4) below applies, the accused is not guilty of an offence under section 52(1)(b) of this Act relating to an indecent photograph of a child.
- (4) This subsection applies if—
  - (a) either—
    - (i) the photograph was of the child aged 16 or over; or
    - (ii) the accused reasonably believed that to be so;
  - (b) at the time of the offence charged or at the time when the accused obtained the photograph, the accused and the child were—
    - (i) married to or civil partners of each other; or
    - (ii) partners in an established relationship;
  - (c) either—
    - (i) the child consented to the photograph's being taken or made; or
    - (ii) the accused reasonably believed that to be so; and
  - (d) the showing or distributing of the photograph was only to the child.
- (5) If subsection (6) below applies, the accused is not guilty of an offence under section 52(1)(c) of this Act relating to an indecent photograph of a child.
- (6) This subsection applies if—
  - (a) either—
    - (i) the photograph was of the child aged 16 or over; or
    - (ii) the accused reasonably believed that to be so;
  - (b) at the time of the offence charged or at the time when the accused obtained the photograph, the accused and the child were—
    - (i) married to or civil partners of each other; or
    - (ii) partners in an established relationship;
  - (c) either—
    - (i) the child consented to the photograph's being in the accused's possession; or
    - (ii) the accused reasonably believed that to be so; and
  - (d) the accused had the photograph in his possession with a view to its being distributed or shown only to the child.

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- (7) If subsection (8) below applies, the accused is not guilty of an offence under section 52A of this Act relating to an indecent photograph of a child.
- (8) This subsection applies if—
- (a) either—
    - (i) the photograph was of the child aged 16 or over; or
    - (ii) the accused reasonably believed that to be so;
  - (b) at the time of the offence charged or at the time when the accused obtained the photograph, the accused and the child were—
    - (i) married to or civil partners of each other; or
    - (ii) partners in an established relationship; and
  - (c) either—
    - (i) the child consented to the photograph's being in the accused's possession; or
    - (ii) the accused reasonably believed that to be so.
- (9) Subsections (2), (4), (6) and (8) above apply whether the photograph showed the child alone or with the accused, but not if it showed any other person.

#### Textual Amendments

**F105** Ss. 52B, 52C inserted (7.10.2005) by [Protection of Children and Prevention of Sexual Offences \(Scotland\) Act 2005 \(asp 9\), ss. 16\(3\), 20\(2\); S.S.I. 2005/480, art. 2](#)

### 52C Section 52B: proof of exceptions **S**

- (1) This section applies for the purpose of determining whether a matter within a paragraph of section 52B(2), (4), (6) or (8) of this Act is the case.
- (2) If sufficient evidence is adduced to raise an issue as to whether the matter is the case, it shall be held to be the case, except where subsection (3) below applies.
- (3) This subsection applies where the prosecution proves beyond reasonable doubt that the matter is not the case.
- (4) Otherwise, the matter shall be held not to be the case.]

#### Textual Amendments

**F105** Ss. 52B, 52C inserted (7.10.2005) by [Protection of Children and Prevention of Sexual Offences \(Scotland\) Act 2005 \(asp 9\), ss. 16\(3\), 20\(2\); S.S.I. 2005/480, art. 2](#)

### 53 Obstruction by pedestrians. **S**

Any person who, being on foot in any public place—

- (a) obstructs, along with another or others, the lawful passage of any other person and fails to desist on being required to do so by a constable in uniform, or
- (b) wilfully obstructs the lawful passage of any other person

shall be guilty of an offence and liable, on summary conviction, to a fine not exceeding [<sup>F106</sup>level 2 on the standard scale].

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### Textual Amendments

**F106** Words substituted by virtue of [Criminal Procedure \(Scotland\) Act 1975 \(c. 21, SIF 39:1\)](#), s. 289G

## 54 Playing instruments, singing, playing radios, etc. **S**

(1) Any person who—

- (a) sounds or plays any musical instrument;
- (b) sings or performs; or
- (c) operates any radio or television receiver, record player, tape-recorder or other sound producing device

so as to give any other person reasonable cause for annoyance and fails to desist on being required to do so by a constable in uniform, shall be guilty of an offence and liable, on summary conviction, to a fine not exceeding £50.

(2) This section is without prejudice to any offence under section 62 of the <sup>M23</sup>Control of Pollution Act 1974 (operation of loudspeakers in streets).

[<sup>F107</sup>(2A) Where a constable reasonably suspects that an offence under subsection (1) above has been committed in relation to a musical instrument or in relation to such a device as is mentioned in paragraph (c) of that subsection, he may enter any premises on which he reasonably suspects that instrument or device to be and seize any such instrument or device he finds there.

(2B) A constable may use reasonable force in the exercise of the power conferred by subsection (2A) above.

(2C) Schedule 2A to this Act (which makes provision in relation to the retention and disposal of property seized under subsection (2A) above) shall have effect.]

(3) Subsection (1) above shall not apply to the operation of a loudspeaker—

- (a) for police, [<sup>F108</sup>fire-fighting] or ambulance purposes, by [<sup>F109</sup>Scottish Water] in the exercise of any of its functions, or by a local authority within its area;
- (b) for communicating with persons on a vessel for the purpose of directing the movement of that or any other vessel;
- (c) if the loudspeaker forms part of a public telephone system;
- (d) if the loudspeaker—
  - (i) is in or fixed to a vehicle, and
  - (ii) is operated solely for the entertainment of or for communicating with the driver or a passenger of the vehicle or, where the loudspeaker is or forms part of the horn or similar warning instrument of the vehicle, solely for giving warning to other traffic, and
  - (iii) is so operated as not to give reasonable cause for annoyance to persons in the vicinity;
- (e) otherwise than on a [<sup>F110</sup>road], by persons employed in connection with a transport undertaking used by the public in a case where the loudspeaker is operated solely for making announcements to passengers or prospective passengers or to other persons so employed;
- (f) by a travelling showman on land which is being used for the purposes of a pleasure fair;
- (g) in case of emergency.

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F111 .....

- [<sup>F112</sup>(4) In subsection (3)(a), the reference to fire-fighting purposes is a reference to—
- (a) the purposes of a relevant authority (as defined in section 6 of the Fire (Scotland) Act 2005 (asp 5)); or
  - (b) fire-fighting functions of any other employer of fire-fighters.]

#### Textual Amendments

- F107** S. 54(2A)-(2C) inserted (1.12.1998) by 1998 c. 37, s. 24(2); S.I. 1998/2327, art. 2(1)
- F108** Words in s. 54(3)(a) substituted (2.8.2005) by Fire (Scotland) Act 2005 (asp 5), s. 90, sch. 3 para. 11(a) (with s. 77); S.S.I. 2005/392, art. 2(k)
- F109** Words in s. 54(3)(a) substituted (1.4.2002) by Water Industry (Scotland) Act 2002 (asp 3), s. 71(2), Sch. 7 para. 13(a), (with s. 67); S.S.I. 2002/118, art. 2
- F110** Word substituted by Roads (Scotland) Act 1984 (c. 54, SIF 108), s. 156(1), Sch. 9 para. 87(4)
- F111** Words in s. 54(3) repealed (1.4.2002) by Water Industry (Scotland) Act 2002 (asp 3), s. 71(2), Sch. 7 para. 13(b), (with s. 67); S.S.I. 2002/118, art. 2
- F112** S. 54(4) inserted (2.8.2005) by Fire (Scotland) Act 2005 (asp 5), s. 90, sch. 3 para. 11(b) (with s. 77); S.S.I. 2005/392, art. 2(k)

#### Marginal Citations

- M23** 1974 c. 40.

## 55 Touting. **S**

- (1) Any person who—
- (a) in a public place—
    - (i) touts for the purpose of selling or advertising anything or otherwise obtaining custom so as to give any other person reasonable cause for annoyance; or
    - (ii) importunes any other person for that purpose so as to give that, or any other, person reasonable cause for annoyance; and
  - (b) fails to desist when required to do so by a constable in uniform,
- shall be guilty of an offence and liable, on summary conviction, to a fine not exceeding [<sup>F113</sup>level 2 on the standard scale].

#### Textual Amendments

- F113** Words substituted by virtue of Criminal Procedure (Scotland) Act 1975 (c. 21, SIF 39:1), s. 289G

## 56 Fires. **S**

Any person who lays or lights a fire in a public place so as to endanger any other person or give him reasonable cause for alarm or annoyance or so as to endanger any property shall be guilty of an offence and liable, on summary conviction, to a fine not exceeding [<sup>F114</sup>level 3 on the standard scale].

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#### Textual Amendments

F114 Words substituted by virtue of [Criminal Procedure \(Scotland\) Act 1975 \(c. 21, SIF 39:1\)](#), s. 289G

### *Preventive offences*

#### 57 **Being in or on building etc. with intent to commit theft.** **S**

(1) Any person who, without lawful authority to be there, is found in or on a building or other premises, whether enclosed or not, or in its curtilage or in a vehicle or vessel so that, in all the circumstances, it may reasonably be inferred that he intended to commit theft there shall be guilty of an offence and liable, on summary conviction, to a fine not exceeding [F115]level 4 on the standard scale] or to imprisonment for a period not exceeding 3 months or to both.

(2) In this section “theft” includes any aggravation of theft including robbery.

#### Textual Amendments

F115 Words substituted by virtue of [Criminal Procedure \(Scotland\) Act 1975 \(c. 21, SIF 39:1\)](#), s. 289G

#### 58 **Convicted thief in possession.** **S**

(1) Any person who, being a person to whom this section applies—  
(a) has or has recently had in his possession any tool or other object from the possession of which it may reasonably be inferred that he intended to commit theft or has committed theft; and  
(b) is unable to demonstrate satisfactorily that his possession of such tool or other object is or was not for the purposes of committing theft

shall be guilty of an offence and liable, on summary conviction, to a fine not exceeding [F116]level 4 on the standard scale] or to imprisonment for a period not exceeding 3 months or to both.

(2) For the purposes of subsection (1) above, a person shall have recently had possession of a tool or other object if he had possession of it within 14 days before the date of—

- (a) his arrest without warrant for the offence of having so possessed it in contravention of subsection (1) above; or
- (b) the issue of a warrant for his arrest for that offence; or
- (c) if earlier, the service upon him of the first complaint alleging that he has committed that offence.

(3) Where a court convicts a person of an offence under this section or discharges him absolutely or makes a probation order in relation to him in respect of such an offence it may order the forfeiture of any tool or other object in respect of the possession of which he was convicted or discharged absolutely, or, as the case may be, the probation order was made.

(4) This section applies to a person who has two or more convictions for theft which are not, for the purposes of the <sup>M24</sup>Rehabilitation of Offenders Act 1974, spent convictions.

(5) In this section “theft” includes any aggravation of theft including robbery.

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#### Textual Amendments

**F116** Words substituted by virtue of [Criminal Procedure \(Scotland\) Act 1975 \(c. 21, SIF 39:1\)](#), **s. 289G**

#### Marginal Citations

**M24** [1974 c. 53](#).

### *Powers of constables etc.*

#### **59 Powers of arrest and apprehension. S**

- (1) Subject to subsection (2) below, a constable may, where it is necessary in the interests of justice to do so, arrest without warrant a person whom he finds committing an offence to which this section applies or a person who is delivered into his custody in pursuance of subsection (3) below.
- (2) A constable who is not in uniform shall produce his identification if required to do so by any person whom he is arresting under subsection (1) above.
- (3) The owner, tenant or occupier of any property in, upon, or in respect of, which an offence to which this section applies is being committed or any person authorised by him may apprehend any person whom the owner or, as the case may be, the tenant, occupier or authorised person finds committing that offence and detain the apprehended person until he can be delivered into the custody of a constable.

In this subsection “property” means heritable or moveable property.

- (4) This section applies to offences under sections 50, 57 and 58 of this Act.
- (5) This section shall not prejudice any power of arrest conferred by law apart from this section.

#### **60 Powers of search and seizure. S**

- (1) Subject to subsection (2) and (3) below, if a constable has reasonable grounds to suspect that a person is in possession of any stolen property, the constable may without warrant—
  - (a) search that person or anything in his possession, and detain him for as long as is necessary for the purpose of that search;
  - (b) enter and search any vehicle or vessel in which the constable suspects that that thing may be found, and for that purpose require the person in control of the vehicle or vessel to stop it and keep it stopped;
  - (c) enter and search any premises occupied by a second-hand dealer or a metal dealer for the purposes of his business;
  - (d) seize and detain anything found in the course of any such search which appears to the constable to have been stolen or to be evidence of the commission of the crime of theft

and may, in doing so, use reasonable force.

In this subsection “second-hand dealer” and “metal dealer” have the meanings respectively assigned to them by sections 24(2) and 37(1) of this Act.

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- (2) The power under subsection (1)(b) above to require the person in charge of a vehicle or vessel to stop it shall be exercisable only by a constable in uniform.
- (3) A constable who is not in uniform shall not be entitled to exercise the powers which he may exercise under subsection (1)(a) to (c) above until he has produced his identification—
- (a) in relation to the exercise of powers under subsection (1)(a) above, to the person in respect of whom the powers are exercised;
  - (b) in relation to the exercise of powers under subsections (1)(b) or (c) above, to the person for the time being in charge of the vehicle, vessel or premises and to any other person in or on the vehicle, vessel or premises who, having reasonable cause to do so, requests to see it.
- (4) In subsection (1) above “theft” includes any aggravation of theft including robbery.
- (5) Nothing in [F117]section 54(2A) of this Act or] this section prejudices any power of entry or search or any power to seize or detain property or any power to require any vehicle or vessel to be stopped [F118]which is otherwise exercisable by a constable].
- (6) Any person who, without reasonable excuse—
- (a) fails to allow a constable [F119]to enter and search—
    - (i) any premises in pursuance of section 54(2A) of this Act or of subsection (1) above; or
    - (ii) any vehicle or vessel in pursuance of the said subsection (1)], or seize and detain anything found in the course of such search;
  - (b) when required by a constable in pursuance of subsection (1) above to stop a vehicle or vessel and keep it stopped, fails to do so; or
  - (c) obstructs a constable in the exercise of his powers under [F120]section 54(2A) of this Act or]subsection (1) above;
- shall be guilty of an offence and liable, on summary conviction, to a fine not exceeding [F121]level 3 on the standard scale].

#### Textual Amendments

**F117** Words in s. 60(5) inserted (1.12.1998) by 1998 c. 37, s. 24(3)(a)(i); S.I. 1998/2327, art. 2(1)

**F118** Words in s. 60(5) substituted (1.12.1998) by 1998 c. 37, s. 24(3)(a)(ii); S.I. 1998/2327, art. 2(1)

**F119** Words and s. 60(6)(a)(i)(ii) substituted for words in s. 60(6)(a) substituted (1.12.1998) by 1998 c. 37, s. 24(3)(b)(i); S.I. 1998/2327, art. 2(1)

**F120** Words in s. 60(6)(c) inserted (1.12.1998) by 1998 c. 37, s. 24(3)(b)(ii); S.I. 1998/2327, art. 2(1)

**F121** Words substituted by virtue of Criminal Procedure (Scotland) Act 1975 (c. 21, SIF 39:1), s. 289G

## 61 Protection of insecure premises. **S**

- (1) Where—
- (a) any premises have been left open, unlocked or otherwise insecure; and
  - (b) in the opinion of a constable, the insecurity of the premises is likely to conduce to the commission of an offence,
- the constable may take such reasonable steps as he may consider necessary to make the premises secure.



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- (2) Any reasonable expense incurred by a constable in making any premises secure under subsection (1) above may be recovered by the police authority from the occupier (or, where there is no occupier, from the tenant or, where there is no occupier or tenant, from the owner) of the premises.

## PART V S

### PUBLIC PROCESSIONS

#### 62 Notification of processions. S

- (1) A person proposing to hold a procession in public shall give written notice of that proposal in accordance with subsections (2) and (3) below
- [<sup>F122</sup>(a)] to the [<sup>F123</sup>local authority] in whose area the procession is to be held, or if it is to be held in the areas of more than one such [<sup>F123</sup> authority], to each such [<sup>F123</sup> authority][<sup>F124</sup>;
- [<sup>F125</sup>(aa)] if the procession is to be held to any extent in a National Park, to the National Park authority for the National Park;]
- and
- [<sup>F124</sup>(b)] to the chief constable.]
- (2) Notice shall be given for the purposes of subsection (1) above by—
- (a) its being posted to the main office of the [<sup>F123</sup>local authority][<sup>F126</sup>and (where subsection (1)(aa) above applies) of the National Park authority][<sup>F127</sup> and to the office of the chief constable] so that in the normal course of post it might be expected to arrive not later than [<sup>F128</sup>28] days before the date when the procession is to be held; or
- (b) its being delivered by hand to [<sup>F129</sup>those offices] not later than [<sup>F130</sup>28] days before that date.
- (3) The notice to be given under subsection (1) above shall specify—
- (a) the date and time when the procession is to be held;
- (b) its route;
- (c) the number of persons likely to take part in it;
- (d) the arrangements for its control being made by the person proposing to hold it; and
- (e) the name and address of that person.
- (4) A [<sup>F123</sup>local authority] may, on application in accordance with subsection (5) below by a person proposing to hold a procession in public in their area
- [<sup>F131</sup>(a)] made to them [<sup>F132</sup>;
- [<sup>F133</sup>(aa)] if the procession is to be held to any extent in a National Park, intimated to the National Park authority for the National Park;]
- and
- [<sup>F132</sup>(b)] intimated to the chief constable,] within the period of [<sup>F134</sup>28] days before the date when the procession is to be held, make an order dispensing with the requirements of subsection (2) above in relation to the time limits for the giving of notice of that proposal.

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- (5) An application under subsection (4) above shall
- [<sup>F135</sup>(a) set out the reason why notice of the proposal was not given in accordance with subsections (1) and (2) above
  - (b) specify the matters mentioned in subsection (3) above,]
- <sup>F136</sup>(6) .....
- <sup>F137</sup>(7) .....
- <sup>F138</sup>(8) .....
- (9) The [<sup>F123</sup>local authority] shall, before making an order under subsection (4) above <sup>F139</sup>..., consult the chief constable.
- (10) ..... <sup>F140</sup>
- <sup>F141</sup>(11) .....
- [<sup>F142</sup>(11A) A local authority shall, as soon as possible after making an order under subsection (4) above, publicise that fact in such manner as they think fit and send a copy of the order to the applicant.
- (11B) This section does not apply to a procession—
- (a) which is a funeral procession organised by a funeral director acting in the ordinary course of his business; or
  - (b) which is specified in, or is within a description specified in, an order made by the Scottish Ministers.
- (11C) In subsection (11B) above, a “funeral director” is a person whose business consists of or includes the arrangement and conduct of funerals.
- (11D) An order made for the purposes of subsection (11B)(b) above shall be made by statutory instrument subject to annulment in pursuance of a resolution of the Scottish Parliament.]
- (12) In this section and in sections 63 to 65 of this Act—
- “procession in public” means a procession in a public place;
  - “chief constable” means, in relation to a [<sup>F123</sup>local authority], the chief constable of the police force for the area which comprises or includes the area of the [<sup>F123</sup>authority]; and
  - “public place” has the same meaning as in [<sup>F143</sup>Part II of the Public Order Act 1986].

#### Textual Amendments

- F122** “(a)” inserted by [Public Order Act 1986 \(c. 64, SIF 39:2\)](#), s. 40(2)(4)(5), [Sch. 2 para. 3\(2\)\(a\)\(i\)](#)
- F123** Words in s 62(1)(2)(4)(6)(7)(9)(11)(12) substituted (1.4.1996) by [1994 c. 39](#), s. 180(1), [Sch. 13 para. 129\(4\)\(a\)-\(d\)](#); [S.I. 1996/323](#), [art. 4\(1\)\(c\)](#)
- F124** S. 62(1)(b) and “; and” immediately preceding it inserted by [Public Order Act 1986 \(c. 64, SIF 39:2\)](#), s. 40(2)(4)(5), [Sch. 2 para. 3\(2\)\(a\)\(ii\)](#)
- F125** S. 62(1)(aa) inserted (8.9.2000) by [2000 asp 10](#), s. 36, [Sch. 5 para. 9\(1\)\(a\)](#) (with s. 32); [S.S.I. 2000/312](#), [art. 2](#)
- F126** Words in s. 62(2)(a) inserted (8.9.2000) by [2000 asp 10](#), s. 36, [Sch. 5 para. 9\(1\)\(b\)](#) (with s. 32); [S.S.I. 2000/312](#), [art. 2](#)

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- F127** Words inserted by Public Order Act 1986 (c. 64, SIF 39:2), s. 40(2)(4)(5), **Sch. 2 para. 3(2)(b)(i)**
- F128** Word in s. 62(2)(a) substituted (1.4.2007) by Police, Public Order and Criminal Justice (Scotland) Act 2006 (asp 10), **ss. 70(2)(a)**, 104(1); S.S.I. 2007/84, art. 3(3) (with arts. 56)
- F129** Words substituted by Public Order Act 1986 (c. 64, SIF 39:2), s. 40(2)(4)(5), **Sch. 2 para. 3(2)(b)(ii)**
- F130** Word in s. 62(2)(b) substituted (1.4.2007) by Police, Public Order and Criminal Justice (Scotland) Act 2006 (asp 10), **ss. 70(2)(b)**, 104(1); S.S.I. 2007/84, art. 3(3) (with arts. 56)
- F131** “(a)” inserted by Public Order Act 1986 (c. 64, SIF 39:2), s. 40(2)(4)(5), **Sch. 2 para 3(2)(c)(i)**
- F132** S. 62(4)(b) and “; and” immediately preceding it inserted by Public Order Act 1986 (c. 64, SIF 39:2), s. 40(2)(4)(5), **Sch. 2 para. 3(2)(c)(ii)**
- F133** S. 62(4)(aa) inserted (8.9.2000) by 2000 asp 10, s. 36, **Sch. 5 para. 9(1)(c)** (with s. 32); S.S.I. 2000/312, **art. 2**
- F134** Word in s. 62(4) substituted (1.4.2007) by Police, Public Order and Criminal Justice (Scotland) Act 2006 (asp 10), **ss. 70(3)**, 104(1); S.S.I. 2007/84, art. 3(3) (with arts. 56)
- F135** Words in s. 62(5) substituted (1.4.2007) by Police, Public Order and Criminal Justice (Scotland) Act 2006 (asp 10), **ss. 70(4)**, 104(1); S.S.I. 2007/84, art. 3(3) (with arts. 56)
- F136** S. 62(6) repealed (1.4.2007) by Police, Public Order and Criminal Justice (Scotland) Act 2006 (asp 10), **ss. 70(5)**, 104(1); S.S.I. 2007/84, art. 3(3) (with arts. 56)
- F137** S. 62(7) repealed (1.4.2007) by Police, Public Order and Criminal Justice (Scotland) Act 2006 (asp 10), **ss. 70(5)**, 104(1); S.S.I. 2007/84, art. 3(3) (with arts. 56)
- F138** S. 62(8) repealed (1.4.2007) by Police, Public Order and Criminal Justice (Scotland) Act 2006 (asp 10), **ss. 70(5)**, 104(1); S.S.I. 2007/84, art. 3(3) (with arts. 56)
- F139** Words in s. 62(9) repealed (1.4.2007) by Police, Public Order and Criminal Justice (Scotland) Act 2006 (asp 10), **ss. 70(6)**, 104(1); S.S.I. 2007/84, art. 3(3) (with arts. 56)
- F140** S. 62(10) repealed by Public Order Act 1986 (c. 64, SIF 39:2), s. 40(3)(4)(5), **Sch. 3**
- F141** S. 62(11) repealed (1.4.2007) by Police, Public Order and Criminal Justice (Scotland) Act 2006 (asp 10), **ss. 70(7)**, 104(1); S.S.I. 2007/84, art. 3(3) (with arts. 56)
- F142** S. 62(11A)-(11D) inserted (1.4.2007) by Police, Public Order and Criminal Justice (Scotland) Act 2006 (asp 10), **ss. 70(8)**, 104(1); S.S.I. 2007/84, art. 3(3) (with arts. 56)
- F143** Words substituted by Public Order Act 1986 (c. 64, SIF 39:2), s. 40 (2)(4)(5), **Sch. 2 para. 3(2)(d)**

## 63 Functions of regional and islands councils in relation to processions. **S**

(1) The [<sup>F144</sup>local authority] may, after consulting the chief constable [<sup>F145</sup>and (where section 62(1)(aa) of this Act applies) the National Park authority] in respect of a procession notice of which has been given or falls to be treated as having been given in accordance with section 62(1) of this Act, make an order—

- (i) prohibiting the holding of the procession; or
- (ii) imposing conditions on the holding of it.

[<sup>F146</sup>(1A) Where notice of a proposal to hold a procession has been given or falls to be treated as having been given in accordance with section 62(1) of this Act—

- (a) if a [<sup>F144</sup>local authority] have made an order under subsection (1) above they may at any time thereafter, after consulting the chief constable [<sup>F147</sup>and (where subsection (1)(aa) of that section applies) the National Park authority], vary or revoke the order and, where they revoke it, make any order which they were empowered to make under that subsection;
- (b) if they have decided not to make an order they may at any time thereafter, after consulting the chief constable [<sup>F147</sup>and (where subsection (1)(aa) of that section applies) the National Park authority], make any order which they were empowered to make under that subsection.]

<sup>F148</sup>(2) . . . . .

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- (3) A <sup>F144</sup>local authority] shall—
- (a) where notice of a proposal to hold a procession has been given or falls to be treated as having been given in accordance with section 62(1) of this Act, deliver at least 2 days before the date when, in terms of the notice, the procession is to be held, to the person who gave the notice—
    - (i) where they have made an order under subsection (1) <sup>F149</sup>or (1A)]<sup>F150</sup> above, a copy of it and a written statement of the reasons for it; . . .
    - (ii) where they decide not to make <sup>F151</sup>an order under subsection (1) above or to revoke an order already made under subsection (1) or (1A) above], notification of that fact;
    - <sup>F152</sup>(iii) where they have, under subsection (1A) above, varied such an order, a copy of the order as varied and a written statement of the reasons for the variation; and]
  - (b) where they have made an order under subsection (1) <sup>F153</sup>or (1A)] above in relation to a proposal to hold a procession, make such arrangements as will ensure that persons who might take or are taking part in that procession are made aware of the fact that the order has been made <sup>F153</sup>and, if the order has been varied under subsection (1A) above, that it has been so varied] and of its effect <sup>F154</sup>; and
  - (c) where they have revoked an order made under subsection (1) or (1A) above in relation to a proposal to hold a procession, make such arrangements as will ensure that persons who might take or are taking part in that procession are made aware of the fact that the order has been revoked.]
- (4) The <sup>F144</sup>local authority] shall comply with subsection (3) above—
- (a) as early as possible;
  - (b) only insofar as it is reasonably practicable for them to do so.
- <sup>F155</sup>(5) The local authority may, after consulting the chief constable and (where section 62(1) (aa) of this Act applies) the National Parks Authority, make an order—
- (a) imposing conditions on the holding of a procession to which paragraph (a) of subsection (11B) of section 62 of this Act relates;
  - (b) prohibiting or imposing conditions on the holding of a procession to which paragraph (b) of that subsection relates.
- (6) Subsections (1A), (3) and (4) above apply in relation to an order made under subsection (5) above and to a decision not to make an order under that subsection as they apply to an order under subsection (1) above and to a decision not to make an order under that subsection respectively, but with the modifications set out in subsection (7) below.
- (7) Those modifications are—
- (a) the references to notice having been or falling to be treated as having been given shall be ignored;
  - (b) the reference to the person who gave the notice shall be treated as a reference to the person appearing to the local authority to be the person who is to hold the procession; and
  - (c) the words “not to make an order under subsection (1) above or” in subsection (3)(a)(ii) shall be ignored.

