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## SCHEDULES

### SCHEDULE 1 **S**

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

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

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

##### *Applications for the grant and renewal of licences*

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

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

#### Textual Amendments

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

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

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

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

- (7) The licensing authority—

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

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

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

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

#### Textual Amendments

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

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### *Objections and representations*

- 3 (1) Any objection or representation relating to an application for the grant or renewal of a licence shall, subject to sub-paragraph (2) below, be entertained by the licensing authority if, but only if, the objection or representation—
- (a) is in writing;
  - (b) specifies the grounds of the objection or, as the case may be, the nature of the representation;
  - (c) specifies the name and address of the person making it;
  - (d) is signed by him or on his behalf;
  - (e) was made to them within [F828] days of whichever is the later or, as the case may be, latest of the following dates—
    - (i) where public notice of the application was given under paragraph 2(7) above, the date when it was first so given;
    - (ii) where the application relates to a licence for an activity which is wholly or mainly to be carried out in premises and the authority have specified a date under paragraph 2(6) above, that date;
    - (iii) in any other case, the date when the application was made to them.
- (2) Notwithstanding sub-paragraph (1)(e) above, it shall be competent for a licensing authority to entertain an objection or representation received by them before they take a final decision upon the application to which it relates if they are satisfied that there is sufficient reason why it was not made in the time required under that sub-paragraph.
- (3) An objection or representation shall be made for the purposes of sub-paragraph (1) above if it is delivered by hand within the time there specified to the licensing authority or posted (by registered or recorded delivery post) so that in the normal course of post it might be expected to be delivered to them within that time.
- (4) The licensing authority shall send a copy of any relevant objection or representation (within the meaning of paragraph 19 below) to the applicant to whose application it relates.

#### **Textual Amendments**

**F8** Word in Sch. 1 para. 3(1)(e) substituted (28.2.2011) by [Criminal Justice and Licensing \(Scotland\) Act 2010 \(asp 13\)](#), **ss. 178(2)(e)**, 206(1); S.S.I. 2010/413, art. 2, sch. (with sch.)

### *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 [F914] days) of the date of the hearing, notify the applicant and each such person of that date.

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- (3) A licensing authority shall not reach a final decision upon such an application—
- (a) in relation to which a relevant objection or representation (within the meaning of paragraph 19 below) has been made to them or in relation to which they intend to take into account any result of their inquiries under sub-paragraph (1) above; and
  - (b) in respect of which they have not, under this paragraph, given the applicant and any person who has made any such objection or representation an opportunity to be heard,
- unless they have given the applicant an opportunity to notify them in writing of his views on such objection or representation or, as the case may be, result within such reasonable period (not being less than 7 days) as they may specify.
- (4) The period referred to in sub-paragraphs (2) and (3) above shall begin with the date when the notification given by the licensing authority for the purpose of sub-paragraph (2) or, as the case may be, (3) is delivered to the person concerned and, when it is sent by post, it shall be treated as being delivered at the time when it might be expected to be delivered in the normal course of post.

#### Textual Amendments

**F9** Word in Sch. 1 para. 4(2) substituted (28.2.2011) by [Criminal Justice and Licensing \(Scotland\) Act 2010 \(asp 13\)](#), ss. [178\(2\)\(f\)](#), [206\(1\)](#); S.S.I. 2010/413, art. 2, sch. (with sch.)

- 5 (1) Where an application for the grant or renewal of a licence has been made to a licensing authority they shall, in accordance with this paragraph—
- (a) grant or renew the licence <sup>F10</sup> ...;
  - <sup>F11</sup>(b) .....
  - (c) refuse to grant or renew the licence.
- <sup>F12</sup>(1A) In granting or renewing a licence under sub-paragraph (1)(a), a licensing authority may (either or both)—
- (a) disapply or vary any standard conditions so far as applicable to the licence,
  - (b) impose conditions in addition to any mandatory or standard conditions to which the licence is subject.]
- (2) [<sup>F13</sup>Subject to sub-paragraph (2A),] the conditions referred to in sub-paragraph [<sup>F14</sup>(1A)(b)] above shall be such reasonable conditions as the licensing authority think fit and, without prejudice to that generality, may include—
- (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>F15</sup>(2A) The conditions referred to in sub-paragraph (1)(b) above shall not relate to any matter in relation to which requirements or prohibitions are or could be imposed by virtue of Part 3 of the [Fire \(Scotland\) Act 2005 \(asp 5\)](#).]
- <sup>F16</sup>(2A) A variation made under sub-paragraph (1A)(a) or condition imposed under sub-paragraph (1A)(b) has no effect so far as it is inconsistent with any mandatory condition to which the licence is subject.]

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- (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>[F17]</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>[F18]</sup>Scottish Fire and Rescue Service] .
- (6) Notification shall be made under sub-paragraph (5)(a), (b) or (d) above within 7 days of the decision to be notified by sending to the person concerned written notice of the decision and under sub-paragraph (5)(c) above either by so doing or by publishing, within that time, in a newspaper circulating in the area of the licensing authority, notice of the decision.
- (7) A licensing authority shall make out and deliver a licence to every person to whom a licence is granted or whose licence is renewed by the authority, and shall when requested by any such person and on payment of such fee as they may charge under paragraph 15 below, make out a duplicate of any licence issued under this sub-paragraph and certify such duplicate to be a true copy of that original licence; and



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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