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- (8) The considerations to which the local authority shall have regard when deciding whether to prohibit the holding of a procession or impose conditions on it under this section shall include—
- (a) the likely effect of the holding of the procession in relation to—
    - (i) public safety;
    - (ii) public order;
    - (iii) damage to property;
    - (iv) disruption of the life of the community;
  - (b) the extent to which the containment of risks arising from the procession would (whether by itself or in combination with any other circumstances) place an excessive burden on the police;
  - (c) where the person proposing to hold the procession has previously held one in the area of the authority or the persons likely to take part in the procession, or some of them, are the same persons as took part in one previously held in that area, or some of them—
    - (i) whether the previous procession was held in breach of a prohibition under this section on its being held or of a condition so imposed on the holding of it;
    - (ii) whether any guidance or code of conduct issued by the authority as to the holding of the previous procession or as to the holding of processions generally was followed; and
    - (iii) the effect of the previous procession in relation to the matters mentioned in sub-paragraphs (i) to (iv) of paragraph (a) above and in paragraph (b) above.
- (9) The local authority shall compile, maintain and make available to the public, free of charge, a list containing information about—
- (a) processions which have, after the coming into force of this subsection, been held in their area;
  - (b) proposed processions which they have, after that time, prohibited under this section.
- (10) A local authority shall make sufficient arrangements to secure that any person, body or other grouping resident in or otherwise present in their area who makes a request for the purposes of this subsection is enabled to receive information about processions which are to or might be held in that area or in any part of it specified in the request.]

#### Textual Amendments

**F144** Words in s. 63(1)(1A)(a)(3)(4) substituted (1.4.1996) by 1994 c. 39, s. 180(1), **Sch. 13 para. 129(5)**; S.I. 1996/323, **art. 4(1)(c)**

**F145** Words in s. 63(1) inserted (8.9.2000) by 2000 asp 10, s. 36, **Sch. 5 para. 9(2)(a)** (with s. 32); S.S.I. 2000/312, **art. 2**

**F146** S. 63(1A) inserted by Public Order Act 1986 (c. 64, SIF 39:2), s. 40(2)(4)(5), **Sch. 2 para. 3(3)(a)**

**F147** Words in s. 63(1A) inserted (8.9.2000) by 2000 asp 10, s. 36, **Sch. 5 para. 9(2)(b)** (with s. 32); S.S.I. 2000/312, **art. 2**

**F148** S. 63(2) repealed (1.4.2007) by Police, Public Order and Criminal Justice (Scotland) Act 2006 (asp 10), **ss. 71(2)**, 104(1); S.S.I. 2007/84, **art. 3(3)** (with arts. 56)

**F149** “or (1A)” inserted by Public Order Act 1986 (c. 64, SIF 39:2), s. 40(2)(4)(5), **Sch. 2 para. 3(3)(c)(i)**

**F150** Word repealed by Public Order Act 1986 (c. 64, SIF 39:2), s. 40(3)(4)(5), **Sch. 3**

**F151** Words substituted by Public Order Act 1986 (c. 64, SIF 39:2), s. 40(2)(4)(5), **Sch. 2 para 3(3)(c)(ii)**

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- F152** S. 63(3)(iii) substituted for word by [Public Order Act 1986 \(c. 64, SIF 39:2\)](#), s. 40(2)(4)(5), [Sch. 2 para. 3\(3\)\(c\)\(iii\)](#)
- F153** Words inserted by [Public Order Act 1986 \(c. 64, SIF 39:2\)](#), s. 40(2)(4)(5), [Sch. 2 para. 3\(3\)\(c\)\(iv\)](#)
- F154** S. 63(3)(c) and “; and” immediately preceding it inserted by [Public Order Act 1986 \(c. 64, SIF 39:2\)](#), s. 40(2)(4)(5), [Sch. 2 para. 3\(3\)\(c\)\(v\)](#)
- F155** S. 63(5)-(10) inserted (1.4.2007) by [Police, Public Order and Criminal Justice \(Scotland\) Act 2006 \(asp 10\)](#), [ss. 71\(3\)](#), 104(1); S.S.I. 2007/84, art. 3(3) (with arts. 56)

## 64 Appeals against orders under section 63. **S**

- (1) An appeal to the sheriff shall lie at the instance of a person who, in accordance with section 62 of this Act, has or falls to be treated as having given notice of a proposal to hold a procession in public <sup>F156</sup>against
  - (a) an order made under section 63(1) or (1A) of this Act; or
  - (b) a variation under section 63(1A) of this Act of an order made under section 63(1) or (1A),in relation to the procession.]
- (2) An appeal under this section shall be made by way of summary application and shall be lodged with the sheriff clerk within 14 days from the date on which the copy of the order and statement of reasons were received by the appellant.
- (3) On good cause being shown, the sheriff may hear an appeal under this section notwithstanding that it was not lodged within the time mentioned in subsection (2) above.
- (4) The sheriff may uphold an appeal under this section only if he considers that the <sup>F157</sup>local authority] in arriving at their decision to make <sup>F158</sup>or, as the case may be, to vary] the order—
  - (a) erred in law;
  - (b) based their decision on any incorrect material fact;
  - (c) exercised their discretion in an unreasonable manner; or
  - (d) otherwise acted beyond their powers.
- (5) In considering an appeal under this section the sheriff may hear evidence by or on behalf of any party to the appeal.
- (6) Subject to subsection (7) below, on an appeal under this section, the sheriff may
  - (a) uphold the appeal and—
    - (i) remit the case, with the reasons for his decision, to the <sup>F157</sup>local authority] for reconsideration of their decision, or
    - (ii) if he considers that there is insufficient time for the case to be remitted under sub-paragraph (i) above <sup>F159</sup>quash] the order which is the subject of the appeal <sup>F160</sup>, vary it] or make <sup>F161</sup>in substitution for the order ] any such order as the <sup>F157</sup>authority] were empowered to make under section 63(1) of this Act; or
  - (b) dismiss the appeal,and on remitting a case under paragraph (a)(ii) above, the sheriff may—
  - (i) specify a date by which the reconsideration by the <sup>F157</sup>authority] must take place;



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- (ii) modify any procedural steps which otherwise would be required to be taken in relation to the matter by or under any enactment (including this Act).
- (7) The sheriff shall not exercise any of his powers under subsection (6) above 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 [<sup>F157</sup> authority] whose order [<sup>F162</sup>or, as the case may be, the variation of whose order] under section 63 of this Act is the subject of the appeal.
- (8) The sheriff may include in his decision on an appeal under this section such order as to the expenses of the appeal as he thinks proper.
- (9) Any party to an appeal to the sheriff under this section may appeal on a point of law from the decision of the sheriff to the Court of Session within 28 days from the date of that decision.

#### Textual Amendments

- F156** S. 64 (1)(a)(b) and word “against” immediately preceding it substituted for words by [Public Order Act 1986 \(c. 64, SIF 39:2\)](#), s. 40(2)(4)(5), [Sch. 2 para. 3\(4\)\(a\)](#)
- F157** Words in s. 64(4)(6)(a)(i)(7) substituted (1.4.1996) by [1994 c. 39, s. 180\(1\)](#), [Sch. 13 para. 129\(6\)](#) (with s. 128); [S.I. 1996/323, art. 4\(1\)\(c\)](#)
- F158** Words inserted by [Public Order Act 1986 \(c. 64, SIF 39:2\)](#), s. 40(2)(4)(5), [Sch. 2 para. 3\(4\)\(b\)](#)
- F159** Word in s. 64(6)(a)(ii) substituted (1.4.2007) by [Police, Public Order and Criminal Justice \(Scotland\) Act 2006 \(asp 10\)](#), [ss. 72\(1\)\(a\)](#), 104(1); [S.S.I. 2007/84, art. 3\(3\)](#) (with arts. 56)
- F160** Words in s. 64(6)(a)(ii) inserted (1.4.2007) by [Police, Public Order and Criminal Justice \(Scotland\) Act 2006 \(asp 10\)](#), [ss. 72\(1\)\(b\)](#), 104(1); [S.S.I. 2007/84, art. 3\(3\)](#) (with arts. 56)
- F161** Words in s. 64(6)(a)(ii) inserted (1.4.2007) by [Police, Public Order and Criminal Justice \(Scotland\) Act 2006 \(asp 10\)](#), [ss. 72\(1\)\(c\)](#), 104(1); [S.S.I. 2007/84, art. 3\(3\)](#) (with arts. 56)
- F162** Words inserted by [Public Order Act 1986 \(c. 64, SIF 39:2\)](#), s. 40(2)(4)(5), [Sch. 2 para. 3\(4\)\(c\)](#)

## 65 Offences and enforcement. **S**

- (1) Subject to subsection (3) below, a person who holds a procession in public—
- (a) [<sup>F163</sup>not ] —
- (i) having given or being a person who is treated as having given notice in accordance with section 62 of this Act of his proposal to do so; <sup>F164</sup> ...
- <sup>F164</sup>(ii) .....
- (b) in contravention of an order under section 63(1) [<sup>F165</sup>or (1A)] or 64(6)(a)(ii) of this Act prohibiting the holding of it;
- (c) otherwise than in accordance with a condition imposed by an order under section 63(1) [<sup>F165</sup>or (1A)] or 64(6)(a)(ii) of this Act in relation to the procession; or
- (d) otherwise than in accordance with the particulars of its date, time and route specified—
- (i) in the notice given under section 62(1) to (3) of this Act; or
- (ii) where an order has been made under subsection (4) of that section, in the application for the order
- except to the extent that a condition referred to in paragraph (c) above relates to its date, time or route,



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shall be guilty of an offence and liable, on summary conviction, to a fine not exceeding [<sup>F166</sup>level 4 on the standard scale] or to imprisonment for a period not exceeding 3 months or to both.

- (2) Subject to subsection (3) below, a person who takes part in a procession in public—
- (a) in respect of which—
- (i) notice has not been or is not treated as having been given in accordance with section 62 of this Act; <sup>F167</sup> ...
- <sup>F167</sup>(ii) .....
- (b) in relation to which an order has been made under section 63(1) [<sup>F168</sup>or (1A)] or 64(6)(a)(ii) of this Act prohibiting the holding of it;
- (c) which is held otherwise than in accordance with a condition imposed by an order under section 63(1) [<sup>F168</sup>or (1A)] or 64(6)(a)(ii) of this Act in relation to the procession; or
- (d) which is held otherwise than in accordance with the particulars of its date, time and route specified—
- (i) in the notice given under section 62(1) to (3) of this Act; or
- (ii) where an order has been made under subsection (4) of that section, in the application for the order

except to the extent that a condition referred to in paragraph (c) above relates to its date, time or route

and refuses to desist when required to do so by a constable in uniform shall be guilty of an offence and liable, on summary conviction, to a fine not exceeding [<sup>F166</sup>level 3 on the standard scale].

[<sup>F169</sup>(3) This section applies to a procession of the description set out in section 62(11B)(a) of this Act (funeral processions) only to the extent that the procession has been held otherwise than in accordance with conditions imposed under this Part of this Act.]

[<sup>F169</sup>(3A) This section applies to a procession which is within section 62(11B)(b) of this Act (processions specified by order) only if and to the extent that it has been prohibited or conditions imposed on it under this Part of this Act.]

(4) Subject to subsection (5) below, a constable may arrest without warrant a person whom he reasonably suspects of committing or having committed an offence under this section.

(5) A constable who is not in uniform shall produce his identification if required to do so by any person whom he is arresting under subsection (4) above.

#### Textual Amendments

**F163** Word in s. 65(1)(a) substituted (1.4.2007) by [Police, Public Order and Criminal Justice \(Scotland\) Act 2006 \(asp 10\)](#), **ss. 72(2)(a)(i)**, 104(1); S.S.I. 2007/84, art. 3(3) (with arts. 56)

**F164** S. 65(1)(a)(ii) and word repealed (1.4.2007) by [Police, Public Order and Criminal Justice \(Scotland\) Act 2006 \(asp 10\)](#), **ss. 72(2)(a)(ii)**, 104(1); S.S.I. 2007/84, art. 3(3) (with arts. 56)

**F165** “or (1A)” inserted by [Public Order Act 1986 \(c. 64, SIF 39:2\)](#), s. 40(2)(4)(5), **Sch. 2 para. 3(5)(a)**

**F166** Words substituted by virtue of [Criminal Procedure \(Scotland\) Act 1975 \(c. 21, SIF 39:1\)](#), **s. 289G**

**F167** S. 65(2)(a)(ii) and word repealed (1.4.2007) by [Police, Public Order and Criminal Justice \(Scotland\) Act 2006 \(asp 10\)](#), **ss. 72(2)(b)**, 104(1); S.S.I. 2007/84, art. 3(3) (with arts. 56)

**F168** “or (1A)” inserted by [Public Order Act 1986 \(c. 64, SIF 39:2\)](#), s. 40(2)(4)(5), **Sch. 2 para. 3(5)(b)**

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**F169** S. 65(3)(3A) substituted for s. 65(3) (1.4.2007) by [Police, Public Order and Criminal Justice \(Scotland\) Act 2006 \(asp 10\)](#), **ss. 72(2)(c)**, 104(1); S.S.I. 2007/84, art. 3(3) (with arts. 56)

## [<sup>F170</sup> **65A Guidance to local authorities** **S**

The local authority shall, in carrying out functions under this Part of this Act, have regard to any guidance in that respect issued by the Scottish Ministers.]

### Textual Amendments

**F170** S. 65A inserted (1.4.2007) by [Police, Public Order and Criminal Justice \(Scotland\) Act 2006 \(asp 10\)](#), **ss. 72(3)**, 104(1); S.S.I. 2007/84, art. 3(3) (with arts. 56)

## 66 **Relationship of sections 62 to 65 with** <sup>F171</sup>[<sup>F171</sup>**Public Order Act 1986**]. **S**

Sections 62 to 65 of this Act are subject to the [<sup>F171</sup>Public Order Act 1986]; and, without prejudice to that generality—

- (a) an order under those sections, so far as relating to the same matters as those to which any directions given [<sup>F172</sup>under section 12] of that Act relate, shall be subject to those directions . . . <sup>F173</sup>; and
- (b) anything done in conformity with any such directions . . . <sup>F174</sup> or omitted, in conformity therewith, to be done shall not be an offence under section 65 of this Act.

### Textual Amendments

**F171** Words substituted by [Public Order Act 1986 \(c. 64, SIF 39:2\)](#), s. 40(2)(4)(5), **Sch. 2 para. 3(6)(a)**

**F172** Words substituted by [Public Order Act 1986 \(c. 64, SIF 39:2\)](#), s. 40(2)(4)(5), **Sch. 2 para. 3(6)(b)**

**F173** Words repealed by [Public Order Act 1986 \(c. 64, SIF 39:2\)](#), s. 40(2)(3)(4)(5), **Sch. 2 para. 3(6)(b)**, Sch. 3

**F174** Words repealed by [Public Order Act 1986 \(c. 64, SIF 39:2\)](#), s. 40(2)(3)(4)(5), **Sch. 2 para. 3(6)(c)**, Sch. 3

## PART VI **S**

### LOST AND ABANDONED PROPERTY

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

**C17** Pt. VI (ss. 67–79) extended with modifications by [Animals \(Scotland\) Act 1987 \(c. 9, SIF 4:6\)](#), **s. 3(2)**

## 67 **Duty of finder.** **S**

- (1) Subject to subsection (2) below, any person taking possession of any property without the authority of the owner in circumstances which make it reasonable to infer that the property has been lost or abandoned (“a finder”) shall take reasonable care of it and shall without unreasonable delay deliver the property or report the fact that he has taken possession of it to a constable or to any of the persons mentioned in

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subsection (3) below, giving a description of the property and information as to where it was found.

- (2) Subsection (1) above does not apply to—
- (a) property found on the premises of, or used by, an undertaking which provides a transport service for the public, being premises such as omnibus stations, ports, airports or other similar places, or on any vehicle, vessel or aircraft used by the undertaking for such a service, if provision is made in relation to such lost or abandoned property by or under any enactment other than this Act;
  - (b) property found on the premises of, or used by, the British Railways Board or on any vehicle, train, or vessel used by the Board;
  - (c) motor vehicles which appear to be abandoned, whose removal is provided for by or under any enactment other than this Act; or
  - (d) any dog in relation to which provision is made under sections 3 and 4 of the <sup>M25</sup>Dogs Act 1906 (which relate to stray dogs).
- (3) The persons referred to in subsection (1) above are—
- (a) the owner of the property;
  - (b) the person having right to possession of it;
  - (c) if the property has been found on land or premises, the owner or occupier thereof;
  - (d) any person apparently having the authority to act on behalf of any of those persons.
- (4) Where a person who takes possession of property or receives a report about its finding is—
- (a) a person referred to in paragraph (c) of subsection (3) above, he shall deliver the property or report the fact that he has taken possession of it to a constable or to any of the persons referred to in paragraphs (a), (b) or (d) of that subsection;
  - (b) a person referred to in paragraph (d) of subsection (3) above, he shall deliver the property or report the fact that he has taken possession of it to a constable or to any of the persons referred to in paragraphs (a), (b) or (c) of that subsection.
- (5) Any person who reports the fact that he has taken possession of any property to a constable under this section shall, on being required to do so by the chief constable, deliver the property to such person at such time as the chief constable may direct.
- (6) Any person who fails without reasonable excuse to comply with the provisions of this section shall be guilty of an offence and liable, on summary conviction, to a fine not exceeding £50.

**Marginal Citations**

M25 1906 c. 32.

**68 Functions of chief constable. S**

- (1) This section applies to any property which has been delivered or the finding of which has been reported to a constable under section 67 of this Act, or which has been found by a constable.

*Status: Point in time view as at 27/11/2009.*

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- (2) The chief constable shall make such arrangements as he considers appropriate for the care and custody of the property.
- (3) The chief constable shall take reasonable steps to ascertain the identity of the owner or person having right to the possession of the property and to notify him where it can be collected.
- (4) The chief constable may, after the expiry of a period of 2 months from the date on which the property was delivered or its finding reported to a constable under section 67 of this Act, having regard to the whole circumstances including the nature and value of the property and the actings of the finder, offer it to the finder under section 70(1) (b) of this Act or, if in his opinion so to offer it would be inappropriate, may sell it or, if in his opinion it would be both inappropriate so to offer it and impracticable to sell it, may dispose of it or make arrangements for its disposal otherwise as he thinks fit; but he shall not do any of these things before the expiry of that period other than by returning it to the claimant under section 69 of this Act or by disposing of it under subsection (5) below.
- (5) If the property cannot, in the opinion of the chief constable, be safely or conveniently kept for the period mentioned in subsection (4) above he may dispose of it or arrange for its disposal within that period in such manner as he thinks fit.
- (6) The chief constable shall keep a record of particulars connected with the property and shall retain the record so kept for a period of one year from the date on which the property is disposed of under the provisions of this Part of this Act.

## **69 Claims by owner etc. prior to disposal. S**

- (1) The owner or person having right to possession of any property in the possession of the chief constable by virtue of section 67 of this Act, or of another person under arrangements made by the chief constable, may at any time prior to its disposal under section 68 of this Act claim that property from the chief constable in accordance with such procedure as the chief constable may direct.
- (2) The chief constable shall consider any claims to property made under subsection (1) above, and, on being satisfied that the claimant is the owner of that property or has a right to possession of it, shall deliver or arrange for the delivery of the property to the claimant on such conditions (if any) as he thinks fit, including payment of such reasonable charges (including any reasonable expenses incurred by him or on his behalf) as the chief constable may determine and payment of such sum as the claimant may be ordered to pay under section 70 of this Act.
- (3) Nothing in this section affects any right to or interest in the property arising otherwise than by virtue of this section.

## **70 Powers of chief constable regarding rewards. S**

- (1) The chief constable may—
  - (a) in the event of a claim to property being made under section 69 of this Act by a person appearing to him to be the owner of it or having right to possession of it, order the claimant to pay to the chief constable such sum as he may determine as a reward to the finder; or

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- (b) in the event of any such property not being claimed by such a person, give that property or any part of it to the finder, or pay him such sum as he may determine as a reward.
- (2) In determining whether to make any reward under subsection (1) above and in determining the amount of any such reward the chief constable shall have regard to the whole circumstances including—
- (a) the nature and value of the property;
  - (b) where there is a claimant to the property, the ability of the claimant to pay; and
  - (c) the actings of the finder.

## **71 Right arising on disposal of property. S**

- (1) Any disposal of property under sections 68 or 70 of this Act to a person taking in good faith shall, subject to subsection (2) below, vest the ownership of the property in that person.
- (2) In the case of any such disposal of property made otherwise than for value, any person who was immediately before the disposal the owner of the property (“the previous owner”) shall be entitled within the period of one year after the date of the disposal to recover possession of the property as owner.

## **72 Rights to compensation. S**

- (1) Subject to the provisions of this section, the previous owner of any property disposed of for value under section 68 of this Act shall be entitled to compensation.
- (2) A claim for compensation under subsection (1) above in respect of any property may be made within a period of one year after the date of its disposal under section 68 of this Act in such manner as the chief constable may direct.
- (3) The amount of compensation payable under subsection (1) above shall be the net proceeds of the sale of the property, but no compensation shall be payable where the net proceeds of the sale of the property are less than £100 or such other amount as the Secretary of State may, by order made by statutory instrument, specify, and any such statutory instrument shall be subject to annulment in pursuance of a resolution of either House of Parliament.
- (4) In this section, “net proceeds of sale” means the sum received for any property on its disposal for value under section 68 of this Act after deduction of—
- (a) any expenses incurred in connection with the disposal of the property;
  - (b) any amount paid as a reward by the chief constable under section 70 of this Act; and
  - (c) such reasonable charges (including any reasonable expenses incurred by him or on his behalf) as the chief constable may determine.

## **73 No right of ownership conferred by finding. S**

No person who—

- (a) finds any property appearing to have been lost or abandoned;
- (b) is the employer of a finder of such property; or
- (c) owns or occupies the land or premises on which such property is found,

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shall by reason only of the finding of that property have any right to claim ownership of it.

#### 74 Living creatures. **S**

Where any person who has found any living creature, other than a stray dog or livestock (which expression shall have in this section the same meaning as it has for the purposes of section 129 of this Act), has been permitted to have, at his request, care and custody of that creature under arrangements made by the chief constable under section 68(2) of this Act and the creature—

- (a) has continued to be in his care and custody for a period of 2 months, and
- (b) has not been claimed during that period,

that person shall at the end of that period become the owner of that creature.

#### 75 Stray dogs. **S**

In the <sup>M26</sup> Dogs Act 1906—

- (a) in section 3 (seizure and disposal of stray dogs) there shall be inserted after subsection (7) the following subsection—

“(7A) Where a dog is disposed of under this section to a purchaser in good faith, the sale shall vest the ownership of the dog in the purchaser.” ;  
and

- (b) in section 4 (duty of finder of stray dog)—
  - (i) in subsection (3) after the word “of”, where secondly occurring, there shall be inserted the words “subsections (1) and (2)” and for the words “forty shillings” there shall be substituted the words “£50” ;and
  - (ii) after subsection (3) there shall be inserted the following subsection—

“(4) Where a person has taken possession of a stray dog, and kept it in accordance with subsection (2)(a) above for a period of two months without its having been claimed by the person having right to it, the person who has taken possession of it shall, at the end of that period, become the owner of the dog.”

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

**C18** The text of ss. 75, 110, 119(5) and 137(7)(8) is in the form in which it was originally enacted: it was not reproduced in Statutes in Force and does not reflect any amendments or repeals which may have been made prior to 1.2.1991.

#### Marginal Citations

**M26** 1906 c. 32.

#### 76 Appeal to sheriff. **S**

- (1) Any person mentioned in subsection (2) below may appeal to the sheriff against any decision of the chief constable made under the sections specified in relation to that person in that subsection.
- (2) The persons referred to in subsection (1) are—



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- (a) a claimant under section 69 of this Act;
  - (b) a finder or claimant mentioned in section 70 of this Act;
  - (c) a previous owner mentioned in section 72 of this Act.
- (3) An appeal under this section shall be made by way of summary application and shall be lodged with the sheriff clerk within 21 days from the date of the decision appealed against.
- (4) On good cause being shown, the sheriff may hear an appeal under this section notwithstanding that it was not lodged within the time mentioned in subsection (3) above.
- (5) In upholding an appeal under this section the sheriff may—
- (a) remit the case with the reasons for his decision to the chief constable for reconsideration of his decision; or
  - (b) reverse or alter the decision of the chief constable.

## 77 Financial provisions. **S**

- (1) Any moneys received by the chief constable as the proceeds of the disposal of lost or abandoned property under the provisions of this Part of this Act shall be paid by him to the police authority, and shall be treated as part of the income of the police authority for the purposes of the <sup>M27</sup>Police (Scotland) Act 1967.
- (2) The expenses incurred by the chief constable in performing his functions under this Part of this Act shall be defrayed by the police authority, and shall be treated as part of the expenses of the police authority for the purposes of section 32 of the <sup>M28</sup>Police (Scotland) Act 1967.

### Marginal Citations

**M27** 1967 c. 77.

**M28** 1967 c. 77.

## 78 Crown application of Part VI. **S**

- (1) Subject to subsection (3) below, this Part of this Act binds the Crown.
- (2) Accordingly, rights which the Crown has in lost or abandoned property shall be capable of being extinguished in accordance with the provisions of sections 71 and 74 of this Act.
- (3) Subject to subsection (2) above, nothing in this Part of this Act affects the Crown's right of ownership in lost or abandoned property.

## 79 Interpretation of Part VI. **S**

In this Part of this Act—

“chief constable”, in relation to lost or abandoned property, means the chief constable for the police area in which the lost or abandoned property is found and includes a constable acting under his direction for the purpose of this Part of this Act;



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“finder” has the meaning given by section 67 of this Act;  
 “previous owner” has the meaning given by section 71(2) of this Act.

## PART VII S

### PROPERTY IN POSSESSION OF PERSONS TAKEN INTO POLICE CUSTODY

#### 80 Application of Part VII to property. S

- (1) Subject to subsection (2) below, this Part of this Act applies to all the property which is found in the possession of a person, or in his charge, at the time when he is taken into police custody, that is to say, when he is arrested and taken into custody by a constable or when he is detained under section 2 of the <sup>M29</sup>Criminal Justice (Scotland) Act 1980.
- (2) This Part of this Act does not apply to—
  - (a) property which is, or is reasonably suspected by a constable to be, in the unlawful possession of a person taken into police custody;
  - [<sup>F175</sup>(b) property which the prosecutor determines is or may be required as a production in criminal proceedings or which he determines is or may be required for any other purpose relating to such proceedings;]
  - (c) property consisting of the personal clothing and effects of a person taken into police custody.

#### Textual Amendments

**F175** S. 80(2)(b) substituted (19.5.1997) by 1997 c. 30, ss. 6(2), 7(2)

#### Marginal Citations

**M29** 1980 c. 62.

#### 81 Chief constable to take charge of property. S

- (1) The chief constable may take charge of any property to which this Part of this Act applies and shall make such arrangements as he considers appropriate for the care and custody of the property.
- (2) The chief constable shall keep a record of particulars connected with property of which he takes charge under subsection (1) above and shall retain the record so kept for a period of one year from the date on which the property is disposed of under the provisions of this Part of this Act.

#### 82 Provision as to property where the person in custody is the owner etc. S

- (1) If the chief constable is satisfied that the person taken into police custody is the owner or has right to the possession of the property—
  - (a) he shall require that person to make suitable arrangements for the collection, care and custody of the property; and
  - (b) if that person fails to make such arrangements as are referred to in paragraph (a) above within a reasonable time of having been required under that paragraph to do so, the chief constable—

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- (i) may make such arrangements as he thinks fit for the care and custody of the property;
  - (ii) if the property cannot in his opinion be safely or conveniently kept, may dispose of it, or arrange for its disposal, as he thinks fit.
- (2) When a person in relation to whose property the chief constable has made arrangements under subsection (1)(b)(i) above ceases to be in police custody, the chief constable shall make the property available to him or to any person authorised by him to act on his behalf for the purposes of this subsection on such conditions as the chief constable thinks fit, including payment of any reasonable expenses incurred by him in connection with the custody of the property.
- (3) Any disposal of property under subsection (1)(b)(ii) above to a person taking in good faith shall vest the ownership of the property in that person.
- (4) Any right which the Crown might have in property by virtue of its abandonment by its owner shall be capable of being extinguished in accordance with subsection (3) above.
- (5) Any proceeds from the disposal of the property under subsection (1)(b)(ii) above shall, after deduction of any reasonable expenses incurred by the chief constable in connection with the custody and disposal of the property, be kept by the chief constable on behalf of the person in police custody and shall be paid to that person when he ceases to be in such custody or to another person authorised on his behalf.
- (6) Where the proceeds mentioned in subsection (5) above do not cover the reasonable expenses of the chief constable in connection with the custody or disposal of the property, the chief constable may recover those expenses from the person who was taken into police custody.

### 83 Provision as to property where the person in custody is not the owner etc. **S**

If the chief constable has reason to believe that the person taken into police custody is not the owner or the person having right to possession of [<sup>F176</sup>property to which this Part of this Act applies], the provisions of Part VI of this Act shall apply to the property as they apply to property to which section 67 of this Act applies [<sup>F177</sup>(the property being regarded, for the purposes of those provisions, as being found by the constable arresting or detaining the person so taken)].

#### Textual Amendments

**F176** Words in s. 83 substituted (19.5.1997) by 1997 c. 30, ss. 6(3)(a), 7(2)

**F177** Words in s. 83 added (19.5.1997) by 1997 c. 30, ss. 6(3)(b), 7(2)

### 84 Appeal to sheriff. **S**

Any person taken into police custody may appeal to the sheriff against the decision of the chief constable under this Part of this Act in relation to property found in that person's possession or in his charge when taken into custody, and subsections (3) to (5) of section 76 of this Act shall apply to an appeal under this section as they apply to an appeal under that section.

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## 85 Financial provisions: property of persons in custody. **S**

- (1) Any moneys received by the chief constable as the proceeds of the disposal of property to which this Part of this Act applies shall, pending their payment under section 82(5) of this Act, be paid by him to the police authority, and shall be treated as part of the income of the police authority for the purposes of the <sup>M30</sup>Police (Scotland) Act 1967.
- (2) The expenses incurred by the chief constable in performing his functions under this Part of this Act shall be defrayed by the police authority, and shall be treated as part of the expenses of the police authority for the purposes of section 32 of the <sup>M31</sup>Police (Scotland) Act 1967.

### Marginal Citations

**M30** 1967 c. 77.

**M31** 1967 c. 77.

## 86 Interpretation and Crown application of this Part. **S**

- (1) In this Part of this Act, “chief constable” means the chief constable for the police area in which the person taken into custody, within the meaning of section 80 of this Act, is so taken and includes a constable acting under the direction of the chief constable for the purposes of this Part of this Act.
- (2) This Part of this Act binds the Crown.

## [PART VIIA **S**

### PROPERTY IN UNLAWFUL POSSESSION OF PERSONS TAKEN INTO POLICE CUSTODY AND CERTAIN OTHER PROPERTY TO WHICH PART VII DOES NOT APPLY

#### <sup>F178</sup>86A Application of Part VIIA to property. **S**

- (1) Subject to subsection (2) below, this Part of this Act applies to property to which, by virtue only of paragraph (a) or (b) of section 80(2) of this Act, Part VII of this Act does not apply.
- (2) This Part of this Act does not apply to property—
  - (a) possession of which has passed to the prosecutor and is for the time being retained by him or, in accordance with arrangements made by him, by some person other than the chief constable or himself; or
  - (b) in respect of which a suspended forfeiture order or a restraint order has been—
    - (i) made and not recalled; or
    - (ii) applied for and not refused.
- (3) In subsection (2) above, “suspended forfeiture order” and “restraint order” shall be construed in accordance with, respectively, [<sup>F179</sup>section 21(2) of the Proceeds of Crime (Scotland) Act 1995 and Part 3 of the Proceeds of Crime Act 2002] .

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#### Textual Amendments

**F178** Pt. VIIA (ss. 86A-86J) inserted (19.5.1997) by 1997 c. 30, ss. 6(4), 7(2)

**F179** Words in s. 86A(3) substituted (24.3.2003) by Proceeds of Crime Act 2002 (c. 29), s. 458(1), Sch. 11 para. 12(2); S.S.I. 2003/210, art. 2(1)(b)(2), sch. (with art. 7)

#### <sup>F180</sup> **86B Certification by prosecutor.** **S**

The prosecutor may certify that, notwithstanding any determination under section 80(2)(b) of this Act, property to which this Part of this Act applies is not, or is no longer, required as a production in criminal proceedings or for any other purpose relating to such proceedings (property which he has so certified being, in the following provisions of this Part, referred to as “relevant” property).

#### Textual Amendments

**F180** Pt. VIIA (ss. 86A-86J) inserted (19.5.1997) by 1997 c. 30, ss. 6(4), 7(2)

#### <sup>F181</sup> **86C Claims by owner etc. prior to disposal.** **S**

- (1) The owner, or the person having right to possession, of any property to which this Part of this Act applies and which is in the possession of the chief constable, or of another person under arrangements made by the chief constable, may at any time prior to its disposal under section 86E of this Act claim that property in accordance with such procedure as the chief constable may direct.
- (2) The chief constable shall consider any claims to property made under subsection (1) above and, on being satisfied that the property is relevant property and that the claimant is the owner of it or has a right to possession of it, shall deliver it, or arrange for its delivery, to the claimant on such conditions (if any) as the chief constable thinks fit, as for example, but without prejudice to the generality of this subsection, for payment of such reasonable charges (including any reasonable expenses incurred in relation to the property by or on behalf of the chief constable) as the chief constable may determine.

#### Textual Amendments

**F181** Pt. VIIA (ss. 86A-86J) inserted (19.5.1997) by 1997 c. 30, ss. 6(4), 7(2)

#### <sup>F182</sup> **86D Duty of care etc.** **S**

Subject to the proviso to section 17(3)(b) of the <sup>M32</sup>Police (Scotland) Act 1967 (duty to comply with instructions received from prosecutor), the chief constable shall make such arrangements as he considers appropriate for the care and custody of property to which this Part of this Act applies; and if he has reason to believe that the person taken into police custody is not the owner or the person having right to possession of it, shall take reasonable steps to ascertain the identity of the owner or of the person with that right and to notify him of the procedures directed under section 86C(1) of this Act.

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#### Textual Amendments

**F182** Pt. VIIA (ss. 86A-86J) inserted (19.5.1997) by 1997 c. 30, ss. 6(4), 7(2)

#### Marginal Citations

**M32** 1967 c. 77.

### <sup>F183</sup> **86E Disposal of relevant property. S**

- (1) If relevant property cannot, in the opinion of the chief constable, safely be kept he may dispose of it or arrange for its disposal in such manner as he thinks fit.
- (2) The chief constable may sell relevant property or, if in his opinion it would be impracticable to sell it, may dispose of it (or make arrangements for its disposal) otherwise as he thinks fit; but subject to subsection (1) above he shall not do so—
  - (a) before the expiry of a period of two months after the date on which the property was found in the possession or in the charge of the person taken into police custody; or
  - (b) if it would be inconvenient to keep the property until the expiry of that period, before the expiry of such shorter period as is reasonable in all the circumstances.
- (3) Sections 71, 72 and 77(1) of this Act shall apply to a disposal under this section as they apply to a disposal under section 68 of this Act.

#### Textual Amendments

**F183** Pt. VIIA (ss. 86A-86J) inserted (19.5.1997) by 1997 c. 30, ss. 6(4), 7(2)

### <sup>F184</sup> **86F Retention of relevant property by police authority. S**

- (1) Where a chief constable has power under section 86E(2) of this Act to sell or otherwise dispose of property and that property (not being money) has remained—
  - (a) for any continuous period of twelve months in his possession; or
  - (b) for part of any such period in his possession and for the rest of it in the possession of the prosecutor,
 the police authority may, if they are of the opinion that the property can be used for police purposes, determine that the property is to be retained by the authority; and the property shall vest in them on the making of the determination.
- (2) A determination under subsection (1) above shall be recorded in writing; and that record shall include the date on which the determination is made.
- (3) Any person who, immediately before the date on which a determination under subsection (1) above is made, owns the property in question, shall be entitled within one year after that date to recover possession of it as owner.
- (4) In subsection (1) above, “police authority” has the meaning assigned to it by section 2(1), as read with section 19(9)(a), of the <sup>M33</sup>Police (Scotland) Act 1967; and “the police authority” means the police authority for the area for which the chief constable’s force is maintained.

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#### Textual Amendments

**F184** Pt. VIIA (ss. 86A-86J) inserted (19.5.1997) by 1997 c. 30, ss. 6(4), 7(2)

#### Marginal Citations

**M33** 1967 c. 77.

### <sup>F185</sup> **86G Appeals.** **S**

- (1) A claimant under section 86C(2) of this Act may appeal to the sheriff against any decision of the chief constable made under that section as respects the claim.
- (2) The previous owner of any property disposed of for value under section 86E of this Act may appeal to the sheriff against any decision of the chief constable made under section 72 of this Act as applied by subsection (3) of section 86E.
- (3) Subsections (3) to (5) of section 76 of this Act shall apply to an appeal under this section as they apply to an appeal under section 76.

#### Textual Amendments

**F185** Pt. VIIA (ss. 86A-86J) inserted (19.5.1997) by 1997 c. 30, ss. 6(4), 7(2)

### <sup>F186</sup> **86H Crown application of Part VIIA.** **S**

- (1) Subject to subsection (2) below, this Part of this Act binds the Crown.
- (2) Rights which the Crown has in lost or abandoned property shall be capable of being extinguished in accordance with the provisions of section 71 (as applied by section 86E(3)) or 86F(1) of this Act; but nothing in this Part of this Act otherwise affects the Crown's right of ownership in such property.

#### Textual Amendments

**F186** Pt. VIIA (ss. 86A-86J) inserted (19.5.1997) by 1997 c. 30, ss. 6(4), 7(2)

### <sup>F187</sup> **86I Further financial provision.** **S**

Subsection (2) of section 77 of this Act shall apply in respect of functions under this Part of this Act as that subsection applies in respect of functions under Part VI of this Act.

#### Textual Amendments

**F187** Pt. VIIA (ss. 86A-86J) inserted (19.5.1997) by 1997 c. 30, ss. 6(4), 7(2)

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## <sup>F188</sup>86J References in this Part to “chief constable”. **S**

In this Part of this Act, “chief constable” means the chief constable for the police area in which the person taken into custody, within the meaning of section 80 of this Act, is so taken; and includes a constable acting under the direction of the chief constable for the purposes of this Part of this Act.]

### Textual Amendments

**F188** Pt. VIIA (ss. 86A-86J) inserted (19.5.1997) by 1997 c. 30, ss. 6(4), 7(2)

## PART VIII **S**

### BUILDINGS, ETC.

## 87 Local authorities’ powers in relation to buildings in need of repair. **S**

<sup>F189</sup>(1) .....

(2) For the purposes of this section, any object or structure fixed to a building or forming part of the land and comprised within the curtilage of a building shall be treated as part of the building.

(3) Where it appears to a local authority to be necessary in the interests of health or safety or to prevent damage to any property that they should repair immediately a building in their area, they may without prior notice rectify such defects in the building as could have been specified in a notice under subsection (1) above had such a notice been served and any person authorised by them may, on their behalf, for these purposes, enter the building and the land pertaining thereto.

(4) The local authority may recover from the owner of the building the expense of anything done by them under subsection (3) above or, where there is more than one owner, apportion such expense among them and recover from each the appropriate sum, but may remit any sum or any part of any sum due to them under this subsection as they think fit.

(5) A person who, in compliance with a notice served under [<sup>F190</sup>section 28 of the Building (Scotland) Act 2003 (asp 8)]<sup>F191</sup> ..., carries out work on a building which is, for the purposes of [<sup>F192</sup>Part V of the Housing (Scotland) Act 1987], a house shall have the same entitlement to loans and grants as he would have had if the notice had been served and to the extent that it could have been served under section [<sup>F192</sup>108 of that Act].

<sup>F193</sup>(6) .....

### Textual Amendments

**F189** S. 87(1) repealed (1.5.2005) by Building (Scotland) Act 2003 (asp 8), s. 59(1), sch. 6 para. 14(2)(a) (with s. 53); S.S.I. 2004/404, art. 2(1)

**F190** Words in s. 87(5) substituted (1.5.2005) by Building (Scotland) Act 2003 (asp 8), s. 59(1), sch. 6 para. 14(2)(b) (with s. 53); S.S.I. 2004/404, art. 2(1)

**F191** Words in s. 87(5) repealed (1.10.2009) by Public Health etc. (Scotland) Act 2008 (asp 5), s. 128(2), sch. 3 Pt. 1 (with s. 127); S.S.I. 2009/319, art. 2(a), sch. 1



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**F192** Words substituted by [Housing \(Scotland\) Act 1987 \(c. 26, SIF 61\)](#), ss. 335, 339(2), [Sch. 23 para. 28\(1\)](#)

**F193** S. 87(6) repealed (1.4.1996) by [1994 c. 39, s. 180\(1\)\(2\)](#), [Sch. 13 para. 129\(7\)](#), [Sch. 14](#); [S.I. 1996/323, art. 4\(1\)\(c\)\(d\)](#), [Sch. 2](#)

## 88 Installation of pipes through neighbouring property. **S**

- (1) The sheriff may, on summary application by an owner of a part of a building who requires, but has been refused or otherwise has been unable to obtain, the consent of any other person for—
- (a) the installation—
    - (i) on the outside surface of any external wall or roof of the building;
    - (ii) in, through or under any part of the building which is held in common by the owner and the other person or any land pertaining to the building which is so held;
    - (iii) in, through or under any part of the building owned by the other person or any land pertaining to the building which is so ownedof such pipes or drains as are necessary for the purpose of water supply to, or the soil, waste or rainwater drainage or the ventilation in connection with such drainage of, the owner's part of the building;
  - (b) the making of connections with common water supply pipes, or soil, waste or rainwater drains or drain ventilating pipes; or
  - (c) access to the pipes or drains referred to in paragraph (a) above for the purpose of their maintenance and repair,
- subject to subsection (2) below, grant warrant authorising such installation, making of connections or access.
- (2) The sheriff shall not grant warrant under—
- (a) subsection (1) above unless it appears to him that it is reasonable that the installation be carried out, the connections be made or, as the case may be, the maintenance or repair for which access is applied for under that subsection, be done;
  - (b) under paragraph (a) or (b) of that subsection or, except for repair in an emergency, paragraph (c) of that subsection to an owner who has been otherwise unable to obtain consent unless it appears to him that the owner's request for consent was made in writing to the other person at least 28 days before the application under that subsection.
- (3) The sheriff may—
- (a) make a warrant granted by him under this section subject to such conditions as he thinks fit;
  - (b) make such award of expenses as he sees fit in relation to an application under this section.
- (4) An appeal shall lie to the Court of Session from the decision of the sheriff under this section.
- (5) This section is without prejudice to any requirement to obtain approval under or any other obligation imposed by or by virtue of the Building (Scotland) Acts 1959 and 1970, the <sup>M34</sup>Sewerage (Scotland) Act 1968, the Town and Country Planning (Scotland) Acts 1972 to 1974, the <sup>M35</sup>Water (Scotland) Act 1980 or any other

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enactment relating to building, the provision of public sewerage services, planning or the public supply of water.

#### Marginal Citations

M34 1968 c. 47.

M35 1980 c. 45.

## 89 Safety of platforms etc. **S**

- (1) No person shall use or permit the use of a raised structure for the purpose of providing for himself or others raised seated or standing accommodation, unless such use has been approved by the local authority in whose area the raised structure is situated.
- (2) In this section a “raised structure” means a platform, stand, staging or other similar structure.
- (3) The local authority shall grant their approval of the use of a raised structure under subsection (1) above if they are satisfied that it—
  - (a) has been safely constructed and secured; and
  - (b) has sufficient means of entrance and exit including means of escape in case of fire or other emergency
 in relation to the circumstances in which it is to be used; but not otherwise.

[<sup>F194</sup>(4) Where—

- (a) Part 3 of the [Fire \(Scotland\) Act 2005 \(asp 5\)](#) (“the 2005 Act”) applies in relation to the premises where the raised structure is situated; and
- (b) the local authority are not the enforcing authority (as defined in section 61(9) of the 2005 Act),

the local authority shall consult the enforcing authority before making their decision under subsection (3)(b) above.

(4A) Where—

- (a) Part 3 of the 2005 Act does not apply in relation to the premises where the raised structure is situated; and
- (b) the local authority are not the appropriate relevant authority,

the local authority shall consult the appropriate relevant authority before reaching their decision under subsection (3)(b) above.

(4B) In subsection (4A) “appropriate relevant authority” means a relevant authority (as defined in section 6 of the 2005 Act) discharging in the area of the local authority the functions of a relevant authority under that Act.]

- (5) The local authority may, when granting their approval of the use of a raised structure under this section or at any other time thereafter, impose by notice served on the person to whom approval is being or, as the case may be, has been granted such conditions as they think necessary relating to such use, and the conditions may include a condition as to the maximum number of persons permitted to use the raised structure and a prohibition on its use for so long as the conditions contained in the notice have not been complied with.

(6) Any person who—

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- (a) uses or permits the use of a raised structure for the purpose of providing for himself or others raised seated or standing accommodation without the approval of the local authority under subsections (1) and (3) above; or
- (b) contravenes a condition contained in a notice served on him under subsection (5) above

shall be guilty of an offence and liable, on summary conviction, to a fine not exceeding [<sup>F195</sup>level 4 on the standard scale].

- (7) This section shall not apply to—
- (a) any structure in respect of which a building warrant has been granted;
  - (b) any structure in respect of which such a warrant, by reason only of the date when it was built, was not required; or
  - (c) scaffolding or similar equipment used in connection with work on a building or other structure.

In this subsection, “building warrant” means a warrant for [<sup>F196</sup>work for construction or for conversion of a building granted under section 9 of the Building (Scotland) Act 2003 (asp 8)] .

- (8) Nothing in this section affects any requirement to obtain approval or any other obligation imposed by or by virtue of any other enactment.
- (9) The local authority shall charge such fees in respect of the discharge of their functions under this section as may be resolved by them from time to time and shall seek to ensure that the total amount of such fees is sufficient to meet the expenses incurred by them in that respect.

<sup>F197</sup>(10) . . . . .

**Textual Amendments**

**F194** S. 89(4)-(4B) substituted for s. 89(4) (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(2)**

**F195** Words substituted by virtue of [Criminal Procedure \(Scotland\) Act 1975 \(c. 21, SIF 39:1\)](#), **s. 289G**

**F196** Words in s. 89(7) substituted (1.5.2005) by [Building \(Scotland\) Act 2003 \(asp 8\)](#), s. 59(1), **sch. 6 para. 14(3)** (with s. 53); [S.S.I. 2004/404](#), art. 2(1)

**F197** S. 89(10) repealed (1.4.1996) by [1994 c. 39](#), 180(1)(2), Sch. 13 para. 129(8), Sch. 14; [S.I. 1996/323](#), art. 4(1)(c)(d), **Sch. 2**

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

**C19** S. 89 restricted by [Fire Safety and Safety of Places of Sport Act 1987 \(c. 27, SIF 45A\)](#), **ss. 26(1), 33(1)** (c)

**90 Lighting of common stairs etc. S**

- (1) In this section—
- “common property” means common stairs or passages or private courts;
  - “owner”, in relation to common property, means the owner or owners of lands or premises having a right of access by the common property;
  - “private court” means any area which—
- (a) is maintained or liable to be maintained by a person other than a local authority; and

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- (b) forms a common access to lands or premises separately occupied.
- (2) A [<sup>F198</sup>local authority] may—
- (a) provide and maintain lighting in common property; and
  - (b) light and extinguish the lights in the common property or arrange for that to be done.
- (3) A [<sup>F198</sup>local authority] may continue to provide and maintain lighting in any place where they provided and maintained it immediately before the commencement of subsection (2) above notwithstanding that the place is not common property.
- (4) Where, and to the extent that, the [<sup>F198</sup>local authority] for the area in which any common property is situated has not exercised the powers conferred upon them by subsection (2) above, it shall be the duty of the owner—
- (a) to provide and maintain lighting in the common property to the satisfaction of the [<sup>F198</sup>local authority]; and
  - (b) to light and extinguish the lights in the common property at such times as the [<sup>F198</sup>local authority] may require by order published in accordance with subsection (6) below.
- (5) A [<sup>F198</sup>local authority] may by notice in writing require the owner to comply with subsection (4)(a) above within 14 days of the date of service of the notice on the owner.
- (6) An order made under subsection (4)(b) above shall be published once weekly for at least two weeks in a newspaper circulating in the area of the [local authority].
- (7) In the event of the owner's failing to comply with subsection (4) above, the [<sup>F198</sup>local authority] may provide and maintain lighting or, as the case may be, light and extinguish the lights in the common property.
- (8) An authorised officer of the [<sup>F198</sup>local authority] shall be entitled at any reasonable time to enter common property for the purpose of determining whether subsection (4) above is being complied with and a person authorised to do so by such a [<sup>F198</sup> authority] shall be entitled at any reasonable time to enter such property and to do there anything which the [<sup>F198</sup>local authority] are entitled to do under subsection (2), (3) or (7) above.
- [<sup>F199</sup>(9) A [<sup>F198</sup>local authority] who have, under subsection (2), (3) or (7) above, provided or maintained lighting or lit or extinguished lights shall be entitled to recover—
- (a) from the owner of the lands or premises the expense incurred by the [<sup>F198</sup> authority]; or
  - (b) where there is more than one owner of the lands or premises, that is, where the lands or premises are common property, from each owner such proportion of the expense thereby incurred by the council as the council may determine, but the authority may remit any sum or part of any sum due to them under this subsection.]

#### Textual Amendments

**F198** Words in s. 90(2)-(9) substituted (1.4.1996) by 1994 c. 39, s. 180(1), **Sch. 13 para. 129(9)**; S.I. 1996/323, **art. 4(1)(c)**

**F199** S. 90(9) substituted by **Abolition of Domestic Rates Etc. (Scotland) Act 1987** (c. 47, SIF 81:2, 103:2), s. 6, **Sch. 1 Pt. III para. 39**

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## 91 Installation of lights in private property. **S**

- (1) A [<sup>F200</sup>local authority] or an owner of common property may, where it is necessary to do so for the purpose of performing their or, as the case may be, his functions under section 90 of this Act, provide and maintain lights in or on any land or building in or on which they have no right (apart from this section) to do so, and any person authorised by such [<sup>F200</sup>authority] or by such owner may, at any reasonable time, enter that land or building in order to do so on their behalf.
- (2) A [<sup>F200</sup>local authority] who provide and maintain or an owner of common property who provides and maintains lights under this section shall, in doing so, cause as little inconvenience and damage as possible and pay compensation for any damage done; and, in case of dispute, the amount of such compensation shall be determined summarily by the sheriff, whose decision in the matter shall be final.
- (3) The person having right to any land or building in or on which lights have been provided and maintained under subsection (1) above may, on giving 14 days written notice to that effect, require the [<sup>F200</sup>local authority] or, as the case may be, the owner of the common property to remove them temporarily during any reconstruction, repair or similar works relating to the land or building, and if the [<sup>F200</sup> authority] or, as the case may be, the owner fails to do so, the person having right as aforesaid may do so and recover the expense thereof from the [<sup>F200</sup>authority] or, as the case may be, the owner, with interest thereon at such reasonable rate as that person may determine from the date on which a demand for the expenses is served until payment.

### Textual Amendments

**F200** Words in s. 91(1)-(3) substituted (1.4.1996) by 1994 c. 39, s. 180(1), **Sch. 13 para. 129(10)**; S.I. 1996/323, **art. 4(1)(c)**

## 92 Cleaning and painting of common stairs, etc. **S**

- (1) In this section—
  - “common property” means common stairs, passages, water-closets, backgreens or basements or other similar areas or private courts;
  - “occupier”, in relation to common property, means the occupier or occupiers of lands or premises having a right of access by, or a right in common to, the common property.
- (2) It shall be the duty of the occupier to keep the common property clean to the satisfaction of the [<sup>F201</sup>local authority] within whose area the common property is situated.
- (3) A [<sup>F201</sup>local authority] may make byelaws for the regulation of the cleaning of common property by the occupier in accordance with this section and such byelaws may provide that persons contravening such provisions of the byelaws as may be specified as provisions contravention of which is an offence shall be liable, on summary conviction, to a fine not exceeding [<sup>F202</sup>level 2 on the standard scale] or such lesser sum as the byelaws may specify.
- (4) A [<sup>F201</sup>local authority] may by notice in writing require the occupier to comply with subsection (2) above or with byelaws made under subsection (3) above within such reasonable time as may be specified in the notice.