- F10** Word in Sch. 1 para. 5(1)(a) repealed (28.3.2011) by **Criminal Justice and Licensing (Scotland) Act 2010** (asp 13), **ss. 172(6)(a)(i)**, 206(1); S.S.I. 2011/178, art. 2, sch. (with sch.)
- F11** Sch. 1 para. 5(1)(b) repealed (28.3.2011) by **Criminal Justice and Licensing (Scotland) Act 2010** (asp 13), **ss. 172(6)(a)(ii)**, 206(1); S.S.I. 2011/178, art. 2, sch. (with sch.)
- F12** Sch. 1 para. 5(1A) inserted (28.3.2011) by **Criminal Justice and Licensing (Scotland) Act 2010** (asp 13), **ss. 172(6)(b)**, 206(1); S.S.I. 2011/178, art. 2, sch. (with sch.)
- F13** 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)**
- F14** Word in Sch. 1 para. 5(2) substituted (28.3.2011) by **Criminal Justice and Licensing (Scotland) Act 2010** (asp 13), **ss. 172(6)(c)**, 206(1); S.S.I. 2011/178, art. 2, sch. (with sch.)
- F15** 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)**
- F16** Sch. 1 para. 5(2A) inserted by virtue of (28.3.2011) by **Criminal Justice and Licensing (Scotland) Act 2010** (asp 13), **ss. 172(6)(d)**, 206(1); S.S.I. 2011/178, art. 2, sch. (with sch.)
- F17** 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)**
- F18** Words in Sch. 1 para. 5(5)(d) substituted (1.4.2013) by **Police and Fire Reform (Scotland) Act 2012** (asp 8), s. 129(2), **sch. 7 para. 53(6)**; S.S.I. 2013/51, art. 2 (with transitional provisions and savings in S.S.I. 2013/121)

#### *Restriction on successive applications*

- 6 Where a licensing authority have refused an application for the grant or renewal of a licence they shall not, within one year of their refusal, entertain a subsequent application from the same applicant for the grant of the same kind of licence in respect of the same activity in the same area or, where the activity consists of or includes the use of premises or a vehicle or vessel, in respect of an activity consisting of or including the same use of the same premises, vehicle or vessel 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>F19</sup>, (2A)] and (4) to (6) shall not apply, but in relation to each application for a temporary licence the licensing authority—

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- (a) shall consult the chief constable and, where the application relates to an activity wholly or mainly to be carried on
    - [<sup>F20</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>F21</sup>Scottish Fire and Rescue Service] ;
    - and
  - (b) may [<sup>F22</sup>, subject to sub-paragraph (3A) below,] grant it subject to such conditions as they think fit.
- [<sup>F23</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

- F19** 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)**
- F20** 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)**
- F21** Words in Sch. 1 para. 7(3)(a)(ii) substituted (1.4.2013) by [Police and Fire Reform \(Scotland\) Act 2012 \(asp 8\)](#), s. 129(2), **sch. 7 para. 53(6)**; S.S.I. 2013/51, art. 2 (with transitional provisions and savings in S.S.I. 2013/121)
- F22** 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)**
- F23** 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.



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- (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.
- (3) In the event of the death of a holder of a licence (except in the case of a licence referred to in section 13 of this Act) that licence shall be deemed to have been granted to his executor and shall, unless previously revoked, suspended or surrendered, remain in force until the end of the period of 3 months beginning with the death and shall then expire; but the licensing authority may from time to time, on the application of the executor, extend or further extend that period if they are satisfied that the extension is necessary for the purpose of winding up the deceased's estate and that no other circumstances make it undesirable.
- (4) Where one of the joint holders of a licence ceases to be such, the licence shall continue in force as if held by its remaining holder for a period of six weeks from the date of such cessation but, where the remaining holder has made an application under paragraph 1 above for a licence in respect of the same activity within that period of six weeks, that period shall be extended until the time specified in sub-paragraph (6) below.
- (5) If an application for the renewal of a licence is made before its expiry, the existing licence shall continue to have effect until the time specified in sub-paragraph (6) below.
- [<sup>F24</sup>(5A) On good cause being shown, a licensing authority may, for the purposes of sub-paragraph (5), deem an application for renewal of a licence made up to 28 days after the expiry of the licence to be an application made before the expiry.]
- (6) The time referred to in sub-paragraphs (4) and (5) above is—
  - (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.

*Status: Point in time view as at 01/04/2015.*

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#### **Textual Amendments**

**F24** Sch. 1 para. 8(5A) inserted (28.2.2011) by [Criminal Justice and Licensing \(Scotland\) Act 2010 \(asp 13\)](#), [ss. 178\(2\)\(g\)](#), 206(1); S.S.I. 2010/413, art. 2, sch. (with sch.)

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

**C2** 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.
- (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>F25</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>F26</sup>Scottish Fire and Rescue Service] .
- (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>F27</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>F28</sup>Scottish Fire and Rescue Service] .
- (8) In this paragraph, a “material change” includes any material change in the particulars given or referred to in the application for the grant, or, where the licence has been renewed, the most recent application for the renewal, of the licence.

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#### Textual Amendments

- F25** 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\(6\)\(e\)\(i\)](#)
- F26** Words in Sch. 1 para. 9(5)(b) substituted (1.4.2013) by [Police and Fire Reform \(Scotland\) Act 2012 \(asp 8\)](#), s. 129(2), [sch. 7 para. 53\(6\)](#); S.S.I. 2013/51, art. 2 (with transitional provisions and savings in S.S.I. 2013/121)
- F27** 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\(6\)\(e\)\(ii\)](#)
- F28** Words in Sch. 1 para. 9(7)(b) substituted (1.4.2013) by [Police and Fire Reform \(Scotland\) Act 2012 \(asp 8\)](#), s. 129(2), [sch. 7 para. 53\(6\)](#); S.S.I. 2013/51, art. 2 (with transitional provisions and savings in S.S.I. 2013/121)

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

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

#### *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>F29</sup>Scottish Fire and Rescue Service] of the proposed variation; and
- (b) shall give each of the persons [<sup>F30</sup>required to be notified under] sub-sub-paragraph (a) above an opportunity to be heard by the authority on that day.
- [<sup>F31</sup>2A) Where the premises mentioned in sub-paragraph (2)(a) above are premises to which Part 3 of the [Fire \(Scotland\) Act 2005 \(asp 5\)](#) applies, that sub-paragraph applies as if the reference to the [<sup>F32</sup>Scottish Fire and Rescue Service] were a reference to the enforcing authority]
- (3) A licensing authority shall have complied with sub-paragraph (2)(b) above if they have invited each of the persons whom they must notify under that sub-paragraph to attend and to be heard by the authority when the variation of the licence is to be considered.
- (4) A licensing authority shall, within 7 days of their decision under sub-paragraph (1) above, send written notice of their decision to the holder of the licence and the chief constable and, where the licence relates to an activity wholly or mainly carried on
- [<sup>F33</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>F34</sup>Scottish Fire and Rescue Service] .
- (5) A variation in the terms of a licence shall come into force—
- (a) when the time within which an appeal under paragraph 18 below may be made has elapsed; or

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- (b) where such an appeal has been lodged, when the appeal has been abandoned or determined in favour of the variation.

#### Textual Amendments

- F29** Words in Sch. 1 para. 10(2)(a) substituted (1.4.2013) by [Police and Fire Reform \(Scotland\) Act 2012 \(asp 8\)](#), s. 129(2), [sch. 7 para. 53\(6\)](#); S.S.I. 2013/51, art. 2 (with transitional provisions and savings in S.S.I. 2013/121)
- F30** 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\(6\)\(f\)\(i\)](#)
- F31** 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\(6\)\(f\)\(ii\)](#)
- F32** Words in Sch. 1 para. 10(2A) substituted (1.4.2013) by [Police and Fire Reform \(Scotland\) Act 2012 \(asp 8\)](#), s. 129(2), [sch. 7 para. 53\(6\)](#); S.S.I. 2013/51, art. 2 (with transitional provisions and savings in S.S.I. 2013/121)
- F33** 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\(6\)\(f\)\(iii\)](#)
- F34** Words in Sch. 1 para. 10(4)(b) substituted (1.4.2013) by [Police and Fire Reform \(Scotland\) Act 2012 \(asp 8\)](#), s. 129(2), [sch. 7 para. 53\(6\)](#); S.S.I. 2013/51, art. 2 (with transitional provisions and savings in S.S.I. 2013/121)

- 11 (1) A licensing authority may, whether upon a complaint made to them or not, suspend 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;

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- (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>F35</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>F36</sup>Scottish Fire and Rescue Service] ,an opportunity to be heard by the licensing authority.
- (8) The licensing authority shall have complied with their duty under sub-paragraph (7) above if they have caused to be sent to the persons entitled under that sub-paragraph to an opportunity to be heard, not later than [<sup>F37</sup>14] days before the hearing, notice in writing that the authority propose to hold a hearing, together with a copy of any complaints relevant to the matters to be considered at the hearing and a note of the grounds upon which the suspension 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.

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### Textual Amendments

- F35** 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\(6\)\(g\)](#)
- F36** Words in Sch. 1 para. 11(7)(d) substituted (1.4.2013) by [Police and Fire Reform \(Scotland\) Act 2012 \(asp 8\)](#), s. 129(2), [sch. 7 para. 53\(6\)](#); S.S.I. 2013/51, art. 2 (with transitional provisions and savings in S.S.I. 2013/121)
- F37** Word in Sch. 1 para. 11(8) substituted (28.2.2011) by [Criminal Justice and Licensing \(Scotland\) Act 2010 \(asp 13\)](#), [ss. 178\(2\)\(h\)](#), 206(1); S.S.I. 2010/413, art. 2, sch. (with sch.)

- 12 (1) A licensing authority shall, whether upon a complaint made to them or not, order the suspension under this paragraph of a licence if they are of the opinion that the carrying on of the activity to which the licence relates is causing or is likely to cause a serious threat to public order or public safety.
- (2) In considering whether to suspend a licence under this paragraph, a licensing authority may make such reasonable inquiries as they think fit and include the results of their inquiries in the matters to which they have regard in such consideration.
- (3) Where a licensing authority intend to include any of the results of their inquiries under sub-paragraph (2) above in the matters to which they have regard for the purposes of this paragraph they shall notify the holder of the licence of that intention.
- (4) A licensing authority shall, before reaching a decision on the question whether or not to suspend a licence under this paragraph, consult the chief constable and, where the licence relates to an activity wholly or mainly carried on
- [<sup>F38</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>F39</sup>Scottish Fire and Rescue Service] .
- (5) An order under this paragraph suspending a licence shall have effect from the date on which it is made until whichever is the earlier of the following two dates—
- (a) a date six weeks after the order was made;
- (b) the date of any decision of the leasing 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>F40</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>F41</sup>Scottish Fire and Rescue Service] .