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- (5) Sections 99(4) and 106 of this Act shall not apply to a notice served under subsection (4) above.
- (6) A [<sup>F201</sup>local authority] may by notice in writing require the owner or owners of lands or premises having a right of access by common stairs or passages to paint or otherwise suitably decorate the common stairs or passages within such reasonable time as may be specified in the notice.
- (7) A [local authority] may remove litter from a backgreen or private court.
- (8) An authorised officer of a [<sup>F201</sup>local authority] shall be entitled at any reasonable time to enter common property for the purpose of—
- (a) determining whether subsection (2) above and any byelaws made under subsection (3) above are being complied with;
  - (b) determining whether any common stairs or passages referred to in subsection (6) above require to be painted or otherwise suitably decorated.
- and a person authorised to do so by such a [<sup>F201</sup>authority] shall be entitled at any reasonable time to enter such property and to do there anything which the [<sup>F201</sup>authority] may do under subsection (7) above.
- (9) A person who throws down, drops or otherwise deposits, and leaves, litter in any common property shall be guilty of an offence and liable, on summary conviction, to a fine not exceeding [<sup>F202</sup>level 3 on the standard scale].

#### Textual Amendments

**F201** Words in s. 92(2)-(4)(6)-(8) substituted (1.4.1996) by 1994 c. 39, s. 180(1), **Sch. 13 para. 129(11)**; S.I. 1996/323, **art. 4(1)(c)**

**F202** Words substituted by virtue of **Criminal Procedure (Scotland) Act 1975 (c. 21, SIF 39:1), s. 289G**

### 93 Fire precautions in common stairs etc. **S**

- (1) In this section—
- “common property” and “occupier” have respectively the same meanings as in section 92 of this Act;
- “combustible substance” means anything which is dangerously combustible in normal conditions and includes any container holding the combustible substance including any such container forming part of a motor vehicle but does not include anything forming part of any common property.
- (2) It shall be the duty of the occupier to keep the common property free of—
- (a) any combustible substances;
  - (b) anything which might obstruct egress from and access to the property in the event of fire.
- (3) [<sup>F203</sup>Where Part 3 of the **Fire (Scotland) Act 2005 (asp 5)** applies in relation to the common property, an enforcement officer appointed under section 61(3) of that Act or, in any other case,] an authorised officer of the [<sup>F204</sup>appropriate relevant authority] shall be entitled—
- (a) to enter common property for the purpose of determining whether subsection (2) above is being complied with; and



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- (b) if it is not, and there is thereby an immediate risk of fire likely to endanger life, to enter the property and to do there anything he may consider necessary to remove that risk including seizing and arranging as he sees fit for the retention of any substance or other thing until claimed by a person having a right of possession to it.
- (4) [<sup>F205</sup>Where Part 3 of the Fire (Scotland) Act 2005 (asp 5) applies in relation to the common property, the enforcing authority or, in any other case,] the [<sup>F204</sup>appropriate relevant authority] may by notice in writing require the occupier to comply with subsection (2) above within such reasonable time as may be specified in the notice by removing or rendering safe the substance or other thing (if any) there specified.
- (5) Any person who fails without reasonable excuse to comply with a notice served under subsection (4) above shall be guilty of an offence and liable, on summary conviction, to a fine not exceeding [<sup>F206</sup>level 3 on the standard scale].
- (6) Section 105 of this Act shall apply to a notice served by [<sup>F207</sup>an enforcing authority or][<sup>F208</sup>an appropriate relevant authority] under subsection (4) above, as it applies to notices served by local authorities.
- (7) [<sup>F209</sup>The enforcing authority or, as the case may be,] the [<sup>F210</sup>appropriate relevant authority] shall be entitled to recover the expense of doing anything under subsection (3)(b) above from the occupier or person having a right of possession to such substances or articles as are referred to in the said subsection (3)(b) but may remit any sum or any part of any sum due to them under this subsection as they think fit.
- (8) This section is without prejudice to any other enactment relating to fire precautions.
- (9) In this section, [<sup>F211</sup>“appropriate relevant authority” means the authority discharging in the area in which the common property is situated the functions of a relevant authority as defined in section 6 of the [Fire \(Scotland\) Act 2005 \(asp 5\)](#)] .

#### Textual Amendments

- F203** Words in s. 93(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\(3\)\(a\)](#)
- F204** Words in s. 93(3)(4) substituted (2.8.2005) by [The Fire \(Scotland\) Act 2005 \(Consequential Modifications and Amendments\) Order 2005 \(S.S.I. 2005/383\)](#), art. 1, [sch. 1 para. 7\(2\)\(3\)\(b\)](#)
- F205** Words in s. 93(4) 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\(3\)\(b\)](#)
- F206** Words substituted by virtue of [Criminal Procedure \(Scotland\) Act 1975 \(c. 21, SIF 39:1\)](#), [s. 289G](#)
- F207** Words in s. 93(6) 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\(3\)\(c\)](#)
- F208** Words in s. 93(6) substituted (2.8.2005) by [The Fire \(Scotland\) Act 2005 \(Consequential Modifications and Amendments\) Order 2005 \(S.S.I. 2005/383\)](#), art. 1, [sch. 1 para. 7\(9\)\(a\)](#)
- F209** Words in s. 93(7) 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\(3\)\(d\)](#)
- F210** Words in s. 93(7) substituted (2.8.2005) by [The Fire \(Scotland\) Act 2005 \(Consequential Modifications and Amendments\) Order 2005 \(S.S.I. 2005/383\)](#), art. 1, [sch. 1 para. 7\(2\)\(3\)\(b\)](#)
- F211** Words in s. 93(9) substituted (2.8.2005) by [The Fire \(Scotland\) Act 2005 \(Consequential Modifications and Amendments\) Order 2005 \(S.S.I. 2005/383\)](#), art. 1, [sch. 1 para. 7\(9\)\(b\)](#)



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## 94 Disused petrol containers. **S**

- (1) Where a fixed tank or other fixed container which has been used for the storage of petroleum spirit and is no longer used for that purpose (in this section referred to as a “disused petrol container”) is kept in any lands or premises, the occupier of the lands or premises (or, where the lands or premises are unoccupied, the owner) shall take all such steps as may be reasonably necessary to prevent danger from the container.
- (2) The [<sup>F212</sup>local authority] for the area in which are situated the lands or premises in which there is a disused petrol container may by notice in writing require the occupier (or, as the case may be, the owner) of the lands or premises to comply with subsection (1) above within such reasonable time as may be specified in the notice.
- (3) An authorised officer of a [<sup>F212</sup>local authority] shall be entitled, at any reasonable time, on producing his authorisation to any person for the time being in charge of any lands or premises in the area of the [<sup>F212</sup>authority] in which there is a disused petrol container to enter the lands or premises for the purpose of determining whether subsection (1) above is being complied with.
- (4) This section shall not apply to lands or premises situated within the jurisdiction of a harbour authority (as defined in section 23 of the <sup>M36</sup>Petroleum (Consolidation) Act 1928).
- (5) In this section “petroleum spirit” has the same meaning as in the Petroleum (Consolidation) Act 1928.

### Textual Amendments

**F212** Words in s. 94(2)(3) substituted (1.4.1996) by 1994 c. 39, s. 180(1), **Sch. 13 para. 129(12)**; S.I. 1996/323, **art. 4(1)(c)**

### Marginal Citations

**M36** 1928 c. 32.

## 95 Private open spaces. **S**

- (1) It shall be the duty of the owner of every open space which is—
  - (a) in a populous place; and
  - (b) set apart for use by the owners or occupiers of two or more separate properties, to maintain the open space and any boundary walls or fences so as to prevent danger or nuisance to the public.
- (2) A [<sup>F213</sup>local authority] may by notice in writing require the owner of an open space referred to in subsection (1) above to comply with that subsection within such reasonable time as may be specified in the notice.
- (3) An owner of an open space referred to in subsection (1) above shall be entitled to recover from each person entitled to use the open space an equal proportion of—
  - (a) the expense incurred by the owner in complying with that subsection; and
  - (b) any amount paid by the owner to the [<sup>F213</sup>local authority] under section 99(4) of this Act.

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#### Textual Amendments

**F213** Words in s. 95(2)(3)(b) substituted (1.4.1996) by 1994 c. 39, s. 180(1), **Sch. 13 para. 129(13)**; S.I. 1996/323, **art. 4(1)(c)**

## 96 Statues and monuments. **S**

- (1) A [<sup>F214</sup>local authority] may—
- erect, maintain, or permit the erection or maintenance of, any statue or monument in any public place;
  - demolish or remove to another site any statue or monument maintained by them;
  - by notice in writing require the owner of any statue or monument not maintained by them which is in a public place owned by them, within such reasonable time as may be specified in the notice, to put it in good order and repair, or demolish it or remove it to another site:

Provided that the powers conferred by paragraphs (a) and (b) above shall not be exercised without the prior consent of—

- the owner of the land on which the statue or monument is, or is proposed to be, situated; and
- [<sup>F215</sup>where such land is a road, the roads authority.]

and the powers conferred by paragraphs (b) and (c) above shall be exercised only where the [<sup>F214</sup>authority] consider it expedient to exercise them for reasons of public safety or the better use of the site on which the statue or monument has been erected.

- (2) Sections 99 to 109 of this Act shall apply in relation to a statue or monument in respect of which a notice is served under paragraph (c) of subsection (1) above with the following modifications—
- any reference in these sections to the land or premises shall be construed as a reference to the statue or monument; and
  - any reference to a tenant or other occupier of land or premises shall be construed as a reference to the tenant or other occupier of the land or premises in or on which the statue or monument is situated.
- (3) This section is without prejudice to section 53 of the <sup>M37</sup>Town and Country Planning (Scotland) Act 1972 (control of works for demolition, alteration or extension of listed building) or section 2 of the <sup>M38</sup>Ancient Monuments and Archaeological Areas Act 1979 (control of works affecting scheduled monuments).

#### Textual Amendments

**F214** Words in s. 96(1) substituted (1.4.1996) by 1994 c. 39, s. 180(1), **Sch. 13 para. 129(14)**; S.I. 1996/323, **art. 4(1)(c)**

**F215** S. 96(1)(ii) substituted by Roads (Scotland) Act 1984 (c. 54, SIF 108), s. 156(1), **Sch. 9 para. 87(5)**

#### Marginal Citations

**M37** 1972 c. 52.

**M38** 1979 c. 46.

*Status: Point in time view as at 27/11/2009.*

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## 97 Street names and house numbers. **S**

- A [<sup>F216</sup>local authority] may, in relation to any . . . <sup>F217</sup> road . . . <sup>F217</sup> in their area—
- (a) give such name to it as they think fit;
  - (b) after advertising in a newspaper circulating in their area any proposal to alter its name and taking into account any representations thereupon made to them within 28 days after the date of the first publication of the advertisement, alter any such name;
  - (c) affix, paint or mark its name on any premises, fence, lamp post, pole or other structure in it so as to be readily legible to members of the public there, and erect poles or other structures there for that purpose;
  - (d) give each of the premises in it such distinguishing number as they think fit; alter that number when necessary; and require the owner of each of the premises, by notice served on him, to affix or paint that number on his premises so that it is readily legible from the nearest part of the public place giving access to the premises.

### Textual Amendments

**F216** Words in s. 97 substituted (1.4.1996) by 1994 c. 39, s. 180(1), **Sch. 13 para. 129(16)**; S.I. 1996/323, **art. 4(1)(c)**

**F217** Words repealed by **Roads (Scotland) Act 1984** (c. 54, SIF 108), s. 156(3), **Sch. 11**

## 98 Luminous tube signs. **S**

- (1) The Secretary of State may make regulations for ensuring the safe operation of electrical luminous tube signs, and without prejudice to that generality such regulations may include provisions—
  - (a) requiring the provision of switches to cut off the supply of electricity to such signs to the satisfaction of the [<sup>F218</sup>appropriate relevant authority] ;
  - (b) requiring the giving of notice to the [<sup>F218</sup>appropriate relevant authority] by any person proposing to install such a sign;
  - (c) empowering the [<sup>F218</sup>appropriate relevant authority] to serve a counter-notice prohibiting the use of such a sign if they are not satisfied that it is safe in the event of its being affected by fire or steps taken to put fire out;
  - (d) giving a right of appeal against a counter-notice to the sheriff by the person upon whom it has been served;
  - (e) making it an offence to fail without reasonable excuse to comply with any obligation imposed by the regulations which is specified in the regulations as an obligation breach of which is an offence and providing that any person guilty of such an offence shall be liable, on summary conviction, to a fine not exceeding [<sup>F219</sup>level 3 on the standard scale] or such lesser sum as may be specified in the regulations.
- [<sup>F220</sup>(1A) Where Part 3 of the **Fire (Scotland) Act 2005** (asp 5) applies in relation to premises where there is an electrical luminous tube sign, paragraphs (a), (b) and (c) of subsection (1) above apply as if references to the appropriate relevant authority were references to the enforcing authority.]
- (2) In subsection (1) above—

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[<sup>F221</sup>“appropriate relevant authority”, in relation to an electrical luminous tube sign, means the authority discharging in the area in which the sign is situated the functions of a relevant authority as defined in section 6 of the [Fire \(Scotland\) Act 2005 \(asp 5\)](#)];

“electrical luminous tube sign” means—

- (a) any luminous tube sign designed to work on a voltage [<sup>F222</sup>of such description as may be specified in regulations made under subsection (1) above], or ancillary equipment so designed; and
- (b) any transformer required to raise the voltage of the sign or equipment; and

<sup>F223</sup>  
...

- (3) The power to make regulations under this section shall be exercisable by statutory instrument subject to annulment in pursuance of a resolution of either House of Parliament.

#### Textual Amendments

- F218** Words in s. 98(1)(a)-(c) substituted (2.8.2005) by [The Fire \(Scotland\) Act 2005 \(Consequential Modifications and Amendments\) Order 2005 \(S.S.I. 2005/383\)](#), art. 1, sch. 1 para. 7(2)(3)(c)
- F219** Words substituted by virtue of [Criminal Procedure \(Scotland\) Act 1975 \(c. 21, SIF 39:1\)](#), s. 289G
- F220** S. 98(1A) 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(4)
- F221** Words in s. 98(2) inserted (2.8.2005) by [The Fire \(Scotland\) Act 2005 \(Consequential Modifications and Amendments\) Order 2005 \(S.S.I. 2005/383\)](#), art. 1, sch. 1 para. 7(10)
- F222** Words substituted by [Fire Safety and Safety of Places of Sport Act 1987 \(c. 27, SIF 81:2\)](#), s. 48
- F223** Words in s. 98(2) repealed (2.8.2005) by [The Fire \(Scotland\) Act 2005 \(Consequential Modifications and Amendments\) Order 2005 \(S.S.I. 2005/383\)](#), art. 1, sch. 2

*Powers of entry, execution of works, etc.*

## 99 Power to enter, execute works and recover expense. **S**

- (1) Where, under any notice served by a local authority under this Part of this Act, anything is required to be done by the owner or occupier of land or premises in relation to the land or premises an authorised officer of the local authority may, on the expiration of any period of time specified in the notice as that in which the thing has to be done, enter the land or premises to see if whatever is required to be done under the notice has been done.
- (2) Where—
  - (a) under any notice served by a local authority under this Part of this Act, anything is required to be done by the owner or occupier of land or premises in relation to the land or premises and the owner, or as the case may be, the occupier fails to do it in accordance with the notice; and
  - (b) there is no express provision in this Act, apart from this section, authorising the local authority to do whatever is required by the notice to be done,any person authorised by the local authority may enter the land or premises and do or cause to be done whatever is required by the notice to be done.

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- (3) A person shall not be entitled to exercise the powers which he may exercise under subsections (1) or (2) above until he has produced his authorisation to do so to the person for the time being in charge of the land or premises.
- (4) Subject to subsection (7) below, a local authority shall be entitled to recover the expense of doing anything in relation to any land or premises under subsection (2) above from the owner or, as the case may be, the occupier of the land or premises but may remit any sum or any part of any sum due to them under this subsection as they think fit.
- (5) Where such expense as is mentioned in subsection (4) above is recoverable under that subsection from more than one person, the local authority may apportion such expense among them.
- (6) Where a local authority claim to recover any expense as is mentioned in subsection (4) above from a person and he proves that he—
- (a) is receiving the rent of the land or premises merely as trustee, tutor, curator, factor or agent for some other person; and
  - (b) has not, and since the date of service on him of the demand for payment has not had, in his hands on behalf of that other person sufficient money to discharge the whole demand of the authority,
- his liability shall be limited to the total amount of money which he has or has had in his hands as aforesaid.
- (7) Subsection (4) above does not apply in relation to any cleaning of common property done under subsection (2) above.
- (8) In this section and in sections 100 to 109 of this Act references to the occupier of land or premises include references to the occupier of common property within the meaning given to those expressions by section 92 of this Act.

## 100 Interest on expenses. **S**

Where under any provision of this Part of this Act a local authority is entitled to recover expenses, they shall also be entitled to interest thereon at such reasonable rate as they may determine from the date on which a demand for the expenses is served until payment but they may remit any sum or any part of any sum due to them as interest as they think fit.

## 101 Offences relating to powers of entry and carrying out of works. **S**

Any person who—

- (a) fails without reasonable excuse to permit—
  - (i) an authorised officer of a local authority who, in pursuance of sections 90(8), 91(1), 92(8) or 99(1) of this Act, demands to do so, to enter any land or premises; or
  - (ii) a person authorised by a local authority under section 87(3), 90(8), 91(1), 92(8) or 99(2) of this Act to enter any land or premises and do or cause anything to be done there who demands to do so or an owner of land, building or other premises or his contractors or workmen who having been authorised under section 88 or 104 or being entitled under section 91(1) of this Act to enter the land, building or other premises

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and execute work there demands or demand to do so, to enter the land, building or other premises and do there whatever is to be done; or

(b) obstructs the entry in pursuance of this Act to any land or premises of, or the doing there in accordance with this Act of anything by, any such authorised officer or other person who has demanded so to enter or so to do that thing,

shall be guilty of an offence and liable, on summary conviction, to a fine not exceeding [F224]level 3 on the standard scale].

#### Textual Amendments

F224 Words substituted by virtue of [Criminal Procedure \(Scotland\) Act 1975 \(c. 21, SIF 39:1\)](#), s. 289G

### 102 Entry warrants. **S**

- (1) If a justice of the peace or sheriff is satisfied by evidence on oath that—
- (a) entry to any land or premises which a person is entitled to enter in pursuance of this Part of this Act has been refused to that person or he has been prevented from doing there anything which he is entitled to do in pursuance of this Part of this Act or such refusal or prevention is apprehended or that the land or premises are unoccupied or that the occupier is temporarily absent or that the case is one of emergency; and
- (b) there is reasonable ground for entry to the land or premises for the purposes for which entry is required
- he may grant a warrant to the person to enter the land or premises specified in the warrant if need be by force and to do whatever is to be done.
- (2) A warrant issued in pursuance of this section shall continue in force for a period of one month beginning with the day on which it was granted or until the purpose for which entry is required has been satisfied, whichever is the shorter.
- (3) A person who has been granted a warrant under this section to enter any unoccupied land or premises or land or premises the occupier of which is temporarily absent shall leave the land or premises as effectively secured against trespassers as he found it or them.

### 103 Execution of owner's works by occupier. **S**

- (1) If, in relation to any land or premises, the owner of the land or premises fails to do anything which he is required to do by notice served under this Part of this Act, the tenant or other occupier of the land or premises may, with the consent of the local authority which served the notice, do whatever the notice requires to be done, and may, subject to subsection (2) below, deduct the expense of doing so (with interest thereon from the date on which the expense was incurred at such reasonable rate as the local authority may determine) from any rent due or to be due by the tenant or occupier to the owner in respect of the land or premises.
- (2) Nothing in subsection (1) above authorises the deduction of any expenses from any rent where the deduction would be at variance with any right or obligation arising apart from that subsection between the owner of the land or premises and the tenant or occupier thereof.



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#### **104 Powers of entry: occupier and owner. S**

If the tenant or other occupier of any land or premises prevents the owner of them from executing any work which he is required to execute in pursuance of any notice served by a local authority under this Part of this Act, the sheriff may, on the application of the owner, authorise the owner and his contractors and workmen to enter the land or premises for the purpose of executing such work.

#### **105 Contents of notices. S**

Except where otherwise expressly provided under this Part of this Act, any notice issued or served by a local authority under this said Part regarding the doing of any thing in relation to land or premises shall, so far as necessary and reasonably practicable, specify—

- (a) details, including the location, of the land or premises;
- (b) the nature of any works which have to be carried out and of any requirements which have to be met; and
- (c) the period within which the notice has to be complied with.

#### **106 Appeals. S**

- (1) A person may, in accordance with subsection (3) below, appeal to the sheriff—
  - (a) against any requirement in any notice served on him under this Part of this Act by a local authority; or
  - (b) in respect of the amount of any expenses or interest claimed from him or the rate at which interest is charged against him under this Part of this Act.
- (2) The owner of any land or premises may, in accordance with subsection (3) below, appeal to the sheriff in respect of any expenses or interest (including the rate at which interest is charged) claimed or deducted under section 103 of this Act.
- (3) An appeal under subsection (1) or (2) above shall be made by way of summary application and shall be lodged within 14 days of—
  - (a) in the case of an appeal under paragraph (a) of subsection (1) above, the date of service of the notice; and
  - (b) in other cases, the date of service of the claim for payment or, in the case of an appeal under subsection (2) above where the expense or interest has been deducted from rent, the date of that deduction.
- (4) The sheriff may, on an appeal under this section—
  - (a) order that the requirement appealed against shall be of no effect or that it shall have effect subject to such modifications as he may specify in his order or confirm it;
  - (b) make such order as to the expenses which are or interest which is the subject of the appeal as appears to him appropriate.
- (5) Any party to an appeal under subsection (1) or (2) above may appeal on a point of law from the sheriff's decision to the Court of Session within 14 days from the date of that decision.
- (6) No appeal shall lie from the opinion of the Court of Session given in pursuance of subsection (5) above.



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## 107 Time for enforcing certain notices. **S**

A notice containing a requirement which may be appealed against under paragraph (a) of section 106(1) of this Act shall not be acted upon by a local authority or any person authorised by a local authority to do anything until the time for appealing under that paragraph has expired or, if an appeal thereunder has been lodged, until it is disposed of or abandoned.

## 108 Recovery of expenses incurred under section 87 by charging order. **S**

(1) Where, under—

- (a) section 87(3) of this Act; or
- (b) section 99(4) thereof (to the extent that it relates to failure to rectify a defect specified in a notice served under section 87(1) thereof)

a local authority are entitled to recover any expenses, they may make in favour of themselves an order providing and declaring that the land, building or premises is thereby charged and burdened with an annuity to pay the amount of the expenses.

(2) Paragraphs 2 to 8 of Schedule [<sup>F225</sup>9 to the Housing (Scotland) Act 1987] shall apply to an order under subsection (1) above as they apply to a charging order under paragraph 1 of that Schedule but with the following modifications, that is to say, in sub-paragraph (b)(i) of paragraph 4 of that Schedule at the end there shall be inserted the words “or any sum secured by virtue of section 5(5) to (8) of the <sup>M39</sup>Land Tenure Reform (Scotland) Act 1974” and in sub-paragraph (b)(ii) of that paragraph, after the word “Act”, where thirdly occurring, there shall be inserted the words “or under the <sup>M40</sup>Building (Scotland) Act 1959.”.

### Textual Amendments

**F225** Words substituted by [Housing \(Scotland\) Act 1987 \(c. 26, SIF 61\)](#), ss. 335, 339(2), [Sch. 23 para. 28\(2\)](#)

### Marginal Citations

**M39** 1974 c. 38.

**M40** 1959 c. 24.

## 109 Replacement of provisions of this Part by Health and Safety Regulations. **S**

Subsection (1) of section 80 of the <sup>M41</sup>Health and Safety at Work etc. Act 1974 (repeal or modification of certain provisions by regulations) shall apply to any provision of this Part of this Act and to any byelaws made under any such provision as it applies to any provision mentioned in subsection (2) of that section.

### Marginal Citations

**M41** 1974 c. 37.

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## PART IX **S**

### MISCELLANEOUS AND GENERAL

#### Byelaws

110

**S**

- (1) The <sup>M42</sup> Local Government (Scotland) Act 1973 shall be amended in accordance with subsections (2) and (3) below.
- (2) In section 202 of that Act (procedure etc. for byelaws)—
  - (a) for subsection (1)(c)(ii) there shall be substituted the following—
    - “(ii) the Civic Government (Scotland) Act 1982 ;”; and
  - (b) in subsection (9), for the words “ Burgh Police (Scotland) Acts 1892 and 1903” there shall be substituted the words “ Civic Government (Scotland) Act 1982”.
- (3) After the said section 202 there shall be inserted the following sections—

#### “202A Review of byelaws.

A local authority shall, not later than 10 years from whichever is the later of the following times—

- (a) the coming into force of a byelaw which they have the power to revoke or amend ;
- (b) the coming into force of this section ;

review that byelaw and do so thereafter at intervals of not more than 10 years.

#### 202B Register of byelaws.

- (2) The register kept under subsection (1) above shall contain—
  - (a) a description of the byelaws, including a description of any offences created and penalties imposed by the byelaws;
  - (b) the date or dates when the byelaws and any amendments to them were confirmed ;
  - (c) the date or dates when the byelaws and any amendments to them came or come into operation ; and
  - (d) the date when the byelaws and any amendments to them were last reviewed under section 202A of this Act.
- (3) The register kept under subsection (1) above shall at such reasonable times and places as the local authority may determine be open to public inspection and any member of the public may make a copy of or extract from anything in it.
- (4) No payment shall be charged or taken by the local authority for any inspection or the making of any copy or extract under subsection (3) above.
- (5) The local authority may, on payment of such reasonable fee as they may determine, issue a certified true copy of an entry in the register ; and any document purporting to be certified by the proper officer of the local authority

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as a true copy of an entry shall be sufficient evidence of the terms of the original entry.