### Textual Amendments

- F38** 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\(6\)\(h\)\(i\)](#)
- F39** Words in Sch. 1 para. 12(4)(b) substituted (1.4.2013) by [Police and Fire Reform \(Scotland\) Act 2012 \(asp 8\)](#), s. 129(2), [sch. 7 para. 53\(6\)](#); S.S.I. 2013/51, art. 2 (with transitional provisions and savings in S.S.I. 2013/121)



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- F40** 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\(6\)\(h\)\(ii\)](#)
- F41** Words in Sch. 1 para. 12(7)(b) substituted (1.4.2013) by [Police and Fire Reform \(Scotland\) Act 2012 \(asp 8\)](#), s. 129(2), [sch. 7 para. 53\(6\)](#); S.S.I. 2013/51, art. 2 (with transitional provisions and savings in S.S.I. 2013/121)

### *Supplementary*

- 13 (1) A holder of a licence may at any time surrender the licence to the licensing authority and it shall thereupon cease to have effect.
- (2) A holder of a licence shall deliver the licence to the licensing authority—
- (a) within 7 days after the coming into effect of a decision of a licensing authority to suspend 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.
- 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;

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

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

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

*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 [F4221] 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

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- (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>F43</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>F44</sup>Scottish Fire and Rescue Service] ;
  - (d) in respect of a decision to consent or to refuse to consent to a material change
    - [<sup>F45</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>F46</sup>Scottish Fire and Rescue Service] ;and
  - (e) in respect of a decision specified in sub-paragraph (1)(d) above, any person who, in pursuance of paragraph 11(7)(b) above, was heard by the licensing authority.

#### Textual Amendments

- F42** Word in Sch. 1 para. 17(2) substituted (28.2.2011) by [Criminal Justice and Licensing \(Scotland\) Act 2010 \(asp 13\)](#), **ss. 178(2)(i)**, 206(1); S.S.I. 2010/413, art. 2, sch. (with sch.)
- F43** 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)**
- F44** Words in Sch. 1 para. 17(4)(c)(ii) substituted (1.4.2013) by [Police and Fire Reform \(Scotland\) Act 2012 \(asp 8\)](#), s. 129(2), **sch. 7 para. 53(6)**; S.S.I. 2013/51, art. 2 (with transitional provisions and savings in S.S.I. 2013/121)
- F45** 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)**
- F46** Words in Sch. 1 para. 17(4)(d)(ii) substituted (1.4.2013) by [Police and Fire Reform \(Scotland\) Act 2012 \(asp 8\)](#), s. 129(2), **sch. 7 para. 53(6)**; S.S.I. 2013/51, art. 2 (with transitional provisions and savings in S.S.I. 2013/121)

#### Appeals

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

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- (4) An appeal under this paragraph shall be made by way of summary application and shall be lodged with the sheriff clerk within 28 days from the date of the decision appealed against.
- (5) On good cause being shown, the sheriff may hear an appeal under this paragraph notwithstanding that it was not lodged within the time mentioned in sub-paragraph (4) above.
- (6) For the purposes of an appeal under this paragraph, the sheriff may, in the case of a decision of a licensing authority for which reasons have not been given by the authority under paragraph 17 above, require the authority to give reasons for that decision, and the authority shall comply with such a requirement.
- (7) The sheriff may uphold an appeal under this paragraph only if he considers that the licensing authority, in arriving at their decision—
  - (a) erred in law;
  - (b) based their decision on any incorrect material fact;
  - (c) acted contrary to natural justice; or
  - (d) exercised their discretion in an unreasonable manner.
- (8) In considering an appeal under this paragraph, the sheriff may hear evidence by or on behalf of any party to the appeal.
- (9) On upholding an appeal under this paragraph, the sheriff may—
  - (a) remit the case with the reasons for his decision to the licensing authority for reconsideration of their decision; or
  - (b) reverse or modify the decision of the authority,
 and on remitting a case under sub-sub-paragraph (a) above, the sheriff may—
  - (i) specify a date by which the reconsideration by the authority must take place;
  - (ii) modify any procedural steps which otherwise would be required in relation to the matter by or under any enactment (including this Act).
- (10) In considering an appeal under this paragraph against suspension 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

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- (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>M1</sup>Customs and Excise Management Act 1979 of goods which section 42 of the <sup>M2</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

**M1** 1979 c. 2.

**M2** 1876 c. 36.

#### *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

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- (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—

F47  
...

[<sup>F48</sup>“authorised civilian employee” means a person—

- (a) [<sup>F49</sup>appointed by the Scottish Police Authority under section 26(1) of the Police and Fire Reform (Scotland) Act 2012 (asp 8); and]
- (b) authorised by the chief constable for the purposes of paragraph 20 of this Schedule;]

[<sup>F50</sup>“chief constable” means the chief constable of the Police Service of Scotland;]

F51  
...

“relevant objection or representation” means—

- (a) in paragraphs 1 to 8, an objection or representation which, under paragraph 8 below, the [<sup>F52</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**

- F47** Words in Sch. 2 para. 3 repealed (1.4.2013) by [Police and Fire Reform \(Scotland\) Act 2012 \(asp 8\)](#), s. 129(2), [sch. 8 Pt. 2](#); S.S.I. 2013/51, [art. 2](#) (with transitional provisions and savings in S.S.I. 2013/121)
- F48** Words in Sch. 2 para. 3 inserted (13.12.2010) by [Criminal Justice and Licensing \(Scotland\) Act 2010 \(asp 13\)](#), [ss. 173\(5\)](#), 206(1); S.S.I. 2010/413, [art. 2](#), [sch.](#)
- F49** Words in Sch. 2 para. 3 substituted (1.4.2013) by [Police and Fire Reform \(Scotland\) Act 2012 \(asp 8\)](#), s. 129(2), [sch. 7 para. 6\(12\)\(a\)](#); S.S.I. 2013/51, [art. 2](#) (with transitional provisions and savings in S.S.I. 2013/121)
- F50** Words in Sch. 2 para. 3 substituted (1.4.2013) by [Police and Fire Reform \(Scotland\) Act 2012 \(asp 8\)](#), s. 129(2), [sch. 7 para. 6\(12\)\(b\)](#); S.S.I. 2013/51, [art. 2](#) (with transitional provisions and savings in S.S.I. 2013/121)
- F51** 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](#)
- F52** 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\(1\)\(c\)](#)

### *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>F53</sup>local authority] for the area.



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### Textual Amendments

**F53** 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 [F54]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 [F54]local authority] may reasonably require in addition.
- (4) The [F54]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 [F54]local authority] think fit.
- (6) Where the [F54]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 [F54]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 [F54]local authority] shall give the chief constable a copy of any notice given by them under sub-paragraph (7) above.

### Textual Amendments

**F54** 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)**

### 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 [F55]local authority].
- (2) An application made by a natural person shall state—
- (a) the full name and address of the applicant;
  - [F56](b) the date and place of birth of the applicant;]
  - (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 [F57]date and place of birth] of the person who is,

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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 [<sup>F58</sup>, private addresses and dates and places of birth] of its directors, partners or other persons responsible for its management; and
  - (d) the full name, private address and [<sup>F59</sup>date and place of birth] 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>F55</sup>local authority] may reasonably require in addition to any particulars required under sub-paragraphs (2) to (5) above.

#### Textual Amendments

- F55** 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)**
- F56** Sch. 2 para. 6(2)(b) substituted (28.2.2011) by Criminal Justice and Licensing (Scotland) Act 2010 (asp 13), **ss. 178(3)(a)**, 206(1); S.S.I. 2010/413, **art. 2, sch.** (with sch.)
- F57** Words in Sch. 2 para. 6(2)(c) substituted (28.2.2011) by Criminal Justice and Licensing (Scotland) Act 2010 (asp 13), **ss. 178(3)(b)**, 206(1); S.S.I. 2010/413, **art. 2, sch.** (with sch.)
- F58** Words in Sch. 2 para. 6(3)(c) substituted (28.2.2011) by Criminal Justice and Licensing (Scotland) Act 2010 (asp 13), **ss. 178(3)(c)(i)**, 206(1); S.S.I. 2010/413, **art. 2, sch.** (with sch.)
- F59** Words in Sch. 2 para. 6(3)(d) substituted (28.2.2011) by Criminal Justice and Licensing (Scotland) Act 2010 (asp 13), **ss. 178(3)(c)(ii)**, 206(1); S.S.I. 2010/413, **art. 2, sch.** (with sch.)

#### *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>F60</sup>local authority], being a newspaper circulating in their area and the applicant shall supply a copy of that advertisement to the [<sup>F60</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.
- (5) Every notice under this paragraph which relates to premises shall identify the premises.

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- (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 [F60]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 [F60]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 [F60]local authority], taken reasonable steps for the protection or, as the case may require, replacement of the notice;
- or
- (b) the [F60]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

**F60** 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 [F61]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
- [F62](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 [F63]Scottish Fire and Rescue Service] .
- (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 [F61]local authority] if, but only if, the objection or representation—

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- (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 [F61local authority] under paragraph 7(10) above.
- (3) Notwithstanding sub-paragraph (2)(e) above, it shall be competent for a [F61local 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 [F61local 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 [F61local 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 [F61local 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 [F61local 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 [F64 and, where they propose to do so, must, within such reasonable period (not being less than 14 days) of the date of the hearing, notify the applicant and each such person of that date] .
- (8) A [F61local 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,
- 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.

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### Textual Amendments

- F61** 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)**
- F62** 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)**
- F63** Words in Sch. 2 para. 8(1)(b) substituted (1.4.2013) by **Police and Fire Reform (Scotland) Act 2012 (asp 8)**, s. 129(2), **sch. 7 para. 53(7)**; S.S.I. 2013/51, art. 2 (with transitional provisions and savings in S.S.I. 2013/121)
- F64** Words in Sch. 2 para. 8(7) inserted (28.2.2011) by **Criminal Justice and Licensing (Scotland) Act 2010 (asp 13)**, **ss. 178(3)(d)**, 206(1); S.S.I. 2010/413, art. 2, sch. (with sch.)

### *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>F65</sup>[local authority] they shall, in accordance with this paragraph—
- grant or renew the licence unconditionally;
  - grant or renew the licence subject to conditions; or
  - refuse to grant or renew the licence.
- (2) <sup>F66</sup>[Subject to sub-paragraph (2A)] the conditions referred to in sub-paragraph (1) above shall be such reasonable conditions as the <sup>F65</sup>[local authority] think fit and, without prejudice to that generality, may include conditions regulating—
- the hours of opening and closing of sex shops;
  - displays or advertisements on or in such shops;
  - the visibility of the interior of sex shops to passers by.
- <sup>F67</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—
- to a person under the age of 18;
  - to a person who is for the time being disqualified under paragraph 13(10) or 19(5) below;
  - 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;
  - to a person who has been convicted of an offence under paragraphs 19 to 21 below;
  - to a person who is not resident in <sup>F68</sup>[a member state of the European Union] or was not so resident throughout the period of six months immediately preceding the date when the application was made;
  - to a body corporate which is not incorporated in <sup>F68</sup>[a member state of the European Union] ;
  - 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>F65</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>F65</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>F65</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>F65</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