### **202C Revocation of byelaws by resolution.**

- (1) Byelaws may be revoked in accordance with this section by resolution of the local authority having power (apart from this section) to revoke them.
- (2) At least one month before the revocation under this section of any byelaws, notice of the proposed resolution revoking them shall be given in a newspaper circulating in the area to which the byelaws apply.
- (3) The local authority shall not decide the question whether or not to revoke byelaws under this section without taking into account any objections made to them in response to the notice given by them under subsection (2) above.
- (4) Byelaws revoked under this section shall cease to have effect on the date of their revocation or on such later date as may be specified in the resolution revoking them.
- (5) It shall not be competent under this section to revoke, separately from the set of byelaws or byelaw containing it any byelaw or, as the case may be, any part of a byelaw which was inserted into the set of byelaws or, as the case may be, the byelaw by, or otherwise wholly or substantially derives from, a modification made by the confirming authority on the making or any amendment of the set of byelaws or, as the case may be, the byelaw.
- (6) It shall not be competent under this section to revoke any byelaw or any part of any byelaw if the effect of the revocation would be to widen the scope of any other byelaw or, as the case may be, the remaining part of the byelaw.”

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

**C20** The text of ss. 75, 110, 119(5) and 137(7)(8) is in the form in which it was originally enacted: it was not reproduced in Statutes in Force and does not reflect any amendments or repeals which may have been made prior to 1.2.1991.

#### **Marginal Citations**

**M42** 1973 c. 65.

## **111 Cessation of certain byelaws and saving for certain byelaws. S**

- (1) Byelaws—
  - (a) made under an enactment repealed by the <sup>M43</sup>Local Government (Scotland) Act 1947 but saved by section 381 of that Act;
  - (b) made under an enactment repealed by the <sup>M44</sup>Local Government (Scotland) Act 1973 but saved by section 225(1) of that Act;
  - (c) penalising persons allowing dogs in their charge to deposit excrement on footpaths or footways (construed in accordance with section 48(4) of this Act) shall cease to have effect.
- (2) Notwithstanding—
  - (a) subsection (1) above;

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- (b) the repeal by or under this Act of any enactment conferring a power to make byelaws; and
  - (c) the repeal as at the end of 1984 by sections 229(1) and 225(6) of the <sup>M45</sup>Local Government (Scotland) Act 1973 of the Burgh Police (Scotland) Acts 1892 to 1911 and the local statutory provisions to which the said section 225(6) applies,
- any byelaws which—
- (i) are of a kind referred to in subsection (1)(a) or (b) above; or
  - (ii) were made under any power contained in an enactment repealed by this Act or contained in those Acts of 1892 to 1911 or in those local statutory provisions and could be made under this Act
- shall continue in force until the end of 1986 unless earlier revoked and, during the period for which they are continued in force under this section, may be dealt with in all respects as if having effect under the <sup>M46</sup>Local Government (Scotland) Act 1973.

#### Marginal Citations

- M43 1947 c. 43.
- M44 1973 c. 65.
- M45 1973 c. 65.
- M46 1973 c. 65.

### Management rules

#### 112 Making of management rules. **S**

- (1) A local authority may, in accordance with this section, make rules, to be known as “management rules”, to regulate—
  - (a) the use of; and
  - (b) the conduct of persons while on or in
 any land or premises which is owned, occupied or managed by the authority or is otherwise under their control and to which the public have access, whether on payment or not.
 

In this section, “land” does not include land below the high water mark of ordinary spring tides.
- (2) Management rules may be made notwithstanding any power under any enactment to make byelaws, whether exercised or not.
- (3) Notwithstanding section 201(3) of the <sup>M47</sup>Local Government (Scotland) Act 1973 (byelaws for good rule and government not to be made if provision is made by, or is or may be made under any other enactment) byelaws may be made under section 201(1) of that Act as respects any area although provision as respects that area is or may be made by any management rule.
- (4) At least one month before making management rules, a local authority shall—
  - (a) give notice in accordance with subsection (5) below of—
    - (i) their intention to do so;
    - (ii) the general purpose of the proposed rules;

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- (iii) the place where a copy of the proposed rules may be inspected;
  - (iv) the fact that and time within which objections may be made; and
  - (v) the address to which objections may be sent; and
- (b) make copies of the proposed rules available for public inspection without payment at their offices and so far as the authority consider practicable at the land or premises to which the rules are to apply.
- (5) Notice shall be given for the purposes of subsection (4)(a) above by advertisement in a newspaper or newspapers circulating in the area of the local authority.
- (6) Any person may, within one month after notice has first been given by a local authority under subsection (4) above, notify in writing his objection and the ground of his objection to the authority.
- (7) Before making management rules, a local authority shall take into consideration any objections timeously received by them and shall give any objector an opportunity to be heard by them.
- (8) Management rules shall come into force on the date of their execution or on such later date as may be specified in the rules and shall, unless revoked, continue in force for a period of 10 years from that date.
- (9) Management rules shall be executed for the purposes of subsection (8) above by being sealed with the common seal of the local authority making them and signed by the proper officer of that authority.

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

- C21** Ss. 112 - 118 applied (with modifications) (9. 5. 1991) by [Tay Road Bridge Order Confirmation Act 1991 \(c. iv\)](#), [ss. 1,61](#), Sch. Pt. VII  
Ss. 112-118 extended (with modifications) (8.9.2000) by [2000 asp 10, s. 9](#), [Sch. 2 para. 10](#) (with [s. 32](#)); [S.S.I. 2000/312](#), [art. 2](#)

**Marginal Citations**

- M47** [1973 c. 65](#).

**113 Evidence of management rules. S**

The production of a copy of any management rules purporting to be made by a local authority upon which is endorsed a certificate purporting to be signed by the proper officer of the authority stating—

- (a) that the rules were made by the authority;
- (b) that the copy is a true copy of the rules; and
- (c) the date upon which the rules became effective

shall be sufficient evidence of the facts stated in the certificate, and that without proof of the handwriting or official position of any person purporting to sign a certificate in pursuance of this section.

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

- C22** Ss. 112 - 118 applied (with modifications) (9. 5. 1991) by [Tay Road Bridge Order Confirmation Act 1991 \(c. iv\)](#), [ss. 1,61](#), Sch. Pt. VII

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Ss. 112-118 extended (with modifications) (8.9.2000) by 2000 asp 10, s. 9, **Sch. 2 para. 10** (with s. 32); S.S.I. 2000/312, **art. 2**

#### 114 **Publication of management rules.** **S**

Management rules made by a local authority shall, together with a notice stating where copies of the rules may be obtained, be displayed at the entrance to the land or premises to which they apply or elsewhere so that they may be seen by members of the public intending to have access to the land or premises.

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

**C23** Ss. 112 - 118 applied (with modifications) (9. 5. 1991) by [Tay Road Bridge Order Confirmation Act 1991 \(c. iv\)](#), **ss. 1,61**, Sch. Pt. VII  
Ss. 112-118 extended (with modifications) (8.9.2000) by 2000 asp 10, s. 9, **Sch. 2 para. 10** (with s. 32); S.S.I. 2000/312, **art. 2**

#### 115 **Inspection and copies of management rules.** **S**

Copies of management rules shall be open to public inspection without payment and a copy of them shall on application be furnished to any person on payment of such reasonable charge as the local authority may determine.

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

**C24** Ss. 112 - 118 applied (with modifications) (9. 5. 1991) by [Tay Road Bridge Order Confirmation Act 1991 \(c. iv\)](#), **ss. 1,61**, Sch. Pt. VII  
Ss. 112-118 extended (with modifications) (8.9.2000) by 2000 asp 10, s. 9, **Sch. 2 para. 10** (with s. 32); S.S.I. 2000/312, **art. 2**

#### 116 **Expulsion or exclusion for breach of management rules.** **S**

An authorised officer of a local authority which has made any management rule may—

- (a) if he has reasonable grounds for believing that a person has contravened, is contravening or is about to contravene the management rule, expel that person;
- (b) if he has reasonable grounds for believing that a person is about to contravene the management rule, exclude that person,

from the land or premises to which the rule applies.

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

**C25** Ss. 112 - 118 applied (with modifications) (9. 5. 1991) by [Tay Road Bridge Order Confirmation Act 1991 \(c. iv\)](#), **ss. 1,61**, Sch. Pt. VII  
Ss. 112-118 extended (with modifications) (8.9.2000) by 2000 asp 10, s. 9, **Sch. 2 para. 10** (with s. 32); S.S.I. 2000/312, **art. 2**

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## 117 Exclusion orders. **S**

- (1) A local authority may decide that a person who has, in respect of particular land or premises, persistently contravened or attempted to contravene management rules applying to the land or premises and is, in their opinion, likely to contravene them again, shall be made subject to an exclusion order under this section.
- (2) An exclusion order shall take effect upon a person under subsection (1) above on such a date as the local authority may decide which shall be not less than 14 days after their decision under that subsection.
- (3) The local authority shall, in accordance with subsection (7) below, give the person subject to an exclusion order notice of their decision under subsection (1) above which notice shall contain a statement of the reasons for that decision and a statement as to his right under subsection (4) below to make representations.
- (4) The person who has been made subject to an exclusion order shall be entitled to make written or oral representations to the local authority at any time up to the date when the order would, but for subsection (5) below, have taken effect upon him.
- (5) On representations being so made the local authority shall suspend the effect of their decision, consider the representations and decide whether to confirm their decision or to revoke or amend it.
- (6) Section 56(1) of the <sup>M48</sup>Local Government (Scotland) Act 1973 shall not apply to the discharge of a local authority's functions under this section so as to enable them to be discharged by an officer.
- (7) Notice shall be given for the purposes of subsection (3) above by—
  - (a) its being sent by recorded delivery letter to the last known address of the person subject to the order so as to arrive there, in the normal course of post, not later than five days after the decision under subsection (1) above; or
  - (b) personal service of the notice upon that person within that time.
- (8) An exclusion order shall have effect for such period, not exceeding one year, as the local authority making it may determine; and a local authority may at any time reduce the period of, or revoke, an exclusion order made by them.

### Modifications etc. (not altering text)

- C26** Ss. 112 - 118 applied (with modifications) (9. 5. 1991) by [Tay Road Bridge Order Confirmation Act 1991 \(c. iv\)](#), **ss. 1,61**, Sch. Pt. VII  
Ss. 112-118 extended (with modifications) (8.9.2000) by [2000 asp 10, s. 9](#), **Sch. 2 para. 10** (with s. 32); [S.S.I. 2000/312](#), **art. 2**

### Marginal Citations

- M48** 1973 c. 65.

## 118 Offences. **S**

Any person who—

- (a) on being required to leave any land or premises by an authorised officer of the local authority who has reasonable grounds for believing that the person



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has contravened, is contravening or is about to contravene any management rule applying to the land or premises, fails to leave;

- (b) on being informed by an authorised officer who has reasonable grounds for believing that the person is about to contravene any management rule applying to any land or premises that he is excluded from the land or premises, enters or attempts to enter the land or premises; or
- (c) being a person subject to an exclusion order under section 117 of this Act, enters or attempts to enter the land or premises to which the exclusion order relates

shall be guilty of an offence and liable, on summary conviction, to a fine not exceeding £50.

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

- C27** Ss. 112 - 118 applied (with modifications) (9. 5. 1991) by [Tay Road Bridge Order Confirmation Act 1991 \(c. iv\)](#), [ss. 1,61](#), Sch. Pt VII  
Ss. 112-118 extended (with modifications) (8.9.2000) by [2000 asp 10, s. 9](#), [Sch. 2 para. 10](#) (with [s. 32](#)); [S.S.I. 2000/312](#), [art. 2](#)

*Regulation of charitable collections*

**119 Regulation of charitable collections. S**

- (1) Subject to the provisions of this section, any person who organises a public charitable collection in respect of which the [<sup>F226</sup>local authority] for the area in which it is to be held have not given their permission under this section shall be guilty of an offence and liable, on summary conviction, to a fine not exceeding [<sup>F227</sup>level 3 on the standard scale].
- (2) Subsection (1) above does not apply to a collection which takes place in the course of a public meeting or to a collection which takes place by means of an unattended receptacle kept in a fixed position in a public place.
- (3) An application for permission under this section shall be made in writing to the [<sup>F226</sup>local authority] by the organiser of the collection not later than 1 month before the date of the collection, or within such other period as the [<sup>F226</sup>authority] may fix.
- (4) On receipt of an application for permission under this section the [<sup>F226</sup>local authority] shall consult the chief constable for the area which comprises or includes their area and may make such other inquiries as they think fit.
- (5) In granting permission under this section a [<sup>F226</sup>local authority] may, subject to the provisions of any regulations made under subsection (13) below, impose such conditions as they think fit, having regard to the local circumstances in which the collection is to be held, including conditions—
  - (a) specifying the date, time or frequency of the collection;
  - (b) specifying the area within which it is to take place;
  - (c) regulating its conduct;
  - (d) specifying the form of collection boxes, other containers and any other articles used for the purposes of the collection; and
  - (e) as to any other matter relating to the local circumstances of the collection.

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- (6) A [F226]local authority] may refuse to grant permission under this section on any of the following grounds—
- (a) that the date, time, frequency or area of the collection would cause undue public inconvenience;
  - (b) that another collection in respect of which permission under this section has been granted or which is exempt under subsection (11) below is due to take place on the same or a proximate day;
  - (c) that it appears to them that the amount likely to be applied for charitable purposes in consequence of the collection is inadequate having regard to the likely amount of the proceeds of the collection;
  - (d) that the organiser of the collection has been convicted of an offence under section 5 of the <sup>M49</sup>Police, Factories, etc. (Miscellaneous Provisions) Act 1916 or the <sup>M50</sup>House to House Collections Act 1939, or under [F228]this section or] regulations made under subsection (13) of this section, or of any other offence which involves dishonesty or the commission of which would be likely to be facilitated by the grant of permission under this section.
- (7) A [F226]local authority] may—
- (a) if they have reason to believe that there has been a change in the circumstances which prevailed at the time when they granted a permission under this section and they are of the opinion that, in consequence, grounds of refusal under subsection (6) above apply, withdraw the permission or vary any condition imposed by them under subsection (5) above in relation to that permission;
  - (b) if they have reason to believe that there has been, is or is likely to be a breach of any condition imposed by them under subsection (5) above, withdraw a permission under this section.
- (8) Where permission for a collection is refused under subsection (6) above or withdrawn under subsection (7) above, the [F226]local authority] shall give written notice of that fact to the organiser of the collection and such notice shall include a statement of the reasons for such refusal or withdrawal.
- (9) The organiser of a collection may appeal to the sheriff against the decision of a [F226]local authority]—
- (a) under subsection (6) above, refusing permission for a collection;
  - (b) under subsection (7) above, withdrawing such permission;
  - (c) under subsection (5) above, imposing any condition;
  - (d) under the said subsection (7), varying any condition,
- and an appeal under this subsection shall be made by way of summary application and shall be lodged with the sheriff clerk within 14 days of the date of the decision appealed against or, in a case where reasons for a decision have been given, within 14 days from the date of receipt of those reasons.
- (10) In upholding an appeal under subsection (9) above, the sheriff may—
- (a) remit the case with the reasons for his decision to the [F226]local authority] for reconsideration of their decision; or
  - (b) reverse or alter the decision of the [F226]local authority].
- (11) If he is satisfied that a person pursues charitable purposes throughout the whole or a substantial part of Scotland, the Secretary of State may direct that that person shall, subject to such conditions as may be specified in the direction, be exempt from subsection (1) above.

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A direction made under this subsection may be revoked or amended by a further direction so made.

- (12) Notwithstanding the provisions of subsection (11) above, any person who has been exempted from subsection (1) above by a direction of the Secretary of State under subsection (11) above shall, unless the Secretary of State otherwise directs, give to the <sup>F226</sup>local authority]in whose area he intends to organise a public charitable collection 3 months notice of that intention.

A direction under this subsection may be revoked or amended by a further direction so made.

- (13) Subject to the provisions of this section, the Secretary of State may make regulations for the purposes of regulating public charitable collections and, without prejudice to that generality, regulations may include provision about the keeping and publication of accounts, provision for prevention of annoyance to the public and provision making it an offence to fail to comply with any obligation imposed by the regulations which is specified in the regulations as an obligation breach of which is an offence and making any person guilty of such an offence liable on summary conviction to a fine not exceeding £50 or such lesser sum as may be specified in the regulations.

- (14) Regulations under this section shall be made by statutory instrument subject to annulment in pursuance of a resolution of either House of Parliament.

<sup>F229</sup>(15) . . . . .

- (16) In this section “public charitable collection” means a collection from the public of money (whether given by them for consideration or not) for charitable purposes taken either in a public place or by means of visits from place to place and “charitable purposes” means any charitable, benevolent or philanthropic purposes whether or not they are charitable within the meaning of any rule of law.

#### Textual Amendments

**F226** Words in s. 119(1)(3)-(9)(10)(a)(b)(12) substituted (1.4.1996) by 1994 c. 39, s. 180(1), **Sch. 13 para. 129(16)**; S.I. 1996/323, **art. 4(1)(c)**

**F227** Words substituted by virtue of **Criminal Procedure (Scotland) Act 1975 (c. 21, SIF 39:1)**, s. 289G

**F228** Words in s. 119(6)(d) inserted (1.9.1992) by **Charities Act 1992 (c. 41)**, s. 78(1), **Sch. 6 para. 10(a)**; S.I. 1992/1900, art. 2, **Sch. 1**.

**F229** S. 119(15) repealed (5.11.1993) by 1993 c. 50, s. 1(1), **Sch. 1 Pt. X** Group 1

#### Marginal Citations

**M49** 1916 c. 31.

**M50** 1939 c. 44.

*The seashore etc.*

## 120 Savings for Crown and other rights. **S**

Subject to—

- (a) the provisions of the <sup>M51</sup>Coast Protection Act 1949, the <sup>M52</sup>Town and Country Planning (Scotland) Acts 1972 to 1974 and the Dumping at Sea Act 1974;

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- (b) the functions of statutory undertakers and port authorities; and
  - (c) any public rights of way
- a [<sup>F230</sup>local authority] may exercise, with respect to the seashore and adjacent waters, the powers conferred on them by sections 121 and 122 of this Act <sup>F231</sup>....

#### Textual Amendments

**F230** Words in s. 120 substituted (1.4.1996) by 1994 c. 39, s. 180(1), **Sch. 13 para. 129(17)**; S.I. 1996/323, **art. 4(1)(c)**

**F231** Words in s. 120 repealed (9.2.2005) by Land Reform (Scotland) Act 2003 (asp 2), s. 100(3), **sch. 2 para. 8(a)** (with s. 100(2)); S.S.I. 2005/17, art. 2(b)

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

**C28** S. 120 extended by Electricity Act 1989 (c. 29, SIF 44:1), s. 112(1)(3), **Sch. 16 para. 1(1)** (xxxvii), Sch. 17 paras. 33, 35(1)

#### Marginal Citations

**M51** 1949 c. 74.

**M52** 1974 c. 20.

## 121 Control of the seashore, adjacent waters and inland waters. **S**

- (1) Insofar as it is necessary to do so for the purpose of preventing nuisance or danger at, or preserving or improving the amenity of, or conserving the natural beauty of, the seashore, a [<sup>F232</sup>local authority] may, in accordance with this section, make byelaws—
- (a) regulating or prohibiting any activity by way of trade or business with, or in expectation of personal reward from, members of the public on the seashore;
  - (b) regulating the use of vehicles on the seashore;
  - (c) regulating the exercise of sporting and recreational activities on the seashore.
- (2) Byelaws under subsection (1) above may confine the exercise of any activity (including the use of vehicles or kinds of vehicles) specified in the byelaws to a part of the seashore specified in the byelaws and prohibit the exercise in that part of the seashore of any other activity (including such use) so specified.
- (3) A [<sup>F232</sup>local authority] may, in accordance with this section, make byelaws relating to the adjacent waters for the purpose of—
- (a) regulating the speed of pleasure boats in these waters;
  - (b) regulating the use of pleasure boats in these waters so as to prevent their navigation in a dangerous manner or without due care and attention or without reasonable consideration for other persons;
  - (c) requiring the use of effective silencers on pleasure boats in these waters;
  - (d) regulating the activities in these waters of divers, surfers, water skiers and persons engaged in similar recreational pursuits.

<sup>F233</sup>(4) .....

- (5) Byelaws may be made under this section only if—
- (a) the [<sup>F232</sup>local authority] have complied with subsection (6) below and made such other inquiries as may be reasonably necessary to ascertain the existence and identity of each person having—

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- (i) in the case of byelaws under subsection (1) above, a proprietary interest in the seashore;
- (ii) in the case of byelaws under subsection (3) above, a proprietary interest in relation to the adjacent waters;
- <sup>F234</sup>(iii) . . . . .
- (iv) in any case, a proprietary interest in any salmon fishings;  
being a proprietary interest which may be affected by the byelaws;
- [<sup>F235</sup>(b) the local authority have given notice in writing of their proposal to make byelaws to each person having a proprietary interest such as is mentioned, in relation to the byelaws, in paragraph (a) above whose identity has been ascertained as mentioned in the said paragraph (a);]
- (c) the [<sup>F232</sup>local authority] have, in connection with their proposal to make the byelaws, consulted such person or body, if any, as appears to them to be representative of persons who engage in each sporting or recreational activity which may be affected by the byelaws.
- (6) The [local authority] shall give public notice of their proposal to make byelaws under this section <sup>F236</sup> . . . in a newspaper circulating in the area where the byelaws are proposed to have effect.
- (7) If a [<sup>F232</sup>local authority] have complied with subsections (5)(a) and (6) above, <sup>F236</sup> . . . , the [<sup>F232</sup> authority] may <sup>F236</sup> . . . proceed to make the byelaws but shall not proceed earlier than one month after the date of the advertisement under subsection (6) above or, if there were more than one advertisement, the later or last of those dates.
- (8) Byelaws made under this section may provide that persons contravening such provisions of the byelaws as may be therein specified as provisions contravention of which is an offence shall be liable, on summary conviction thereof, to a fine not exceeding £50 or such lesser sum as the byelaws may specify; and any offence against any such provision of such byelaws committed within adjacent waters may be inquired into and dealt with as if it had been committed within the area of the [<sup>F232</sup>local authority] concerned.
- (9) A [<sup>F232</sup>local authority] may on the seashore or in or on adjacent waters place notices or other indications advising the public as to any danger or health hazard connected with the seashore or those waters.
- (10) A [<sup>F232</sup>local authority] may provide staff for life saving and any boats or equipment which are appropriate for life saving.
- (11) A [<sup>F232</sup>local authority], when exercising their powers under this section, shall have regard to the need to protect and maintain any public rights under the guardianship of the Crown to use the foreshore, [<sup>F237</sup>and adjacent waters.]
- (12) In subsection (1) above, the reference to conserving natural beauty shall be construed in accordance with section 78(2) of the <sup>M53</sup> Countryside (Scotland) Act 1967.

#### Textual Amendments

**F232** Words in s. 121(1)(3)(4)(5)(a)(c)(6)-(11) substituted (1.4.1996) by 1994 c. 39, s. 180(1), **Sch. 13 para. 129(18)**; S.I. 1996/323, **art. 4(1)(c)**

**F233** S. 121(4) repealed (9.2.2005) by Land Reform (Scotland) Act 2003 (asp 2), s. 100(3), **sch. 2 para. 8(b)(i)** (with s. 100(2)); S.S.I. 2005/17, art. 2(b)

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- F234** S. 121(5)(a)(iii) repealed (9.2.2005) by Land Reform (Scotland) Act 2003 (asp 2), s. 100(3), **sch. 2 para. 8(b)(ii)** (with s. 100(2)); S.S.I. 2005/17, art. 2(b)
- F235** S. 121(5)(b) substituted (4.1.1995) by 1994 c. 39, s. 141(a) (with s. 128); S.I. 1994/2850, art. 3(a), **Sch. 2**
- F236** Words in s. 121(6)(7) repealed (4.1.1995) by 1994 c. 39, ss. 141(b)(c), 180(2), **Sch. 14; S.I. 1994/2850, art. 3(a) Sch. 2**
- F237** Words in s. 121(11) substituted (9.2.2005) by Land Reform (Scotland) Act 2003 (asp 2), s. 100(3), **sch. 2 para. 8(c)** (with s. 100(2)); S.S.I. 2005/17, art. 2(b)

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

- C29** S. 121 modified (7.1.2003) by The Cairngorms National Park Designation, Transitional and Consequential Provisions (Scotland) Order 2003 (S.S.I. 2003/1), arts. 1, **8(1)**

**Marginal Citations**

- M53** 1967 c. 86.

**122 Power to execute works on seashore. S**

- (1) A [<sup>F238</sup>local authority] may, in accordance with this section, on any part of the seashore or in or on adjacent waters or the bed thereof, execute any works for the purpose of preserving, improving or restoring amenity.
- (2) Works may be carried out under this section only if—
  - (a) the [<sup>F238</sup>authority] have complied with subsection (4) below and made such other inquiries as may be reasonably necessary to ascertain the existence and identity of each person having, in the seashore or in relation to the adjacent waters or in the bed thereof or in any salmon fishings, a proprietorial interest which may be affected by the works; and
  - (b) subject to subsection (5) below—
    - (i) every such person has consented to their being carried out; [<sup>F239</sup>and]
    - (ii) in the case of works by [<sup>F240</sup>any local authority other than the authority for Orkney Islands, Shetland Islands or Western Isles], they have obtained the consent of the river purification board within whose area the works are to be carried out; <sup>F241</sup> . . .
    - (iii) . . . . .
- (3) A [<sup>F238</sup>local authority], when exercising their powers under this section, shall have regard to the need to protect and maintain any public rights under the guardianship of the Crown to use the foreshore and adjacent waters or the bed thereof.
- (4) The [<sup>F238</sup>local authority] shall—
  - (a) give public notice of their proposal to carry out works under this section and of the effect of subsection (2)(b)(i) above in relation to that proposal in a newspaper circulating in the area where the works are proposed to be carried out; and
  - (b) notify the Crown Estate Commissioners of that proposal.
- (5) If a [<sup>F238</sup>local authority] have complied with subsections (2)(a) and (4) above but the consent of a person whose consent to the carrying out of the works is required under subsection (2)(b)(i) above cannot be obtained because his existence or identity is unknown or he cannot be found or if the consent of a person whose consent is required under subsection (2)(b) above cannot be obtained because he fails to respond

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in any way to a request for his consent, the [<sup>F238</sup> authority] may nevertheless proceed to carry out the works but shall not so proceed earlier than one month after the date of the advertisement under subsection (4) above or, if there were more than one advertisement, the later or last of these dates.