- F65** 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)**
- F66** 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)**
- F67** 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)**
- F68** Words in Sch. 2 para. 9(3)(e)(f) substituted (16.8.2010 for specified purposes, 28.2.2011 in so far as not already in force) by **Criminal Justice and Licensing (Scotland) Act 2010 (asp 13)**, **ss. 178(3)(e)**, 206(1); S.S.I. 2010/297, art. 2; S.S.I. 2010/413, art. 2, **sch. (with sch.)**

#### Notification of decisions and reasons

- 10 (1) The [<sup>F69</sup>local authority] shall, in accordance with sub-paragraph (2) below, notify their decision under paragraph 9(1) above to—



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- (a) the applicant;
  - (b) the chief constable;
  - (c) any person who made a relevant objection or representation in relation to the application; and
  - (d) [<sup>F70</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>F71</sup>Scottish Fire and Rescue Service] .
- (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>F69</sup>local authority], notice of the decision.
- (3) The [<sup>F69</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>F69</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>F69</sup>authority] shall be sufficient evidence of the terms of that licence.

#### Textual Amendments

- F69** Words in Sch. 2 para. 10 substituted (1.4.1996) by 1994 c. 39, s. 180(1), [Sch. 13 para. 129\(2\)\(d\)](#); S.I. 1996/323, [art. 4\(1\)\(c\)](#)
- F70** 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\(7\)\(c\)](#)
- F71** Words in Sch. 2 para. 10(1)(d) substituted (1.4.2013) by [Police and Fire Reform \(Scotland\) Act 2012 \(asp 8\)](#), s. 129(2), [sch. 7 para. 53\(7\)](#); S.S.I. 2013/51, art. 2 (with transitional provisions and savings in S.S.I. 2013/121)

#### *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>F72</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>F72</sup>local authority] may decide at the time when they grant or renew the licence.

*Status: Point in time view as at 01/04/2015.*

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- (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>F72</sup>local authority].
- [<sup>F73</sup>(3A) On good cause being shown, a local authority may, for the purposes of sub-paragraph (3), deem an application for renewal of a licence made up to 28 days after the expiry of the licence to be an application made before the expiry.]
- (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 [<sup>F72</sup>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—
- (a) the time within which an appeal under paragraph 24 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.
- (6) Notwithstanding that an application for renewal of a licence has been refused by a [<sup>F72</sup>local authority], the existing licence shall continue in force until—
- (a) the time within which an appeal under paragraph 24 below against the refusal to renew may be made has elapsed; or
  - (b) 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

**F72** 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(22)(e)**; S.I. 1996/323, **art. 4(1)(c)**

**F73** Sch. 2 para. 12(3A) inserted (28.2.2011) by Criminal Justice and Licensing (Scotland) Act 2010 (asp 13), **ss. 178(3)(f), 206(1)**; S.S.I. 2010/413, **art. 2, sch.** (with sch.)

#### Revocation of licences

- 13 (1) The [<sup>F74</sup>local authority] may at any time revoke a licence under this Schedule—
- (a) if, at any time of revocation, it could not, under sub-paragraph (3) of paragraph 9 above, be granted;
  - (b) if, in their opinion, any of the grounds specified in sub-paragraph (5)(a) or (b) of that paragraph apply; or
  - (c) if a condition of the licence has been contravened.

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- (2) A [F74]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 [F74]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.
- (5) A [F74]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) [F75]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 [F76]Scottish Fire and Rescue Service] ,  
an opportunity to be heard by them.
- (6) The [F74]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 [F77]14] days before the hearing, notice in writing that the [F74]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 [F74]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 [F74]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 [F74]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 [F74]authority] before they reached that decision.

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- (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 [F74local 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

- F74** 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)**
- F75** 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)**
- F76** Words in Sch. 2 para. 13(5)(d) substituted (1.4.2013) by Police and Fire Reform (Scotland) Act 2012 (asp 8), s. 129(2), **sch. 7 para. 53(7)**; S.S.I. 2013/51, art. 2 (with transitional provisions and savings in S.S.I. 2013/121)
- F77** Word in Sch. 2 para. 13(6) substituted (28.2.2011) by Criminal Justice and Licensing (Scotland) Act 2010 (asp 13), **ss. 178(3)(g)**, 206(1); S.S.I. 2010/413, art. 2, **sch.** (with **sch.**)

#### *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 [F78local 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 [F78local 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 [F78local authority] may charge under paragraph 18 below.
- (4) A [F78local 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 [F78local 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,
- [F79(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 [F80Scottish Fire and Rescue Service] .
- (6) Where the [F78local 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 [F78local authority] of that change under sub-paragraph (1) above.

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- (7) A [<sup>F78</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>F81</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>F82</sup>Scottish Fire and Rescue Service] .
- (8) In this paragraph, a “material change” includes any material change in the particulars given or referred to in the application for the grant, or, where the licence has been renewed, the most recent application for the renewal, of the licence.