#### Textual Amendments

- F238** Words in s. 122(1)(3)-(5) substituted (1.4.1996) by 1994 c. 39, s. 180(1), **Sch. 13 para. 129(19)(a)-(c)**; S.I. 1996/323, **art. 4(1)(c)**
- F239** Word in s. 122(2)(b)(i) inserted (1.4.1996) by 1994 c. 39, s. 180(1), **Sch. 13 para. 129(19)(b)**; S.I. 1996/323, **art. 4(1)(c)**
- F240** Words in s. 122(2)(b)(ii) substituted (1.4.1996) by 1994 c. 39, s. 180(1), **Sch. 13 para. 129(19)(b)(ii)(A)**; S.I. 1996/323, **art. 4(1)(c)**
- F241** S. 122(2)(b)(iii) and the preceding “and” repealed (1.4.1996) by 1994 c. 39, s. 180(1)(2), **Sch. 13 para. 129(19)(b)**, **Sch. 14**; S.I. 1996/323, **art. 4(1)(c)(d)**, **Sch. 2**

### 123 Interpretation of sections 120 to 122. **S**

(1) In sections 120 to 122 of this Act—

“adjacent waters” means—

- (a) waters within a distance from low water mark of ordinary spring tides not exceeding 1,000 metres; or
- (b) where the width of the waters separating the area of one [<sup>F242</sup>local authority] from that of another is less than 2,000 metres, measured by the shortest distance between the respective such low water marks in these areas, the waters within the median line between those respective low water marks;

<sup>F243</sup>  
...

“proprietary interest” means the interest of a proprietor or lessee;

“seashore” means the shore of the sea, that is to say, the land between the low water mark and the high water mark of ordinary spring tides and every cliff, bank, barrier, dune, beach, flat, esplanade or other land above the said high water mark adjacent to the shore, and to which the public have right of access;

“statutory undertakers” has the meaning assigned to it by section 275 of the <sup>M54</sup>Town and Country Planning (Scotland) Act 1972, except that it also includes <sup>F244</sup> . . . <sup>F245</sup> . . . <sup>F244</sup> . . . British Telecommunications.

(2) Sections 120 to 122 of this Act and this section shall apply to Crown land, that is to say, land an interest in which belongs to Her Majesty in right of the Crown or belongs to a government department or is held in trust for Her Majesty for the purposes of a government department and, for the purposes of [<sup>F246</sup>giving notice or, as the case may be,] giving or withholding consent under these sections in relation to such land, the appropriate authority shall be—

- (a) in relation to land an interest in which belongs to Her Majesty in right of the Crown and is within the administration of the Crown Estate Commissioners, these Commissioners;
- (b) in relation to land an interest in which belongs to a government department or is held in trust for Her Majesty for the purposes of a government department, that department;



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and, if any question arises as to the authority which is the appropriate authority in relation to any Crown land, the question shall be determined by the Treasury.

**Textual Amendments**

- F242** S. 123(1): words in definition of “adjacent waters” substituted (1.4.1996) by 1994 c. 39, s. 180(1), **Sch. 13 para. 129(20)(a)**; S.I. 1996/323, **art. 4(1)(c)**
- F243** Words in s. 123 repealed (9.2.2005) by Land Reform (Scotland) Act 2003 (asp 2), s. 100(3), **sch. 2 para. 8(d)** (with s. 100(2)); S.S.I. 2005/17, art. 2(b)
- F244** Words in s. 123(1) repealed (26.3.2001) by S.I. 2001/1149, art. 3(2), **Sch. 2**
- F245** S. 123(1): words in definition of “statutory undertakers” repealed (31.10.1994) by 1994 c. 21, ss. 67, 68(2)(d), **Sch. 9 para. 28, Sch. 11 Pt. II** (with s. 40(7)); S.I. 1994/2553, **art. 2**
- F246** Words in s. 123(2) inserted (4.1.1995) by 1994 c. 39, s. 180(1), **Sch. 13 para. 129(20)(b)**; S.I. 1996/323, **art. 2**

**Marginal Citations**

- M54** 1972 c. 52.

*Refuse collection and disposal*

**F247** **124** ..... **S**

**Textual Amendments**

- F247** S. 124 repealed (with saving) (1.4.1992) by Environmental Protection Act 1990 (c. 43), s. 162(2)(3), **Sch. 16 Pt. II**; S.I. 1992/266, **art.3**.

**F248** **125** ..... **S**

**Textual Amendments**

- F248** S. 125 repealed (1.4.1992) by Environmental Protection Act 1990 (c. 43, SIF 46:4), s. 162(2), **Sch. 16 Pt. II**; S.I. 1992/266, **art.3**

**126** **Repeal of sections 124 and 125, savings and transitional provisions.** **S**

**F249**(1) .....

- (2) The repeal by the <sup>M55</sup>Local Government (Scotland) Act 1973 or by order made under section 135(1) or 137(3) of this Act of section 108 of the <sup>M56</sup>Burgh Police (Scotland) Act 1892 shall not affect a compulsory purchase order made under the said section 108 before the coming into force of that repeal and such compulsory purchase order may be proceeded with and shall have effect as if the said section 108 had not been repealed.

**F249**(3) .....

*Status: Point in time view as at 27/11/2009.*

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#### Textual Amendments

**F249** S. 126(1)(3) repealed (1.4.1992) by [Environmental Protection Act 1990 \(c. 43, SIF 46:4\)](#), s. 162(2), [Sch. 16 Pt. II](#); S.I. 1992/266, [art.3](#)

#### Marginal Citations

**M55** 1973 c. 65.

**M56** 1892 c. 55.

### Miscellaneous

#### 127 Advertising on local authority lands, vehicles etc. **S**

- (1) A local authority may enter into agreement with any person for the display of advertisements on or in—
  - (a) any land, premises or structure vested in or maintained by the authority;
  - (b) any vehicle owned or operated by the authority.
- (2) This section is without prejudice to section 61 of the <sup>M57</sup>Town and Country Planning (Scotland) Act 1972 (control of advertisements) or to any regulation made under that Act by virtue of that section.

#### Marginal Citations

**M57** 1972 c. 52.

#### 128 Control of stray dogs. **S**

<sup>F250</sup>(1) . . . . .

- (2) For the purpose of extending the powers under section 3 of the <sup>M58</sup>Dogs Act 1906 of seizure and detention of stray dogs to those found on land or premises other than [<sup>F251</sup>in roads] or places of public resort, the said section 3 shall be amended as follows—
  - (a) in subsection (1), after the word “resort”, there shall be inserted the words “or on any other land or premises”;
  - (b) after the said subsection (1) there shall be inserted the following subsection—
 

“(1A) The powers under subsection (1) above shall not be exercised in relation to any dog found on any land or premises other than a highway or place of public resort unless the owner of the land or premises or person having the right of possession thereof has consented to such exercise.”.
- (3) Any enactment in any local Act which amends section 3 of the said Act of 1906 or confers powers on a district or islands council in relation to the said section 3 as it applies to the area of the council shall cease to have effect.

*Status: Point in time view as at 27/11/2009.*

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#### Textual Amendments

**F250** S. 128(1) repealed (1.4.1992) by [Environmental Protection Act 1990 \(c. 43, SIF 46:4\)](#), s. 162(2), [Sch. 16 Pt. IX](#); S.I. 1992/266, [art.3](#)

**F251** Words substituted by [Roads \(Scotland\) Act 1984 \(c. 54, SIF 108\)](#), s. 156(1), [Sch. 9 para. 87\(7\)](#)

#### Marginal Citations

**M58** 1906 c. 32.

### [<sup>F252</sup>129 Killing of or injury to dogs worrying livestock. **S**

- (1) In any civil proceedings in respect of the death of or injury to a dog it shall be a defence to prove—
  - (a) that the person alleged to have killed or injured the dog acted for the protection of any livestock and was a person entitled to act for the protection of that livestock; and
  - (b) that within forty-eight hours of the killing or injury notice thereof was given by him or on his behalf at a police station or to a constable.
- (2) For the purposes of this section a person is entitled to act for the protection of any livestock if, and only if—
  - (a) the livestock or the land on which it is belongs to him or to any person under whose express or implied authority he is acting; and
  - (b) the circumstances are not such that the livestock was killed or injured on land on to which it had strayed and either the dog belonged to the occupier or its presence on the land was authorised by the occupier.
- (3) Subject to subsection (4) of this section, a person killing or causing injury to a dog shall be deemed for the purpose of this section to act for the protection of any livestock if, and only if, either—
  - (a) the dog is worrying or is about to worry the livestock and there are not other reasonable means of ending or preventing the worrying; or
  - (b) the dog has been worrying livestock, has not left the vicinity and is not under the control of any person and there are no practicable means of ascertaining to whom it belongs.
- (4) For the purposes of this section the conditions stated in either of the paragraphs of the preceding subsection shall be deemed to have been satisfied if the person alleged to have killed or injured the dog believed that the condition was satisfied and had reasonable ground for that belief.
- (5) For the purposes of this section—
  - (a) an animal belongs to any person if he owns it or has it in his charge;
  - (b) land belongs to any person if he is the occupier thereof;
  - (c) “livestock” means cattle, horses, asses, mules, hinnies, sheep, pigs, goats and poultry, deer not in the wild state and while in captivity, pheasants, partridges and grouse; and
  - (d) “poultry” means the domestic varieties of the following that is to say, fowls, turkeys, geese, ducks, guinea-fowls, pigeons and quails.]

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#### Textual Amendments

**F252** S. 129 (except as it has effect for the purposes of s. 74) repealed by [Animals \(Scotland\) Act 1987 \(c. 9, SIF 4:6\)](#), s. 8(2), [Sch.](#)

### General

#### 130 Offences by bodies corporate. **S**

- (1) Where an offence under this Act or any regulation or byelaw made under this Act which has been committed by a body corporate is proved to have been committed with the consent or connivance of, or to be attributable to any neglect on the part of, a director, manager, secretary or other similar officer of the body corporate, or a person purporting to act in any such capacity, he as well as the body corporate shall be guilty of that offence and shall be liable to be proceeded against and punished accordingly.
- (2) Where the affairs of a body corporate are managed by its members, subsection (1) above applies in relation to the acts and defaults of a member in connection with his functions of management as if he were a director of the body corporate.

#### 131 Application to Crown. **S**

The provisions of [<sup>F253</sup>Parts VI and VIIA] and sections 120 to 123 of this Act apply to the Crown as provided in those provisions but otherwise this Act shall not bind the Crown.

#### Textual Amendments

**F253** Words in s. 131 substituted (19.5.1997) by [1997 c. 30, ss. 6\(5\), 7\(2\)](#)

#### 132 Expenses. **S**

There shall be defrayed out of moneys provided by Parliament any increase attributable to the provisions of this Act in the sums payable out of moneys so provided under any other enactment.

#### 133 Interpretation. **S**

In this Act, except where the context otherwise requires—

[<sup>F254</sup>“enforcing authority” has the meaning given by section 61(9) of the [Fire \(Scotland\) Act 2005 \(asp 5\)](#)]

“local authority” means a [<sup>F255</sup>council constituted under section 2 of the Local Government etc. (Scotland) Act 1994];

“proper officer” shall be construed in accordance with section 235(3) of the <sup>M59</sup>Local Government (Scotland) Act 1973;

“public place” means any place (whether a thoroughfare or not) to which the public have unrestricted access and includes—

- (a) the doorways or entrances of premises abutting on any such place; and

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- (b) any common passage, close, court, stair, garden or yard pertinent to any tenement or group of separately owned houses; and  
[<sup>F256</sup> “public road”, “road” and “roads authority” have the same meanings as in the Roads (Scotland) Act 1984;]  
“vessel” means any kind of water-craft including a hovercraft within the meaning of the <sup>M60</sup>Hovercraft Act 1968 but not including a vessel in Her Majesty’s service.

**Textual Amendments**

- F254** Words in s. 133 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\(5\)](#)  
**F255** S. 133: words in definition of “local authority” substituted (1.4.1996) by [1994 c. 39](#), s. 180(1), [Sch. 13 para. 129\(21\)](#); [S.I. 1996/323](#), art. 4(1)(c)  
**F256** Definition inserted by [Roads \(Scotland\) Act 1984 \(c. 54, SIF 108\)](#), s. 156, [Sch 9 para. 87\(8\)](#)

**Marginal Citations**

- M59** 1973 c. 65.  
**M60** 1968 c. 59.

**134 Postponement of repeal of Burgh Police (Scotland) Acts and local statutory provisions. S**

- [<sup>F257</sup>(1) The repeal of—  
(a) the Burgh Police (Scotland) Acts 1892 to 1911; and  
(b) the local statutory provisions to which subsection (6) of section 225 of the <sup>M61</sup>Local Government (Scotland) Act 1973 applies,  
which by virtue, respectively, of  
(i) subsection (1) of section 229 of the said Act of 1973; and  
(ii) the said subsection (6),  
falls to take place at the end of 1982 shall, subject to subsection (2) below, sections 135 and 137 of this Act and any order thereunder, be postponed until the end of 1984 and in each of the said subsections, at the beginning there shall be inserted the words “Subject to sections 134(2), 135 and 137 of the Civic Government (Scotland) Act 1982 and any order under these sections,” and for the words “1982” there shall be substituted the words “1984”.]

- <sup>F258</sup>(2) .....  
<sup>F258</sup>(3) .....  
<sup>F258</sup>(4) .....

**Textual Amendments**

- F257** [S. 134\(1\)](#) repealed (5.11.1993 so far as it relates to the Burgh Police (Scotland) Acts 1892 to 1911) by [1993 c. 50](#), s. 1(1), [Sch. 1 Pt. X Group2](#).  
**F258** [S. 134 \(2\)-\(4\)](#) repealed (5.11.1993) by [1993 c. 50](#), s. 1(1), [Sch. 1 Pt. X Group2](#).

*Status: Point in time view as at 27/11/2009.*

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#### Marginal Citations

**M61** 1973 c. 65.

<sup>F259</sup> **135** ..... **S**

#### Textual Amendments

**F259** S. 135 repealed (5.11.1993) by 1993 c. 50, s. 1(1), **Sch. 1 Pt. X** Group2.

### 136 Consequential, transitional and supplementary provisions. **S**

- (1) Anything done or treated by virtue of any enactment as having been done under any provision of the Burgh Police (Scotland) Act 1892 to 1911 or under any local statutory provision to which subsection (6) of section 225 of the <sup>M62</sup>Local Government (Scotland) Act 1973 applies which could be done by or under any provision of this Act shall, on the repeal of the provision of the said Burgh Police (Scotland) Acts 1892 to 1911 or of the local statutory provision, be treated as having been done under the provision of this Act.
- (2) The Secretary of State may by order make such incidental, consequential, transitional or supplementary provision as may appear to him to be necessary, proper or expedient for the general or any particular purpose of this Act or in consequence of any of the provisions thereof or for giving full effect thereto and nothing in any other provision of this Act shall be construed as prejudicing the generality of this subsection.
- (3) Without prejudice to section 13 of the <sup>M63</sup>Interpretation Act 1978 (anticipatory exercise of statutory powers) anything which must or may be done under any provision of Part I or II of this Act may, notwithstanding that that provision is not in force, be done for the purposes of giving full effect to that provision at or after the time when it comes into force and the Secretary of State may, in making transitional provision by order under subsection (2) above, modify any provision of Part I or II of this Act for the purposes of this subsection.
- (4) An order under subsection (2) above—
  - (a) may be made at any time, whether before, at the same time as or after the commencement of any provision of this Act to which the provision made by the order relates;
  - (b) shall be made by statutory instrument subject to annulment in pursuance of a resolution of either House of Parliament.

#### Marginal Citations

**M62** 1973 c. 65.

**M63** 1978 c. 30.

### 137 Citation, commencement, repeals and extent. **S**

- (1) This Act may be cited as the Civic Government (Scotland) Act 1982.

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- (2) This Act, other than sections 134 to 136 and subsections (1) above, (3) to (6) and (9) below and this subsection, shall come into force on such date or dates as the Secretary of State may by order made by statutory instrument appoint and different dates may be appointed under this section for different provisions of this Act or for different purposes of the same provision.
- (3) An order under subsection (2) above shall of itself have the effect of repealing—
- (a) any provision of the Burgh Police (Scotland) Acts 1892 to 1911;
  - (b) any local statutory provision (whether or not subject to an order under section 225(6) of the <sup>M64</sup>Local Government (Scotland) Act 1973 (exemption from and postponement of repeal of local statutory provision))
- to the extent that the provision provides for any matter which is also provided for (whether consistently or not) by or under any provision of this Act commenced by that order.
- (4) A repeal under subsection (3) above shall take effect on the date of commencement of the provision of this Act the commencement of which gives rise, under that subsection, to that repeal.
- (5) In this section “local statutory provision” means—
- (a) a provision of a local Act, the Bill for which was promoted by a local authority;
  - (b) a provision of an Act confirming a provisional order made on the application of a local authority;
  - (c) a provision of an order made on such an application which was subject to special parliamentary procedure,
- not being a provision relating to a statutory undertaking or a protective provision for the benefit of any person.
- (6) In subsection (5) above, “statutory undertaking” means any railway, light railway, tramway, road transport, water transport, canal, inland navigation, ferry, dock, harbour, pier or lighthouse undertaking, any market undertaking, or any undertaking for the supply of electricity, gas, hydraulic power, water or district heating.
- (7) The enactments specified in Schedule 3 to this Act shall have effect subject to the amendments there specified.
- (8) The enactments mentioned in Schedule 4 to this Act are hereby repealed to the extent specified in the third column of that Schedule.
- (9) This Act (except section 16, which applies to England and Wales) applies to Scotland only.

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

**C30** Power of appointment conferred by s. 137(2) fully exercised: [S.I. 1983/201](#), 1984/573, 774

**C31** The text of ss. 75, 110, 119(5) and 137(7)(8) is in the form in which it was originally enacted: it was not reproduced in Statutes in Force and does not reflect any amendments or repeals which may have been made prior to 1.2.1991.

**Marginal Citations**

**M64** 1973 c. 65.



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## SCHEDULES

### SCHEDULE 1 S

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

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

**C32** 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 and address 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 and address 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 and private addresses of its directors, partners or other persons responsible for its management; and
    - (iv) the full name and address 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 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.

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- 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>[F260]</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>[F261]</sup>appropriate relevant authority] .
- (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;
  - (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
  - (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

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- 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;
- (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**

- F260** 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\(6\)\(a\)](#)
- F261** Words in Sch. 1 para. 2(1) substituted (2.8.2005) by [The Fire \(Scotland\) Act 2005 \(Consequential Modifications and Amendments\) Order 2005 \(S.S.I. 2005/383\)](#), art. 1, [sch. 1 para. 7\(2\)\(3\)\(d\)](#)

#### *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 21 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

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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.
- (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.

*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 7 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.
- 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 unconditionally;
    - (b) grant or renew the licence subject to conditions; or
    - (c) refuse to grant or renew the licence.
  - (2) [<sup>F262</sup>Subject to sub-paragraph (2A),] the conditions referred to in sub-paragraph (1) (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>F263</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 \(asp 5\)](#).]
- (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>F264</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>F265</sup>appropriate relevant authority] .
- (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

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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

- F262** 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\(6\)\(b\)\(i\)](#)
- F263** 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\(6\)\(b\)\(ii\)](#)
- F264** 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\(6\)\(b\)\(iii\)](#)
- F265** Words in Sch. 1 para. 5(5)(d) substituted (2.8.2005) by [The Fire \(Scotland\) Act 2005 \(Consequential Modifications and Amendments\) Order 2005 \(S.S.I. 2005/383\)](#), art. 1, [sch. 1 para. 7\(2\)\(3\)\(d\)](#)

#### *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 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>F266</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



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- [<sup>F267</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>F268</sup>appropriate relevant authority] ; and
- (b) may [<sup>F269</sup>, subject to sub-paragraph (3A) below,] grant it subject to such conditions as they think fit.
- [<sup>F270</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

- F266** 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)**
- F267** 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)**
- F268** Words in Sch. 1 para. 7(3)(a) substituted (2.8.2005) by [The Fire \(Scotland\) Act 2005 \(Consequential Modifications and Amendments\) Order 2005 \(S.S.I. 2005/383\)](#), art. 1, **sch. 1 para. 7(2)(3)(d)**
- F269** 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)**
- F270** 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—
- (a) for a period of three years from the date when it comes into force; or
  - (b) for such shorter period as the licensing authority may decide at the time when they grant or renew the licence.



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- (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.
- (6) The time referred to in sub-paragraphs (4) and (5) above is—
  - (a) 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
  - (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) where such an appeal has been lodged, the time when it has been abandoned or determined.
- (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 11 to 14 below.

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

C33 Sch. 1 para. 8(3) extended by S.I. 1984/922, art. 5

*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.

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- (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>F271</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>F272</sup>appropriate relevant authority] .
- (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>F273</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>F274</sup>appropriate relevant authority] .
- (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**

**F271** 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\(6\)\(e\)\(i\)](#)

**F272** Words in [Sch. 1 para. 9\(5\)](#) substituted (2.8.2005) by [The Fire \(Scotland\) Act 2005 \(Consequential Modifications and Amendments\) Order 2005 \(S.S.I. 2005/383\)](#), art. 1, [sch. 1 para. 7\(2\)\(3\)\(d\)](#)

**F273** 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\(6\)\(e\)\(ii\)](#)

**F274** Words in [Sch. 1 para. 9\(7\)](#) substituted (2.8.2005) by [The Fire \(Scotland\) Act 2005 \(Consequential Modifications and Amendments\) Order 2005 \(S.S.I. 2005/383\)](#), art. 1, [sch. 1 para. 7\(2\)\(3\)\(d\)](#)

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

**C34** [Sch. 1 para. 9\(1\)\(8\)](#) extended by [S.I. 1984/922](#), [art. 6](#)

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### *Variation and suspension of licences*

- 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>F275</sup>appropriate relevant authority] of the proposed variation; and
  - (b) shall give each of the persons [<sup>F276</sup>required to be notified under] sub-sub-paragraph (a) above an opportunity to be heard by the authority on that day.
- [<sup>F277</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 appropriate relevant authority 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>F278</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>F279</sup>appropriate relevant authority] .
- (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**

**F275** Words in Sch. 1 para. 10(2)(a) substituted (2.8.2005) by [The Fire \(Scotland\) Act 2005 \(Consequential Modifications and Amendments\) Order 2005 \(S.S.I. 2005/383\)](#), art. 1, sch. 1 para. 7(2)(3)(d)

**F276** 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)**

**F277** 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)**

**F278** 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)**

**F279** Words in Sch. 1 para. 10(4) substituted (2.8.2005) by [The Fire \(Scotland\) Act 2005 \(Consequential Modifications and Amendments\) Order 2005 \(S.S.I. 2005/383\)](#), art. 1, sch. 1 para. 7(2)(3)(d)

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- 11 (1) A licensing authority may, whether upon a complaint made to them or not, suspend a licence in accordance with the provisions of this paragraph.
- (2) A licensing authority may order the suspension 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;
  - (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.
- (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 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 made under this paragraph.
- (7) A licensing authority in considering whether or not to suspend a licence may, but before deciding to do so shall, give—
- (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>F280</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>F281</sup>appropriate relevant authority] ,

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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 21 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 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 of a licence, the suspension 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 or, if such an appeal has been lodged, until it has been abandoned or determined in favour of the suspension.
- (10) If, in deciding to order the suspension 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

- F280** 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)**
- F281** Words in Sch. 1 para. 11(7)(d) substituted (2.8.2005) by [The Fire \(Scotland\) Act 2005 \(Consequential Modifications and Amendments\) Order 2005 \(S.S.I. 2005/383\)](#), art. 1, **sch. 1 para. 7(2)(3)(d)**

- 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.

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- (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>[F282]</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>[F283]</sup>appropriate relevant authority] .
- (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 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
- <sup>[F284]</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>[F285]</sup>appropriate relevant authority] .

#### Textual Amendments

- F282** 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\(6\)\(h\)\(i\)](#)
- F283** Words in [Sch. 1 para. 12\(4\)](#) substituted (2.8.2005) by [The Fire \(Scotland\) Act 2005 \(Consequential Modifications and Amendments\) Order 2005 \(S.S.I. 2005/383\)](#), art. 1, [sch. 1 para. 7\(2\)\(3\)\(d\)](#)
- F284** 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\(6\)\(h\)\(ii\)](#)
- F285** Words in [Sch. 1 para. 12\(7\)](#) substituted (2.8.2005) by [The Fire \(Scotland\) Act 2005 \(Consequential Modifications and Amendments\) Order 2005 \(S.S.I. 2005/383\)](#), art. 1, [sch. 1 para. 7\(2\)\(3\)\(d\)](#)

#### *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 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 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 under this Schedule and the revocation or suspension is quashed or recalled the licensing authority shall re-issue the licence.



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- 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—
- (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, 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.

#### *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)**

**C35** 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.

*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—
    - (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 28 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.
- (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>F286</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>F287</sup>appropriate relevant authority];
  - (d) in respect of a decision to consent or to refuse to consent to a material change
    - <sup>F288</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>F289</sup>appropriate relevant authority]; 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.

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### Textual Amendments

- F286** 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\(6\)\(i\)\(i\)](#)
- F287** Words in Sch. 1 para. 17(4)(c) substituted (2.8.2005) by [The Fire \(Scotland\) Act 2005 \(Consequential Modifications and Amendments\) Order 2005 \(S.S.I. 2005/383\)](#), art. 1, [sch. 1 para. 7\(2\)\(3\)\(d\)](#)
- F288** 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\(6\)\(i\)\(ii\)](#)
- F289** Words in Sch. 1 para. 17(4)(d) substituted (2.8.2005) by [The Fire \(Scotland\) Act 2005 \(Consequential Modifications and Amendments\) Order 2005 \(S.S.I. 2005/383\)](#), art. 1, [sch. 1 para. 7\(2\)\(3\)\(d\)](#)

### 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.
- (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—
- erred in law;
  - based their decision on any incorrect material fact;
  - acted contrary to natural justice; or
  - 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.
- (9) On upholding an appeal under this paragraph, the sheriff may—
- remit the case with the reasons for his decision to the licensing authority for reconsideration of their decision; or
  - reverse or modify the decision of the authority,
- and on remitting a case under sub-sub-paragraph (a) above, the sheriff may—
- specify a date by which the reconsideration by the authority must take place;

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- (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 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) above that the suspension be immediate 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.

#### *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.

## SCHEDULE 2 **S**

### CONTROL OF SEX SHOPS

#### *Saving for existing law*

- 1 Nothing in this Schedule—
- (a) shall afford a defence to a charge in respect of any offence at common law or under any enactment other than this Schedule;
  - (b) shall be taken into account in any way—
    - (i) at a trial for such an offence; or
    - (ii) in proceedings for condemnation under Schedule 3 to the <sup>M65</sup>Customs and Excise Management Act 1979 of goods which section 42 of the <sup>M66</sup>Customs Consolidation Act 1876 prohibits to be imported or brought into the United Kingdom as being indecent or obscene; or
  - (c) shall in any way limit the other powers exercisable under any of those Acts.

#### **Marginal Citations**

**M65** 1979 c. 2.

**M66** 1876 c. 36.

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*Meaning of “sex shop” and “sex article”*

- 2 (1) In this Schedule “sex shop” means any premises, vehicle, vessel or stall used for a business which consists to a significant degree of selling, hiring, exchanging, lending, displaying or demonstrating sex articles.
- (2) No premises, vehicle, vessel or stall shall be treated as a sex shop by reason only of its use for the exhibition of moving pictures by whatever means produced.
- (3) In this Schedule “sex article” means—
- (a) anything intended for use in connection with, or for the purpose of stimulating or encouraging—
    - (i) sexual activity; or
    - (ii) acts of force or restraint which are associated with sexual activity;and
  - (b) anything to which sub-paragraph (4) below applies, but does not include any articles which are manufactured for use primarily for the purposes of birth control or which primarily relate to birth control.
- (4) This sub-paragraph applies—
- (a) to any article containing or embodying matter to be read or looked at or anything intended to be used, either alone or as one of a set, for the reproduction or manufacture of any such article; and
  - (b) to any recording of vision or sound,
- which—
- (i) is concerned primarily with the portrayal of, or primarily deals with or relates to, or is intended to stimulate or encourage, sexual activity or acts of force or restraint which are associated with sexual activity; or
  - (ii) is concerned primarily with the portrayal of, or primarily deals with or relates to, genital organs, or urinary or excretory functions.

*Miscellaneous definitions*

- 3 In this Schedule—
- [<sup>F290</sup>“appropriate relevant authority”, in relation to the area of a local authority, means the authority discharging in that area the functions of a relevant authority as defined in section 6 of the [Fire \(Scotland\) Act 2005 \(asp 5\)](#)];
- “chief constable”, in relation to the area of a [<sup>F291</sup>local authority], means the chief constable for the area which includes the area of the council;
- <sup>F292</sup> ...
- “relevant objection or representation” means—
- (a) in paragraphs 1 to 8, an objection or representation which, under paragraph 8 below, the [<sup>F291</sup>local authority] are obliged to or intend to entertain; and
  - (b) in the other paragraphs, an objection or representation which, under the said paragraph 8, they were obliged to or intended to entertain.

**Textual Amendments**

**F290** Words in Sch. 2 para. 3 inserted (2.8.2005) by [The Fire \(Scotland\) Act 2005 \(Consequential Modifications and Amendments\) Order 2005 \(S.S.I. 2005/383\)](#), art. 1, **sch. 1 para. 7(11)**

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- F291** Words in Sch. 2 para. 3 substituted (1.4.1996) by 1994 c. 39, s. 180(1), **Sch. 13 para. 129(22)(a)**; S.I. 1996/323, **art. 4(1)(c)**
- F292** Words in Sch. 2 para. 3 repealed (2.8.2005) by **The Fire (Scotland) Act 2005 (Consequential Modifications and Amendments) Order 2005 (S.S.I. 2005/383)**, art. 1, **sch. 2**

#### *Requirement for licences for sex shops*

- 4 Subject to the provision of this Schedule, no person shall in any area in which this Schedule is in effect use any premises, vehicle, vessel or stall as a sex shop except under and in accordance with the terms of a licence granted under this Schedule by the [<sup>F293</sup>local authority] for the area.

#### **Textual Amendments**

- F293** Words in Sch. 2 para. 4 substituted (1.4.1996) by 1994 c. 39, s. 180(1), **Sch. 13 para. 129(22)(a)**; S.I. 1996/323, **art. 4(1)(c)**

#### *Waivers*

- 5 (1) Any person who—
- (a) uses in any area any premises, vehicle, vessel or stall as a sex shop; or
  - (b) proposes to do so,
- may apply to the [<sup>F294</sup>local authority] for the area for them to waive the requirement of a licence.
- (2) An application under this paragraph may be made either as part of an application for a licence under this Schedule or without any such application.
- (3) An application under this paragraph shall be made in writing and shall contain the particulars specified in paragraph 6(2) to (6) below and such particulars as the [<sup>F294</sup>local authority] may reasonably require in addition.
- (4) The [<sup>F294</sup>local authority] may waive the requirement of a licence in any case where they consider that to require a licence would be unreasonable or inappropriate.
- (5) A waiver may be for such period as the [<sup>F294</sup>local authority] think fit.
- (6) Where the [<sup>F294</sup>local authority] grant a waiver, they shall notify the chief constable and the applicant for the waiver that they have granted the application.
- (7) The [<sup>F294</sup>local authority] may at any time give a person who would require a licence but for a waiver notice that the waiver is to terminate on such date, not less than 28 days from the date on which they gave the notice, as may be specified in the notice.
- (8) The [<sup>F294</sup>local authority] shall give the chief constable a copy of any notice given by them under sub-paragraph (7) above.

#### **Textual Amendments**

- F294** Words in Sch. 2 para. 5(1)(3)-(8) substituted (1.4.1996) by 1994 c. 39, s. 180(1), **Sch. 13 para. 129(22)(a)**; S.I. 1996/323, **art. 4(1)(c)**

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### *Applications for the grant and renewal of licences*

- 6 (1) An application for the grant or renewal of a licence under this Schedule shall be made in writing to the [<sup>F295</sup>local authority].
- (2) An application made by a natural person shall state—
- (a) the full name and address of the applicant;
  - (b) his age; and
  - (c) where the applicant himself is not to be carrying on the day to day management of the sex shop, the full name, address and age of the person who is,
- and shall be signed by the applicant or his agent.
- (3) An application made by or on behalf of a person other than a natural person shall state—
- (a) the full name of the person;
  - (b) the address of its registered or principal office;
  - (c) the full names and private addresses of its directors, partners or other persons responsible for its management; and
  - (d) the full name, private address and age of any person who is to carry on the day to day management of the sex shop
- and shall be executed by the applicant or signed by its agent.
- (4) An application relating to premises shall state the full address of the premises.
- (5) An application relating to a vehicle, vessel or stall shall state where it is to be used as a sex shop.
- (6) Every application shall contain such particulars as the [<sup>F295</sup>local authority] may reasonably require in addition to any particulars required under sub-paragraphs (2) to (5) above.

#### **Textual Amendments**

**F295** Words in Sch. 2 para. 6(1)(6) substituted (1.4.1996) by 1994 c. 39, s. 180(1), **Sch. 13 para. 129(22)(b)**; S.I. 1996/323, **art. 4(1)(c)**

### *Notification of applications*

- 7 (1) An applicant for the grant or renewal of a licence under this Schedule shall give notice of the application.
- (2) Notice shall in all cases be given by publishing an advertisement in a newspaper specified by the [<sup>F296</sup>local authority], being a newspaper circulating in their area and the applicant shall supply a copy of that advertisement to the [<sup>F296</sup>local authority].
- (3) Publication under sub-paragraph (2) above shall be not later than 7 days after the date of the application.
- (4) Where the application is in respect of premises, notice of it shall in addition be displayed for 21 days, beginning with the date of the application, on or near the premises in a place where the notice can conveniently be read by the public.



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- (5) Every notice under this paragraph which relates to premises shall identify the premises.
- (6) Every notice under this paragraph which relates to a vehicle, vessel or stall shall specify where it is to be used as a sex shop.
- (7) Subject to sub-paragraphs (5) and (6) above, a notice under this paragraph shall be in such form as the [F296]local authority] may prescribe.
- (8) An applicant for a licence under this Schedule which is to relate to premises shall, as soon as possible after the expiry of the period of 21 days referred to in sub-paragraph (4) above, submit to the [F296]local authority] a certificate stating that he has complied with sub-paragraphs (4), (5) and (7) above.
- (9) An applicant shall not be treated as having failed to comply with sub-paragraph (4) 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 (8) above shall state the relevant circumstances.
- (10) Where—
- (a) an applicant for a licence under this Schedule—
- (i) fails to submit the certificate required by sub-paragraph (8) above;
- (ii) in the circumstances referred to in sub-paragraph (9) above, has not, in the opinion of the [F296]local authority], taken reasonable steps for the protection or, as the case may require, replacement of the notice;
- or
- (b) the [F296]local authority] is, at any time before they reach a final decision on an application which is in respect of premises, satisfied that the notice was not displayed in accordance with sub-paragraphs (4), (5) and (7) above,
- 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 (4) above.

#### Textual Amendments

**F296** Words in Sch. 2 para. 7(2)(7)(8)(10) substituted (1.4.1996) by 1994 c. 39, s. 180(1), **Sch. 13 para. 129(22)** (a); S.I. 1996/323, **art. 4(1)(c)**

#### *Objections and representations*

- 8 (1) The [F297]local authority] shall, as soon as an application for the grant or renewal of a licence under this Schedule is made to them, send a copy of the application to the chief constable and
- [F298](a) where Part 3 of the [Fire \(Scotland\) Act 2005 \(asp 5\)](#) applies to the premises, vehicle vessel or stall to which the licence relates, to the enforcing authority;
- (b) where Part 3 of that Act does not so apply,] to the [F299]appropriate relevant authority] .



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- (2) Any objection or representation relating to an application for the grant or renewal of a licence under this Schedule shall, subject to sub-paragraph (3) below, be entertained by the [F297local 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 28 days of whichever is the later or, as the case may be, latest of the following dates—
    - (i) the date of submission to them of the application;
    - (ii) the date when public advertisement was first given under paragraph 7(2) above;
    - (iii) the date, if any, specified by the [F297local authority] under paragraph 7(10) above.
- (3) Notwithstanding sub-paragraph (2)(e) above, it shall be competent for a [F297local 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.
- (4) An objection or representation shall be made for the purposes of sub-paragraph (2) above if it is delivered by hand within the time there specified to the [F297local 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.
- (5) Where the [F297local authority] receive notice of a relevant objection or representation they shall, before considering the application, give notice in writing of the general terms of the objection or representation to the applicant but they shall not without the consent of the person making the objection or representation reveal his name or address to the applicant.
- (6) In considering an application for the grant or renewal of a licence under this Schedule, a [F297local 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.
- (7) A [F297local 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 an opportunity to be heard by them.
- (8) A [F297local authority] shall not reach a final decision upon such an application—
  - (a) in relation to which a relevant objection or representation has been made to them, or in relation to which they intend to take into account any result of their inquiries under sub-paragraph (6) above; and
  - (b) in respect of which they have not, under this paragraph, given the applicant and any person who has made such objection or representation an opportunity to be heard,

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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.

#### Textual Amendments

- F297** Words in Sch. 2 para. 8 substituted (1.4.1996) by 1994 c. 39, s. 180(1), **Sch. 13 para. 129(22)(a)**; S.I. 1996/323, **art. 4(1)(c)**
- F298** Words in Sch. 2 para. 8(1) 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(7)(a)**
- F299** Words in Sch. 2 para. 8(1) substituted (2.8.2005) by The Fire (Scotland) Act 2005 (Consequential Modifications and Amendments) Order 2005 (S.S.I. 2005/383), art. 1, sch. 1 para. 7(2)(3)(e)

#### *Disposal of applications for licences*

- 9 (1) Where an application for the grant or renewal of a licence under this Schedule has been made to a [<sup>F300</sup>local authority] they shall, in accordance with this paragraph—
- (a) grant or renew the licence unconditionally;
  - (b) grant or renew the licence subject to conditions; or
  - (c) refuse to grant or renew the licence.
- (2) [<sup>F301</sup>Subject to sub-paragraph (2A)] the conditions referred to in sub-paragraph (1) above shall be such reasonable conditions as the [<sup>F300</sup>local authority] think fit and, without prejudice to that generality, may include conditions regulating—
- (a) the hours of opening and closing of sex shops;
  - (b) displays or advertisements on or in such shops;
  - (c) the visibility of the interior of sex shops to passers by.
- [<sup>F302</sup>(2A) The conditions referred to in sub-paragraph (1) 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).]
- (3) A licence under this Schedule shall not be granted—
- (a) to a person under the age of 18;
  - (b) to a person who is for the time being disqualified under paragraph 13(10) or 19(5) below;
  - (c) to a person other than a natural person if any director of it or partner in it or any other person responsible for its management is disqualified under paragraph 13(10) or 19(5) below;
  - (f) to a person who has been convicted of an offence under paragraphs 19 to 21 below;
  - (e) to a person who is not resident in the United Kingdom or was not so resident throughout the period of six months immediately preceding the date when the application was made;
  - (f) to a body corporate which is not incorporated in the United Kingdom;
  - (g) to a person who has, within the period of 12 months immediately preceding the date when the application was made, been refused by the same [<sup>F300</sup>local authority] the grant or renewal of a licence under this Schedule for the premises, vehicle, vessel or stall in respect of which the application is made, unless the refusal has been reversed on appeal; or

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- (h) to a person other than a natural person if any director of it or partner in it or any other person responsible for its management has, within that period, been refused by the same [<sup>F300</sup>local authority] the grant or renewal of such a licence, unless the refusal has been reversed on appeal.
- (4) But without prejudice to sub-paragraph (3) above, the [<sup>F300</sup>local authority] shall refuse an application for the grant or renewal of a licence if, in their opinion, one or more of the grounds specified in sub-paragraph (5) below apply.
- (5) The grounds mentioned in sub-paragraph (4) above are—
- (a) that the applicant or, where the applicant is a person other than a natural person, any director of it or any partner in it or any person responsible for its management, is unsuitable to hold the licence by reason of having been convicted of an offence or for any other reason;
  - (b) that, if the licence were to be granted or renewed, the business 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) that the number of sex shops in the relevant locality at the time the application is made is equal to or exceeds the number which the [<sup>F300</sup>local authority] consider is appropriate for that locality;
  - (d) that the grant or renewal of the licence would be inappropriate, having regard—
    - (i) to the character of the relevant locality; or
    - (ii) to the use to which any premises in the vicinity are put; or
    - (iii) to the layout, character or condition of the premises, vehicle, vessel or stall in respect of which the application is made.
- (6) Nil may be an appropriate number for the purposes of sub-paragraph (5)(c) above.
- (7) In this paragraph “the relevant locality” means—
- (a) in relation to premises, the locality where they are situated; and
  - (b) in relation to a vehicle, vessel or stall, any locality where it is desired to use it as a sex shop.]

#### Textual Amendments

- F300** Words in Sch. 2 para. 9(1)(2)(3)(g)(h)(4)(5) substituted (1.4.1996) by 1994 c. 39, s. 180(1), **Sch. 13 para. 129(22)(c)**; S.I. 1996/323, **art. 4(1)(c)**
- F301** Words in Sch. 2 para. 9(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(7)(b)(i)**
- F302** Sch. 2 para. 9(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(7)(b)(ii)**

#### *Notification of decisions and reasons*

- 10 (1) The [<sup>F303</sup>local authority] shall, in accordance with sub-paragraph (2) below, notify their decision under paragraph 9(1) above to—
- (a) the applicant;
  - (b) the chief constable;

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- (c) any person who made a relevant objection or representation in relation to the application; and
  - (d) [<sup>F304</sup>where Part 3 of the [Fire \(Scotland\) Act 2005 \(asp 5\)](#) applies to the premises, vehicle, vessel or stall to which the licence relates, the enforcing authority or, where Part 3 of that Act does not so apply,] the [<sup>F305</sup>appropriate relevant authority] .
- (2) Notification shall be made under sub-paragraph (1)(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 (1)(c) above either by so doing or by publishing within that time, in a newspaper circulating in the area of the [<sup>F303</sup>local authority], notice of the decision.
- (3) The [<sup>F303</sup>local authority] shall make out and deliver a licence to every person to whom a licence is granted or whose licence is renewed by the [<sup>F303</sup> authority], and shall, when requested by any such person and on payment of such fee as they may charge under paragraph 18 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 [<sup>F303</sup>authority] shall be sufficient evidence of the terms of that licence.

#### Textual Amendments

- F303** Words in Sch. 2 para. 10 substituted (1.4.1996) by 1994 c. 39, s. 180(1), [Sch. 13 para. 129\(22\)\(d\)](#); S.I. 1996/323, [art. 4\(1\)\(c\)](#)
- F304** Words in Sch. 2 para. 10(1)(d) 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\(7\)\(c\)](#)
- F305** Words in Sch. 2 para. 10(1)(d) substituted (2.8.2005) by [The Fire \(Scotland\) Act 2005 \(Consequential Modifications and Amendments\) Order 2005 \(S.S.I. 2005/383\)](#), art. 1, sch. 1 para. 7(2)(3)(e)

#### *Display of licences in sex shops*

- 11 The holder of a licence under this Schedule shall keep exhibited in a suitable place to be specified in the licence a copy of the licence.

#### *Duration of licences*

- 12 (1) Subject to and in accordance with the provisions of this paragraph, a licence shall come into force on being granted by the [<sup>F306</sup>local 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—
- (a) for a period of one year from the date when it comes into force; or
  - (b) for such shorter period as the [<sup>F306</sup>local authority] may decide at the time when they grant or renew the licence.
- (3) If an application for the renewal of a licence is made before its expiry the existing licence shall continue to have effect until a final decision on the application is taken by the [<sup>F306</sup>local authority].

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- (4) In the event of the death of the holder of a licence granted under this Schedule, the licence shall be deemed to have been granted to his executor and shall, unless previously revoked or surrendered, remain in force until the end of the period of 3 months beginning with the death and shall then expire; but the [F306]local 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.
- (5) Where a relevant objection or representation has been made in relation to an application for the grant of a licence, that licence shall not come into force until—
- the time within which an appeal under paragraph 24 below against the grant of the licence may be made has elapsed; or
  - where such an appeal has been lodged, it has been abandoned or determined in favour of the applicant.
- (6) Notwithstanding that an application for renewal of a licence has been refused by a [F306]local authority], the existing licence shall continue in force until—
- the time within which an appeal under paragraph 24 below against the refusal to renew may be made has elapsed; or
  - where such an appeal has been lodged, it has been abandoned or determined against the applicant or, if determined in favour of the applicant, the time when the licence is renewed.
- (7) This paragraph is subject to paragraphs 13, 15 and 16 below.

#### Textual Amendments

**F306** Words in Sch. 2 para. 12(1)(2)(b)(3)(4)(6) substituted (1.4.1996) by 1994 c. 39, s. 180(1), **Sch. 13 para. 129(2)(e)**; S.I. 1996/323, **art. 4(1)(c)**

#### *Revocation of licences*

- 13 (1) The [F307]local authority] may at any time revoke a licence under this Schedule—
- if, at any time of revocation, it could not, under sub-paragraph (3) of paragraph 9 above, be granted;
  - if, in their opinion, any of the grounds specified in sub-paragraph (5)(a) or (b) of that paragraph apply; or
  - if a condition of the licence has been contravened.
- (2) A [F307]local authority] may revoke a licence under sub-paragraph (1)(c) above in respect of a contravention of a condition of a licence notwithstanding that there has been no conviction in that respect.
- (3) In considering whether to revoke a licence the appropriate authority may make such reasonable inquiries as they think fit and, subject to sub-paragraph (4) below, include the results of their inquiries in the matters to which they have regard in such consideration.
- (4) Where a [F307]local authority] intend to include any of the results of their inquiries under sub-paragraph (3) 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.

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- (5) A [<sup>F307</sup>local authority], in considering whether or not to revoke a licence, may, but before deciding to revoke it shall, give—
- (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) [<sup>F308</sup>where Part 3 of the [Fire \(Scotland\) Act 2005 \(asp 5\)](#) applies to the premises, vehicle, vessel or stall to which the licence relates, the enforcing authority or, where Part 3 of that Act does not so apply,] the [<sup>F309</sup>appropriate relevant authority] ,
- an opportunity to be heard by them.
- (6) The [<sup>F307</sup>local authority] shall have complied with their duty under sub-paragraph (5) 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 21 days before the hearing, notice in writing that the [<sup>F307</sup>authority] propose to hold a hearing, together with written notice of the general terms of the complaint and a note of the grounds upon which the revocation of the licence is to be considered and, where they decide to exercise their power under that sub-paragraph, they shall cause such notices and note to be sent to those persons not later than that time.
- (7) Where a [<sup>F307</sup>local authority] decide to revoke a licence under this Schedule, the revocation shall not, subject to sub-paragraph (8) below, take effect until the expiry of the time within which the holder of the licence may appeal under paragraph 24 below against the revocation or, if such an appeal has been lodged, until it has been abandoned or determined in favour of the revocation.
- (8) If, in deciding to revoke a licence under this Schedule, a [<sup>F307</sup>local authority] determine that the circumstances of the case justify immediate revocation, they may, without prejudice to their other powers under this paragraph, order that the licence shall be revoked immediately.
- (9) A [<sup>F307</sup>local 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 (5)(a), (c) and (d) above in relation to the licence and to any person who, in pursuance of sub-paragraph (5)(b) above, was heard by the [<sup>F307</sup>authority] before they reached that decision.
- (10) Where a licence under this Schedule is revoked, its holder shall be disqualified from holding or obtaining such a licence in the area of the [<sup>F307</sup>local authority] which revoked it for a period of 12 months beginning with the date of revocation unless the revocation has been reversed on appeal.

#### Textual Amendments

**F307** Words in Sch. 2 para. 13(1)(2)(4)-(10) substituted (1.4.1996) by 1994 c. 39, s. 180(1), [Sch. 13 para. 129\(2\)\(f\)](#); [S.I. 1996/323, art. 4\(1\)\(c\)](#)

**F308** Words in Sch. 2 para. 13(5)(d) 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\(7\)\(d\)](#)

**F309** Words in Sch. 2 para. 13(5)(d) substituted (2.8.2005) by [The Fire \(Scotland\) Act 2005 \(Consequential Modifications and Amendments\) Order 2005 \(S.S.I. 2005/383\)](#), art. 1, [sch. 1 para. 7\(2\)\(3\)\(e\)](#)



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### *Notification of changes of circumstances*

- 14 (1) Where there is a material change of circumstances affecting a holder of a licence under this Schedule or the business to which it relates, he shall, in accordance with this paragraph, notify the <sup>F310</sup>local authority] of the change as soon as reasonably practicable after it has taken place.
- (2) The holder of a licence under this Schedule shall not, unless in accordance with a requirement imposed by or in pursuance of any enactment other than this Schedule, 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, vessel or stall without the prior consent of the <sup>F310</sup>local 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 <sup>F310</sup>local authority] may charge under paragraph 18 below.
- (4) A <sup>F310</sup>local 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 <sup>F310</sup>local authority], before deciding whether or not to give their consent under sub-paragraph (2) above, shall consult the chief constable and, in the case of a change in premises, vehicle, vessel or stall,
- <sup>F311</sup>(a) where Part 3 of the [Fire \(Scotland\) Act 2005 \(asp 5\)](#) applies to the premises, vehicle, vessel or stall, the enforcing authority;
- (b) where Part 3 of that Act does not so apply,] the <sup>F312</sup>appropriate relevant authority] .
- (6) Where the <sup>F310</sup>local authority] have given their consent under sub-paragraph (2) above to a change in premises or a vehicle, vessel or stall it shall not be necessary for the holder of the licence relating to those premises or that vehicle, vessel or stall to notify the <sup>F310</sup>local authority] of that change under sub-paragraph (1) above.
- (7) A <sup>F310</sup>local 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, the chief constable and <sup>F313</sup>either the enforcing authority where Part 3 of that Act applies in relation to the premises, vehicle, vessel or stall or, where Part 3 of that Act does not so apply,] the <sup>F314</sup>appropriate relevant authority] .
- (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**

- F310** Words in Sch. 2 para. 14(1)-(7) substituted (1.4.1996) by 1994 c. 39, s. 180(1), [Sch. 13 para. 129\(22\)\(g\)](#); S.I. 1996/323, [art. 4\(1\)\(c\)](#)
- F311** Words in Sch. 2 para. 14(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\(7\)\(e\)\(i\)](#)
- F312** Words in Sch. 2 para. 14(5) substituted (2.8.2005) by [The Fire \(Scotland\) Act 2005 \(Consequential Modifications and Amendments\) Order 2005 \(S.S.I. 2005/383\)](#), art. 1, [sch. 1 para. 7\(2\)\(3\)\(e\)](#)



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**F313** Words in Sch. 2 para. 14(7) 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(7)(e)(ii)

**F314** Words in Sch. 2 para. 14(7) substituted (2.8.2005) by The Fire (Scotland) Act 2005 (Consequential Modifications and Amendments) Order 2005 (S.S.I. 2005/383), art. 1, sch. 1 para. 7(2)(3)(e)

### Variation of licences

- 15 (1) A [<sup>F315</sup>local 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 and such variation shall come into force on such date as they may specify.
- (2) A [<sup>F315</sup>local 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 the [<sup>F316</sup>appropriate relevant authority] of the proposed variation; and
  - (b) shall give each of the persons mentioned in sub-paragraph (a) above an opportunity to be heard by the [<sup>F315</sup>authority] on that day.
- [<sup>F317</sup>(2A) Where the proposed variation is in respect of a licence which relates to any premises, vehicle, vessel or stall to which Part 3 of the [Fire \(Scotland\) Act 2005 \(asp 5\)](#) applies, sub-paragraph (2)(a) above applies as if the reference to the appropriate relevant authority were a reference to the enforcing authority.]
- (3) A [<sup>F315</sup>local 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 [<sup>F315</sup>local authority] when the variation of the licence is to be considered.
- (4) A variation in the terms of a licence shall come into force—
- (a) when the time within which an appeal under paragraph 24 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.
- (5) A [<sup>F315</sup>local 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, the chief constable and [<sup>F318</sup>either the enforcing authority where Part 3 of that Act applies in relation to the premises, vehicle, vessel or stall or, where Part 3 of that Act does not so apply,] the [<sup>F319</sup>appropriate relevant authority] .

### Textual Amendments

**F315** Words in Sch. 2 para. 15(1)(2)(b)(3)(5) substituted (1.4.1996) by 1994 c. 39, s. 180(1), [Sch. 13 para. 129\(22\)\(h\)](#); S.I. 1996/323, [art. 4\(1\)\(c\)](#)

**F316** Words in Sch. 2 para. 15(2)(a) substituted (2.8.2005) by The Fire (Scotland) Act 2005 (Consequential Modifications and Amendments) Order 2005 (S.S.I. 2005/383), art. 1, sch. 1 para. 7(2)(3)(e)

**F317** Sch. 2 para. 15(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\(7\)\(f\)\(i\)](#)

**F318** Words in Sch. 2 para. 15(5) 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\(7\)\(f\)\(ii\)](#)

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**F319** Words in Sch. 2 para. 15(5) substituted (2.8.2005) by [The Fire \(Scotland\) Act 2005 \(Consequential Modifications and Amendments\) Order 2005 \(S.S.I. 2005/383\)](#), art. 1, sch. 1 para. 7(2)(3)(e)

### *Surrender of licence*

- 16 (1) A holder of a licence may at any time surrender the licence to the <sup>F320</sup>local authority] and it shall thereupon cease to have effect.
- (2) A holder of a licence shall deliver the licence to the <sup>F320</sup>local authority]—
- (a) within 7 days after the coming into effect of a decision of a <sup>F320</sup>local authority], under paragraph 13 above, to revoke or, under paragraph 15 above, to vary the terms of the licence or the decision of a court, under paragraph 19(5) below, to revoke it;
  - (b) where the licence relates to a sex shop which he has ceased to use as such, within 7 days of such cessation.
- (3) A <sup>F320</sup>local authority] shall, on revoking or varying the terms of a licence, cause notice in writing to be given to the holder of the licence of his duty to deliver it up under sub-paragraph (2) above.
- (4) Where a licence has been surrendered under this paragraph on its revocation under paragraph 13 or 19(5)(a) of this Schedule and the revocation is quashed or recalled, the <sup>F320</sup>local authority] shall re-issue the licence.