#### Textual Amendments

- F78** 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)**
- F79** 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)**
- F80** Words in Sch. 2 para. 14(5)(b) substituted (1.4.2013) by Police and Fire Reform (Scotland) Act 2012 (asp 8), s. 129(2), **sch. 7 para. 53(7)**; S.S.I. 2013/51, art. 2 (with transitional provisions and savings in S.S.I. 2013/121)
- F81** 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)**
- F82** Words in Sch. 2 para. 14(7) substituted (1.4.2013) by Police and Fire Reform (Scotland) Act 2012 (asp 8), s. 129(2), **sch. 7 para. 53(7)**; S.S.I. 2013/51, art. 2 (with transitional provisions and savings in S.S.I. 2013/121)

#### Variation of licences

- 15 (1) A [<sup>F83</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>F83</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>F84</sup>Scottish Fire and Rescue Service] 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>F83</sup>authority] on that day.
- [<sup>F85</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 [<sup>F86</sup>Scottish Fire and Rescue Service] were a reference to the enforcing authority.]
- (3) A [<sup>F83</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>F83</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—

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- (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>F83</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>F87</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>F88</sup>Scottish Fire and Rescue Service] .

#### Textual Amendments

- F83** 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)**
- F84** Words in Sch. 2 para. 15(2)(a) substituted (1.4.2013) by Police and Fire Reform (Scotland) Act 2012 (asp 8), s. 129(2), **sch. 7 para. 53(7)**; S.S.I. 2013/51, **art. 2** (with transitional provisions and savings in S.S.I. 2013/121)
- F85** 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)**
- F86** Words in Sch. 2 para. 15(2A) substituted (1.4.2013) by Police and Fire Reform (Scotland) Act 2012 (asp 8), s. 129(2), **sch. 7 para. 53(7)**; S.S.I. 2013/51, **art. 2** (with transitional provisions and savings in S.S.I. 2013/121)
- F87** 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)**
- F88** Words in Sch. 2 para. 15(5) substituted (1.4.2013) by Police and Fire Reform (Scotland) Act 2012 (asp 8), s. 129(2), **sch. 7 para. 53(7)**; S.S.I. 2013/51, **art. 2** (with transitional provisions and savings in S.S.I. 2013/121)

#### *Surrender of licence*

- 16 (1) A holder of a licence may at any time surrender the licence to the [<sup>F89</sup>local authority] and it shall thereupon cease to have effect.
- (2) A holder of a licence shall deliver the licence to the [<sup>F89</sup>local authority]—
- (a) within 7 days after the coming into effect of a decision of a [<sup>F89</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>F89</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>F89</sup>local authority] shall re-issue the licence.



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#### Textual Amendments

**F89** 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 [F90]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 [F90]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 [F90]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 [F90] authority] as a true copy of an entry shall be sufficient evidence of the terms of the original entry.

#### Textual Amendments

**F90** 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 [F91]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 [F91]authority] may under this sub-paragraph determine different fees for the different matters specified in this sub-paragraph.

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- (2) In determining the amount of the different fees under sub-paragraph (1) above, the [<sup>F91</sup>local authority] shall seek to ensure that from time to time the total amount of fees receivable by the [<sup>F91</sup> authority] is sufficient to meet the expenses of the council in exercising their functions under this Schedule.

#### Textual Amendments

**F91** 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 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>F92</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>F93</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>F93</sup>level 5 on the standard scale].

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- (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>F94</sup>local authority] which granted the licence.

#### Textual Amendments

**F92** “£20,000” substituted by S.I. 1984/526, art. 9

**F93** Words substituted by virtue of Criminal Procedure (Scotland) Act 1975 (c. 21, SIF 39:1), s. 289G

**F94** Words in Sch. 2 para. 19(8) substituted (1.4.1996) by 1994 c. 39, s. 180(1), Sch. 13 para. 129(22)(l); S.I. 1996/323, art. 4(1)(c)

#### *Rights of entry and inspection*

- 20 (1) Without prejudice to any other provision of this Schedule an authorised officer of the [<sup>F95</sup>local authority][<sup>F96</sup>, an authorised civilian employee]<sup>F97</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

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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) An authorised officer of a [<sup>F95</sup>local authority][<sup>F98</sup> or an authorised civilian employee]<sup>F99</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 [<sup>F100</sup>, an authorised civilian employee] or an authorised officer of the [<sup>F95</sup>local authority]<sup>F101</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 [<sup>F102</sup> employee or] officer in pursuance of this paragraph shall be guilty of an offence and liable, on summary conviction, to a fine not exceeding [<sup>F103</sup>level 3 on the standard scale].

#### Textual Amendments

- F95** 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)(l)**; S.I. 1996/323, **art. 4(1)(c)**
- F96** Words in Sch. 2 para. 20(1) inserted (13.12.2010) by Criminal Justice and Licensing (Scotland) Act 2010 (asp 13), **ss. 173(6)(a)**, 206(1); S.S.I. 2010/413, art. 2, sch.
- F97** 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**
- F98** Words in Sch. 2 para. 20(3) inserted (13.12.2010) by Criminal Justice and Licensing (Scotland) Act 2010 (asp 13), **ss. 173(6)(b)**, 206(1); S.S.I. 2010/413, art. 2, sch.
- F99** 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**
- F100** Words in Sch. 2 para. 20(5) inserted (13.12.2010) by Criminal Justice and Licensing (Scotland) Act 2010 (asp 13), **ss. 173(6)(c)(i)**, 206(1); S.S.I. 2010/413, art. 2, sch.
- F101** 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**
- F102** Words in Sch. 2 para. 20(5) inserted (13.12.2010) by Criminal Justice and Licensing (Scotland) Act 2010 (asp 13), **ss. 173(6)(c)(ii)**, 206(1); S.S.I. 2010/413, art. 2, sch.
- F103** Words substituted by virtue of Criminal Procedure (Scotland) Act 1975 (c. 21, SIF 39:1), **s. 289G**

#### *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 sub-paragraph (1) above.

*Status: Point in time view as at 01/04/2015.*

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- (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 sub-paragraph (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>F104</sup>level 3 on the standard scale].