### **Textual Amendments**

**F320** Words in Sch. 2 para. 16 substituted (1.4.1996) by [1994 c. 39, s. 180\(1\)](#), [Sch. 13 para. 129\(22\)\(i\)](#); [S.I. 1996/323, art. 4\(1\)\(c\)](#)

### *Register of Applications*

- 17 (1) A <sup>F321</sup>local authority] shall cause to be kept a register of applications under this Section (in this paragraph referred to as “the register”) and shall, as soon as reasonably practicable after—
- (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 terms of each licence granted by the <sup>F321</sup>local authority];
  - (b) a note of any revocation or variation of the terms 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 authority and any member of the public may make a copy thereof or an extract therefrom.
- (4) A <sup>F321</sup>local authority] may, on payment of such fee as they may charge under paragraph 18 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 <sup>F321</sup> authority] as a true copy of an entry shall be sufficient evidence of the terms of the original entry.

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#### Textual Amendments

**F321** Words in Sch. 2 para. 17(1)(2)(4) substituted (1.4.1996) by 1994 c. 39, s. 180(1), **Sch. 13 para. 129(22)(j)**; S.I. 1996/323, **art. 4(1)(c)**

#### Fees

- 18 (1) A [<sup>F322</sup>local authority] shall, subject to sub-paragraph (2) below—
- (a) in respect of applications made to them for the grant or renewal of a licence under this Schedule;
  - (b) in respect of their consideration of a material change in circumstances under paragraph 14 above and their disposal of the matter;
  - (c) in respect of applications made to them for the variation of a licence under this Schedule;
  - (d) in respect of the issue of certified duplicate licences under paragraph 10(3) above;
  - (e) in respect of the issue under paragraph 17 above of certified true copies;
- charge such reasonable fees as they may, in accordance with sub-paragraph (2) below, determine; and the [<sup>F322</sup>authority] may under this sub-paragraph determine different fees for the different matters specified in this sub-paragraph.
- (2) In determining the amount of the different fees under sub-paragraph (1) above, the [<sup>F322</sup>local authority] shall seek to ensure that from time to time the total amount of fees receivable by the [<sup>F322</sup>authority] is sufficient to meet the expenses of the council in exercising their functions under this Schedule.

#### Textual Amendments

**F322** Words in Sch. 2 para. 18 substituted (1.4.1996) by 1994 c. 39, s. 180(1), **Sch. 13 para. 129(22)(k)**; S.I. 1996/323, **art. 4(1)(c)**

#### Enforcement

- 19 (1) A person who—
- (a) without reasonable excuse uses any premises, vehicle, vessel or stall as a sex shop without having a licence under this Schedule for that use or there being in force a waiver under paragraph 5 above for that use or knowingly causes or permits the use of any premises, vehicle, vessel or stall as a sex shop without there being a licence for that use or there being in force a waiver under paragraph 5 above for that use; or
  - (b) being the holder of a licence for a sex shop, employs in the business of the sex shop any person known to him to be a person to whom under paragraph 9(3) above a licence could not be granted; or
  - (c) being the holder of a licence under this Schedule, without reasonable excuse knowingly contravenes, or without reasonable excuse knowingly permits the contravention of, a term or condition specified in the licence; or
  - (d) being the servant, employee or agent of the holder of a licence under this Schedule, without reasonable excuse knowingly contravenes, or without

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- reasonable excuse knowingly permits the contravention of, a term or condition specified in the licence; or
- (e) being the holder of a licence under this Schedule or the servant, employee or agent of such person, without reasonable excuse knowingly permits any person under the age of 18 to enter the sex shop;
- shall be guilty of an offence.
- (2) Any person who, in connection with an application for the grant or renewal of a licence under this Schedule, makes any statement which he knows to be false or recklessly makes any statement which is false in a material particular shall be guilty of an offence.
- (3) A person guilty of an offence under sub-paragraph (1) or (2) above shall be liable, on summary conviction, to a fine not exceeding [<sup>F323</sup>£20,000].
- (4) A person who, being the holder of a licence under this Schedule, fails without reasonable excuse to comply with—
- (a) paragraph 11 or 16(2) above shall be guilty of an offence and liable, on summary conviction, to a fine not exceeding [<sup>F324</sup>level 3 on the standard scale].
- (b) paragraph 14 above shall be guilty of an offence and liable, on summary conviction, to a fine not exceeding [<sup>F324</sup>level 5 on the standard scale].
- (5) Where a holder of a licence under this Schedule is convicted of an offence under this paragraph or paragraph 20 or 21 below the court by which he is convicted may, in addition to any other penalty which the court may impose, make an order in accordance with one or both of the following paragraphs—
- (a) that the licence shall be revoked;
- (b) that the holder of the licence shall be disqualified from holding such a licence in Scotland for a period not exceeding 5 years.
- (6) A person may appeal against an order under sub-paragraph (5) above in the same manner as against sentence and the court which made the order may, pending the appeal, suspend the effect of the order.
- (7) A person may, at any time after the expiry of the first year of his disqualification under sub-paragraph (5) above, apply to the court which ordered the disqualification to remove it, and, on such application, the court may by order remove the disqualification as from such date as may be specified in the order or refuse the application, and, in either case, may order the applicant to pay the whole or any part of the expenses of such application.
- (8) Where the holder of a licence under this Schedule is convicted of an offence under this paragraph or paragraph 20 or 21 below, an extract of such conviction and sentence (if any) shall, within 6 days after the date of the conviction, be transmitted by the clerk of the court to the [<sup>F325</sup>local authority] which granted the licence.

#### Textual Amendments

**F323** “£20,000” substituted by S.I. 1984/526, art. 9

**F324** Words substituted by virtue of Criminal Procedure (Scotland) Act 1975 (c. 21, SIF 39:1), s. 289G

**F325** Words in Sch. 2 para. 19(8) substituted (1.4.1996) by 1994 c. 39, s. 180(1), Sch. 13 para. 129(22)(I); S.I. 1996/323, art. 4(1)(c)

*Status: Point in time view as at 27/11/2009.*

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### *Rights of entry and inspection*

- 20 (1) Without prejudice to any other provision of this Schedule an authorised officer of the [<sup>F326</sup>local authority]<sup>F327</sup> ... or a constable may, for the purposes specified in sub-paragraph (2) below, at any reasonable time enter and inspect any premises, vehicle, vessel or stall in relation to which a licence under this Schedule is in force or has been applied for.
- (2) The purposes referred to in sub-paragraph (1) above are—
- (a) where a licence is in force—
    - (i) seeing whether the terms of the licence are being complied with and, if they are not, obtaining information in respect of such non-compliance;
    - (ii) obtaining information relevant to the question whether the licence should be renewed;
    - (iii) seeing whether paragraph 11 above is being complied with;
    - (iv) ascertaining whether any person is being employed contrary to paragraph 19(1) above or whether any person under the age of 18 has been permitted to enter the sex shop contrary to that paragraph; or
  - (b) where the grant of a licence has been applied for, obtaining information relevant to the question whether the application should be granted.
- (3) An authorised officer of a [<sup>F326</sup>local authority]<sup>F328</sup> ... shall not be entitled to exercise the powers which he may exercise under sub-paragraph (1) above until he has produced his authorisation to the person for the time being in charge of the premises, vehicle, vessel or stall.
- (4) A constable who is not in uniform shall not be entitled to exercise the powers which he may exercise under sub-paragraph (1) above until he has produced his identification to the person for the time being in charge of the premises, vehicle, vessel or stall.
- (5) Any person in charge of any premises, vehicle, vessel or stall who fails without reasonable excuse to permit a constable or an authorised officer of the [<sup>F326</sup>local authority]<sup>F329</sup> ... who, in pursuance of this paragraph, demands to do so to enter or inspect the premises, vehicle, vessel or stall or obstructs the entry thereto of a constable or such officer in pursuance of this paragraph shall be guilty of an offence and liable, on summary conviction, to a fine not exceeding [<sup>F330</sup>level 3 on the standard scale].

#### **Textual Amendments**

**F326** Words in Sch. 2 para. 20(1)(3)(5) substituted (1.4.1996) by 1994 c. 39, s. 180(1), **Sch. 13 para. 129(22) (1)**; S.I. 1996/323, **art. 4(1)(c)**

**F327** Words in Sch. 2 para. 20(1) repealed (1.10.2006) by **The Fire (Scotland) Act 2005 (Consequential Modifications and Savings) Order 2006 (S.S.I. 2006/475)**, art. 1, **sch. 2**

**F328** Words in Sch. 2 para. 20(3) repealed (1.10.2006) by **The Fire (Scotland) Act 2005 (Consequential Modifications and Savings) Order 2006 (S.S.I. 2006/475)**, art. 1, **sch. 2**

**F329** Words in Sch. 2 para. 20(5) repealed (1.10.2006) by **The Fire (Scotland) Act 2005 (Consequential Modifications and Savings) Order 2006 (S.S.I. 2006/475)**, art. 1, **sch. 2**

**F330** Words substituted by virtue of **Criminal Procedure (Scotland) Act 1975 (c. 21, SIF 39:1)**, s. **289G**

*Status: Point in time view as at 27/11/2009.*

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### *Powers of entry and search*

- 21 (1) If a justice of the peace or sheriff is satisfied by evidence on oath that there is reasonable ground for suspecting that—
- (a) any premises, vehicle, vessel or stall is being used as a sex shop; and
  - (b) no licence or waiver under this Schedule is in force in relation to the sex shop,
- he may grant a warrant authorising any constable to enter and search the premises, vehicle, vessel or stall specified in the warrant.
- (2) A constable may use reasonable force in executing a warrant granted under subparagraph (1) above.
- (3) A constable who is not in uniform shall produce his identification if required to do so by any person in or upon any premises, vehicle, vessel or stall which the constable is about to enter, is entering or has entered under the powers conferred under subparagraph (1) above, and if he has been so required to produce his identification, he shall not be entitled to enter or search the premises, vehicle, vessel or stall or, as the case may be, remain there or continue to search the premises, vehicle, vessel or stall until he has produced it.
- (4) Any person who fails without reasonable excuse to permit a constable, in pursuance of this paragraph, to enter and search any premises, vehicle, vessel or stall or who obstructs the entry thereto or search thereof in pursuance of this paragraph by a constable shall be guilty of an offence and liable, on summary conviction, to a fine not exceeding [<sup>F331</sup>level 3 on the standard scale].

#### **Textual Amendments**

**F331** Words substituted by virtue of [Criminal Procedure \(Scotland\) Act 1975 \(c. 21, SIF 39:1\)](#), **s. 289G**

### *Sending of notice by post*

- 22 When a [<sup>F332</sup>local authority] sends by post, for the purposes of paragraph 10(2), 13(9), 14(7) or 15(5), written notice of [<sup>F332</sup>their] 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.

#### **Textual Amendments**

**F332** Words in Sch. 2 para. 22 substituted (1.4.1996) by [1994 c. 39, s. 180\(1\)](#), **Sch. 13 para. 129(22)(m)**; [S.I. 1996/323, art. 4\(1\)\(c\)](#)

### *Notification of decisions and giving of reasons*

- 23 (1) A [<sup>F333</sup>local authority] shall, within 10 days of being required to do so under subparagraph (2) below, give reasons in writing for arriving at any decision of theirs under this Schedule—
- (a) to grant or renew a licence under this Schedule or to refuse to do so;
  - (b) to revoke a licence under this Schedule or not to revoke it;



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- (c) to consent or to refuse to consent to a material change in any premises, vehicle, vessel or stall;
  - (d) to vary or to refuse to vary the terms of a licence under this Schedule.
- (2) Reasons for a decision referred to in sub-paragraph (1) above shall be given by the [<sup>F333</sup>local authority] on a request being made to the [<sup>F333</sup> authority] by a relevant person within 28 days of the date of the decision.
- (3) Nothing in this paragraph affects the power of the sheriff under paragraph 24 below to require a [<sup>F333</sup>local authority] to give reasons for a decision of the council—
- (a) which is being appealed to the sheriff under that paragraph; and
  - (b) for which reasons have not been given under this paragraph.
- (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 3 above) in relation to the application to which the decision relates;
  - (b) in respect of a decision specified in sub-paragraph (1)(b) to (d) above, the holder of the licence, the chief constable or
    - <sup>F334</sup>(i) where Part 3 of the [Fire \(Scotland\) Act 2005 \(asp 5\)](#) applies to the premises, vehicle, vessel or stall to which the licence relates, the enforcing authority;
    - (ii) where Part 3 of that Act does not so apply,] the [<sup>F335</sup>appropriate relevant authority] ; and
  - (c) in respect of a decision specified in sub-paragraph (1)(b) above, any person who in pursuance of paragraph 13(5)(b) above was heard by the [<sup>F333</sup>authority].

#### Textual Amendments

**F333** Words in Sch. 2 para. 23(1)-(3)(4)(c) substituted (1.4.1996) by 1994 c. 39, s. 180(1), [Sch. 13 para. 129\(2\)\(n\)](#); S.I. 1996/323, [art. 4\(1\)\(c\)](#)

**F334** Words in Sch. 2 para. 23(4)(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\(7\)\(g\)](#)

**F335** Words in Sch. 2 para. 23(4)(b) substituted (2.8.2005) by [The Fire \(Scotland\) Act 2005 \(Consequential Modifications and Amendments\) Order 2005 \(S.S.I. 2005/383\)](#), art. 1, [sch. 1 para. 7\(2\)\(3\)\(e\)](#)

#### Appeals

- 24 (1) Subject to sub-paragraph (2) below, a person who may, under this Schedule, require a [<sup>F336</sup>local authority] to give him reasons for their decision may appeal to the sheriff against that decision.
- (2) A person—
- (a) 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 [<sup>F336</sup>local authority] as have been made available to him;
  - (b) shall not be entitled to appeal under this paragraph if his application for the grant or renewal of a licence under this Schedule has been refused on either of the grounds specified in paragraph 9(5)(c) or (d) above.



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- (3) A [F336local authority] may be a party to an appeal under this paragraph.
- (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 [F336local authority] for which reasons have not been given by the [F336authority] under paragraph 23 above, require the [F336 authority] to give reasons for that decision, and the [F336authority] shall comply with such a requirement.
- (7) The sheriff may uphold an appeal under this paragraph only if he considers that the [F336local 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.
- (9) On upholding an appeal under this paragraph, the sheriff may—
  - (a) remit the case with the reasons for his decision to the [F336local authority] for reconsideration of their decision; or
  - (b) reverse or modify the decision of the [F336authority],and on remitting a case under sub-paragraph (a) above, the sheriff may—
  - (i) specify a date by which the reconsideration by the council 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 revocation under paragraph 13(8) above of a licence the sheriff may, pending his decision on the appeal, postpone the taking effect of that revocation but he shall not so postpone 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 council.
- (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.

#### Textual Amendments

**F336** Words in Sch. 2 para. 24(1)(2)(a)(3)(6)(7)(9)(b) substituted (1.4.1996) by 1994 c. 39, s. 180(1), Sch. 13 para. 129(22)(o); S.I. 1996/323, art. 4(1)(c)

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*Provisions relating to existing premises*

- 25 (1) Without prejudice to any enactment other than this Schedule it shall be lawful for any person who—
- (a) immediately before the date of publication as required by section 45 of this Act was using any premises, vehicle, vessel or stall as a sex shop; and
  - (b) had before the appointed day duly applied to the <sup>F337</sup>[local authority] for a licence for the premises, vehicle, vessel or stall under this Schedule to continue to use the premises, vehicle, vessel or stall as a sex shop until
    - (i) the time within which an appeal under paragraph 24 above against any refusal by the <sup>F337</sup>[local authority] of his application has elapsed; or
    - (ii) where such an appeal has been lodged, it has been abandoned or determined against him.
- (2) In this paragraph “the appointed day”, in relation to any area, means the day specified in the resolution passed under section 45 of this Act as the date upon which this Schedule comes into effect in that area.
- (3) A <sup>F337</sup>[local authority] shall not, before the appointed day, consider any application for the grant of a licence under this Schedule made before the appointed day and shall not grant any such application until they have considered all such applications.

**Textual Amendments**

**F337** Words in Sch. 2 para. 25(1)(3) substituted (1.4.1996) by 1994 c. 39, s. 180(1), **Sch. 13 para. 129(22) (p)**; S.I. 1996/323, **art. 4(1)(c)**

<sup>F338</sup>SCHEDULE 2A **S**

Section 54(2C).

RETENTION AND DISPOSAL OF PROPERTY SEIZED UNDER SECTION 54(2A) OF THIS ACT

**Textual Amendments**

**F338** Sch. 2A inserted (1.12.1998) by 1998 c. 37, s. 24(4), **Sch. 1**; S.I. 1998/2327, **art. 4**

*Application*

- 1 This schedule applies to property seized under section 54(2A) of this Act.

*Retention*

- 2 (1) Subject to sub-paragraph (2) below, property to which this Schedule applies may be retained for a period of twenty-eight days beginning with the day on which it was seized.
- (2) Where proceedings for an offence are instituted within the period specified in sub-paragraph (1) above against any person, the property may be retained for a period beginning on the day on which it was seized and ending on the day when—

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- (a) the prosecutor certifies that the property is not, or is no longer, required as a production in criminal proceedings or for any purpose relating to such proceedings;
- (b) the accused in such proceedings—
  - (i) is sentenced or otherwise dealt with for the offence; or
  - (ii) is acquitted of the offence; or
- (c) the proceedings are expressly abandoned by the prosecutor or are deserted *simpliciter*.

#### *Arrangements for custody of property*

- 3 (1) Subject to the proviso to section 17(3)(b) of the <sup>M67</sup>Police (Scotland) Act 1967 (duty to comply with instructions received from prosecutor), the chief constable shall, in accordance with the provisions of this Schedule, make such arrangements as he considers appropriate for the care, custody, return or disposal of property to which this Schedule applies.
- (2) Any reference in this Schedule to property being in the possession of, delivered by or disposed of by, the chief constable includes a reference to its being in the possession of, delivered by or disposed of by, another person under arrangements made under sub-paragraph (1) above.

#### **Marginal Citations**

**M67** [1967 c.77](#).

#### *Disposal*

- 4 Where the period of retention permitted by paragraph 2 above expires and the chief constable has reason to believe that the person from whom the property was seized is not the owner or the person having right to possession of it, he shall take reasonable steps to ascertain the identity of the owner or of the person with that right and to notify him of the procedures determined under paragraph 5(1) below.
- 5 (1) Subject to sub-paragraphs (5) and (6) below, the owner or any person having right to possession of any property to which this Schedule applies and which, at the expiry of the period of retention permitted by paragraph 2 above, is in the possession of the chief constable may at any time prior to its disposal under paragraph 6 below claim that property in accordance with such procedure as the chief constable may determine.
- (2) Subject to sub-paragraphs (3), (5) and (6) below, where the chief constable considers that the person making a claim in accordance with the procedure determined under sub-paragraph (1) above is the owner of the property or has a right to possession of it, he shall deliver the property to the claimant.
- (3) Subject to sub-paragraph (4) below, the chief constable may impose such conditions connected with the delivery to the claimant of property under sub-paragraph (2) above as he thinks fit and, without prejudice to that generality, such conditions may relate to the payment of such reasonable charges (including any reasonable expenses incurred in relation to the property by or on behalf of him) as he may determine.

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- (4) No condition relating to the payment of any charge shall be imposed by the chief constable on the owner or person having right of possession of the property where he is satisfied that that person did not know, and had no reason to suspect, that the property to which this Schedule applies was likely to be used in a manner which gave rise to its seizure.
- (5) This paragraph does not apply where the period of retention expires in such manner as is mentioned in paragraph 2(2)(b)(i) above and the court by which he was convicted has made a suspended forfeiture order or a restraint order in respect of the property to which this Schedule applies.
- (6) This paragraph shall cease to apply where at any time—
- (a) the property to which this Schedule applies—
    - (i) is seized under any other power available to a constable; or
    - (ii) passes into the possession of the prosecutor; or
  - (b) proceedings for an offence are instituted, where the property to which this Schedule applies is required as a production.
- 6 (1) Where this sub-paragraph applies, the chief constable may—
- (a) sell property to which this Schedule applies; or
  - (b) if in his opinion it would be impracticable to sell such property, dispose of it.
- (2) Sub-paragraph (1) above applies—
- (a) at any time after the expiry of the relevant period where, within that period—
    - (i) no claim has been made under paragraph 5 above; or
    - (ii) any such a claim which has been made has been rejected by the chief constable; and
  - (b) where a claim has been made under paragraph 5 above and not determined within the relevant period, at any time after the rejection of that claim by the chief constable.
- (3) In sub-paragraph (2) above, the “relevant period” means a period of six months beginning with the day on which the period of retention permitted by paragraph 2 above expired.
- (4) Sections 71, 72 and 77(1) of this Act shall apply to a disposal under this paragraph as they apply to a disposal under section 68 of this Act.

### *Appeals*

- 7 (1) A claimant under sub-paragraph (2) of paragraph 5 above may appeal to the sheriff against any decision of the chief constable made under that paragraph as respects the claim.
- (2) The previous owner of any property disposed of for value under paragraph 6 above may appeal to the sheriff against any decision of the chief constable made under section 72 of this Act as applied by sub-paragraph (4) of that paragraph.
- (3) Subsections (3) to (5) of section 76 of this Act shall apply to an appeal under this paragraph as they apply to an appeal under that section.

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### Interpretation

8 In this Schedule—

“chief constable” means the chief constable for the police area in which the property to which this Schedule applies was seized, and includes a constable acting under the direction of the chief constable for the purposes of this Schedule;

[<sup>F339</sup>“restraint order” means a restraint order made under Part 3 of the Proceeds of Crime Act 2002]

“suspended forfeiture order” shall be construed in accordance with section 21(2) of that Act.]

#### Textual Amendments

**F339** Words in Sch. 2A para. 8 substituted (24.3.2003) by Proceeds of Crime Act 2002 (c. 29), s. 458(1), Sch. 11 para. 12(3); S.S.I. 2003/210, art. 2(1)(b)(2), sch. (with art. 7)

## SCHEDULE 3 **S**

Section 137.

### MINOR AND CONSEQUENTIAL AMENDMENTS

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

**C36** The text of Sch. 3 paras. 1–3, 5 and Sch. 4 is in the form in which it was originally enacted: it was not reproduced in Statutes in Force and does not reflect any amendments or repeals which may have been made prior to 1.2.1991.

#### *The Roads and Bridges (Scotland) Act 1878 (c. 51)*

<sup>F340</sup><sub>1</sub> .....

#### Textual Amendments

**F340** Sch. 3 para. 1 repealed (5.11.1993) by 1993 c. 50, s. 1(1), Sch. 1 Pt. X Group 1.

#### *The Firearms Act 1968 (c. 27)*

2 In Schedule 2 to the Firearms Act 1968 (offences to which sections 17(2) and 18 apply in Scotland) for paragraphs 14 and 15 there shall be substituted the following paragraph—

“13A Offences against section 57 of the Civic Government (Scotland) Act 1982.”

#### *The Breeding of Dogs Act 1973 (c. 60)*

3 In the Breeding of Dogs Act 1973—

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(a) after the word “breeding” in each place where it occurs, except in sections <sup>F341</sup> . . . 7, there shall be inserted the words “or rearing” ;

<sup>F342</sup>(b) . . . . .

<sup>F342</sup>(c) . . . . .

**Textual Amendments**  
**F341** Words in Sch. 3 para. 3(a) repealed (30.12.1999) by 1999 c. 11, ss. 10, 11(2), Sch.  
**F342** Sch. 3 para. 3(b)(c) repealed (30.12.1999) by 1999 c. 11, ss. 10, 11(2), Sch.

4 . . . . . <sup>F343</sup>

**Textual Amendments**  
**F343** Sch. 3 para. 4 repealed by Housing (Scotland) Act 1987 (c. 26, SIF 61), ss. 335, 339(3), Sch. 24

*The Public Passenger Vehicles Act 1981 (c. 14)*

5 In section 79 of the Public Passenger Vehicles Act 1981 (vehicles excluded from regulation as private hire vehicles) for the words “ section 270 or 271 of and Schedule 5 to the Burgh Police (Scotland) Act 1892” there shall be substituted the words “ sections 10 to 23 of the Civic Government (Scotland) Act 1982 ”.

SCHEDULE 4 **S**

Section 137.

REPEALS

**Modifications etc. (not altering text)**  
**C37** The text of Sch. 3 paras. 1–3, 5 and Sch. 4 is in the form in which it was originally enacted: it was not reproduced in Statutes in Force and does not reflect any amendments or repeals which may have been made prior to 1.2.1991.

Chapter	Short Title	Extent of Repeal
1824 c. 83.	The Vagrancy Act 1824.	Section 4.
1871 c. 112.	The Prevention of Crime Act 1871.	Sections 7, 13 and 15 and the Schedule.
1894 c. 60.	The Merchant Shipping Act 1894.	Sections 538 to 542.
1903 c. 25.	The Licensing (Scotland) Act 1903.	The whole Act.
1906 c. 32.	The Dogs Act 1906.	In section 3(6), the words “on payment of a fee of one shilling.”

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1916 c. 31.	The Police, Factories, etc. (Miscellaneous Provisions) Act 1916.	In section 3(7), the words “on payment of a fee not exceeding one shilling.”. Section 5(3).
1937 c. 37.	The Children and Young Persons (Scotland) Act 1937.	Section 20.
1939 c. 44.	The House to House Collections Act 1939.	The whole Act.
1940 c. 31.	The War Charities Act 1940.	Section 7(2).
1967 c. 77.	The Police (Scotland) Act 1967.	In Schedule 5, the entries relating to the House to House Collections Act 1939.
1967 c. 86.	The Countryside (Scotland) Act 1967.	Section 56.
1968 c. 54.	The Theatres Act 1968.	In section 57, in subsection (1), the words “section 56” and, in subsection (2), the words “or the said section 56”.
1973 c. 65.	The Local Government (Scotland) Act 1973.	Section 2(4)(c) In Part III of Schedule 24, paragraphs 37 and 38. In Part II of Schedule 27, paragraph 53. In Schedule 29, the entry relating to the House to House Collections Act 1939.
1976 c. 67.	The Sexual Offences (Scotland) Act 1976.	Section 13(3).

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**Status:**

Point in time view as at 27/11/2009.

**Changes to legislation:**

Civic Government (Scotland) Act 1982 is up to date with all changes known to be in force on or before 24 June 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.