#### Textual Amendments

**F104** 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>F105</sup>local authority] sends by post, for the purposes of paragraph 10(2), 13(9), 14(7) or 15(5), written notice of [<sup>F105</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

**F105** 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>F106</sup>local 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 under this Schedule or to refuse to do so;
  - (b) to revoke a licence under this Schedule or not to revoke it;
  - (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>F106</sup>local authority] on a request being made to the [<sup>F106</sup> authority] by a relevant person within [<sup>F107</sup>21] 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>F106</sup>local authority] to give reasons for a decision of the council—
- (a) which is being appealed to the sheriff under that paragraph; and

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(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>F108</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>F109</sup>Scottish Fire and Rescue Service] ; 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>F106</sup>authority].

#### Textual Amendments

- F106** 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\(22\)\(n\)](#); S.I. 1996/323, [art. 4\(1\)\(c\)](#)
- F107** Word in Sch. 2 para. 23(2) substituted (28.2.2011) by [Criminal Justice and Licensing \(Scotland\) Act 2010 \(asp 13\)](#), [ss. 178\(3\)\(h\)](#), 206(1); S.S.I. 2010/413, [art. 2](#), sch. (with sch.)
- F108** 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\(7\)\(g\)](#)
- F109** Words in Sch. 2 para. 23(4)(b)(ii) substituted (1.4.2013) by [Police and Fire Reform \(Scotland\) Act 2012 \(asp 8\)](#), s. 129(2), [sch. 7 para. 53\(7\)](#); S.S.I. 2013/51, [art. 2](#) (with transitional provisions and savings in S.S.I. 2013/121)

#### Appeals

- 24 (1) Subject to sub-paragraph (2) below, a person who may, under this Schedule, require a [<sup>F110</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>F110</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.
- (3) A [<sup>F110</sup>local 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.



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- (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 [F110local authority] for which reasons have not been given by the [F110authority] under paragraph 23 above, require the [F110 authority] to give reasons for that decision, and the [F110authority] shall comply with such a requirement.
- (7) The sheriff may uphold an appeal under this paragraph only if he considers that the [F110local 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 [F110local authority] for reconsideration of their decision; or
  - (b) reverse or modify the decision of the [F110authority],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

**F110** 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(2)(o); S.I. 1996/323, art. 4(1)(c)

#### *Provisions relating to existing premises*

- 25 (1) Without prejudice to any enactment other than this Schedule it shall be lawful for any person who—

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- (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>F111</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>F111</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>F111</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

**F111** 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>F112</sup>SCHEDULE 2A S

Section 54(2C).

### RETENTION AND DISPOSAL OF PROPERTY SEIZED UNDER SECTION 54(2A) OF THIS ACT

#### Textual Amendments

**F112** 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—
- (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—

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- (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 [F113 section 17(3)(a) of the Police and Fire Reform (Scotland) Act 2012] (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.

#### **Textual Amendments**

**F113** Words in [Sch. 2A para. 3](#) substituted (1.4.2013) by [Police and Fire Reform \(Scotland\) Act 2012 \(asp 8\)](#), s. 129(2), [sch. 7 para. 6\(13\)\(a\)](#); S.S.I. 2013/51, art. 2 (with transitional provisions and savings in S.S.I. 2013/121)

#### *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.
- (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

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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.

#### *Interpretation*

- 8 In this Schedule—
- [<sup>F114</sup>“chief constable” means the chief constable of the Police Service of Scotland;]

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[<sup>F115</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**

**F114** Words in Sch. 2A para. 8 substituted (1.4.2013) by [Police and Fire Reform \(Scotland\) Act 2012 \(asp 8\)](#), s. 129(2), [sch. 7 para. 6\(13\)\(b\)](#); S.S.I. 2013/51, art. 2 (with transitional provisions and savings in S.S.I. 2013/121)

**F115** 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)**

**C5** 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>F116</sup><sub>1</sub> .....

**Textual Amendments**

**F116** [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—

(a) after the word “breeding” in each place where it occurs, except in sections <sup>F117</sup> . . . 7, there shall be inserted the words “or rearing”;

<sup>F118</sup>(b) .....

<sup>F118</sup>(c) .....

*Status: Point in time view as at 01/04/2015.*

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#### Textual Amendments

**F117** Words in [Sch. 3 para. 3\(a\)](#) repealed (30.12.1999) by [1999 c. 11, ss. 10, 11\(2\), Sch.](#)

**F118** [Sch. 3 para. 3\(b\)\(c\)](#) repealed (30.12.1999) by [1999 c. 11, ss. 10, 11\(2\), Sch.](#)

4

F119

#### Textual Amendments

**F119** [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)

- C6** 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.”  In section 3(7), the words “on payment of a fee not exceeding one shilling.”



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1916 c. 31.	The Police, Factories, etc. (Miscellaneous Provisions) Act 1916.	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.  In section 57, in subsection (1), the words “section 56” and, in subsection (2), the words “or the said section 56”.
1968 c. 54.	The Theatres Act 1968.	Section 2(4)(c)
1973 c. 65.	The Local Government (Scotland) Act 1973.	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:**

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**Changes to legislation:**

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