



# Air Weapons and Licensing (Scotland) Act 2015

2015 asp 10

## PART 3

### CIVIC LICENSING

#### *Taxis and private hire cars*

#### **63 Refusal to grant private hire car licences on grounds of overprovision**

In section 10 of the Civic Government (Scotland) Act 1982 (“the 1982 Act”) (taxi and private hire car licences), after subsection (3) insert—

“(3A) Without prejudice to paragraph 5 of Schedule 1, the grant of a private hire car licence may be refused by a licensing authority if, but only if, they are satisfied that there is (or, as a result of granting the licence, would be) overprovision of private hire car services in the locality (or localities) in their area in which the private hire car is to operate.

(3B) It is for the licensing authority to determine the localities within their area for the purposes of subsection (3A) and in doing so the authority may determine that the whole of their area is a locality.

(3C) In satisfying themselves as to whether there is or would be overprovision for the purposes of subsection (3A) in any locality, the licensing authority must have regard to—

- (a) the number of private hire cars operating in the locality, and
- (b) the demand for private hire car services in the locality.”.

#### **64 Testing of private hire car drivers**

In section 13 of the 1982 Act (taxi and private hire car driving licences), in subsection (5)—

- (a) after “licence” where first occurring insert “or a private hire car driver’s licence”;

- (b) after “taxi” where second occurring insert “or, as the case may be, private hire car”.

#### **65 Exemptions from requirements of sections 10 to 21 of 1982 Act**

- (1) Section 22 of the 1982 Act (saving for certain vehicles etc.) is amended as follows.
- (2) The existing provision becomes subsection (1).
- (3) Paragraph (c) of that subsection is repealed.
- (4) After that subsection, insert—
  - “(2) The Scottish Ministers may by regulations specify further circumstances in which sections 10 to 21 (with the exception of subsection (7) of section 21) are not to apply.
  - (3) Regulations under subsection (2)—
    - (a) may make transitional, transitory and saving provision,
    - (b) are subject to the negative procedure.”.
- (5) The title to section 22 becomes “**Exemptions**”.

#### *Metal dealers*

#### **66 Penalties for failure to have appropriate licence or comply with conditions**

In section 7 of the 1982 Act (offences etc.)—

- (a) in subsection (1)(a), after “is” insert “a metal dealer’s licence, an itinerant metal dealer’s licence or”,
- (b) in subsection (2)—
  - (i) the word “and” immediately following paragraph (aa) is repealed,
  - (ii) after paragraph (aa) insert—
    - “(ab) in a case where the licence is a metal dealer’s licence or an itinerant metal dealer’s licence, to such fine or imprisonment as is mentioned in subsection (1)(a) (or to both), and”.

#### **67 Removal of exemption warrants for certain metal dealers**

- (1) The 1982 Act is amended as follows.
- (2) In section 28 (metal dealers: licensing and regulation)—
  - (a) in subsection (1), for the words “Subject to subsection (2) below, a” substitute “A”,
  - (b) subsections (2) and (3) are repealed.
- (3) Section 29 (metal dealers’ exemption warrants) is repealed.

#### **68 Abolition of requirement to retain metal for 48 hours**

Section 31 of the 1982 Act (retention of metal) is repealed.

## **69 Acceptable forms of payment for metal**

After section 33 of the 1982 Act insert—

### **“33A Acceptable forms of payment for metal**

- (1) A metal dealer or an itinerant metal dealer may pay for metal only by a method of payment specified in subsection (2).
- (2) The methods of payment are—
  - (a) by means of a cheque which under section 81A of the Bills of Exchange Act 1882 is not transferable, or
  - (b) by electronic transfer of funds to a bank or building society account in the name of the payee.
- (3) If a metal dealer or an itinerant metal dealer pays for metal otherwise than in accordance with subsection (1), the dealer and each of the persons listed in subsection (4) (if any) commit an offence.
- (4) The persons are—
  - (a) in a case of payment being made by a metal dealer at a place of business of the dealer, the person with day to day management of the place,
  - (b) in any case, any person who, acting on behalf of the metal dealer or the itinerant metal dealer, makes the payment.
- (5) It is a defence for a metal dealer, an itinerant metal dealer or a person described in subsection (4)(a) who is charged with an offence under this section to prove that the dealer or, as the case may be, person—
  - (a) made arrangements to ensure that the payment was to be made only in accordance with subsection (1), and
  - (b) took all reasonable steps to ensure that those arrangements were complied with.
- (6) A person who commits an offence under this section is liable, on summary conviction, to a fine not exceeding level 5 on the standard scale.
- (7) The Scottish Ministers may by regulations—
  - (a) amend subsection (2) so as to add, amend or remove methods of payment, and
  - (b) make such consequential modification of section 33B or 33C(3) as they consider appropriate.
- (8) Regulations under subsection (7) are subject to the affirmative procedure.
- (9) In this section, “place of business” means a place of business operated by a metal dealer in the ordinary course of that dealer’s business as a metal dealer.

### **33B Acceptable forms of payment: meaning of “bank or building society account”**

- (1) In section 33A(2)(b), “bank or building society account” means an account held with a bank or a building society.
- (2) For the purposes of subsections (1) and (4)—

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- (a) “bank” means an authorised deposit-taker that has its head office or a branch in the United Kingdom, and
  - (b) “building society” has the same meaning as in the Building Societies Act 1986.
- (3) In subsection (2)(a), “authorised deposit-taker” means—
- (a) a person who has permission to accept deposits under Part 4A of the Financial Services and Markets Act 2000 (but see subsection (4) for exclusions),
  - (b) an EEA firm of the kind mention in paragraph 5(b) of Schedule 3 to that Act that has permission under paragraph 15 of that Schedule (as a result of qualifying for authorisation under paragraph 12(1) of that Schedule).
- (4) The reference in subsection (3)(a) to a person who has permission to accept deposits under Part 4A of the Financial Services and Markets Act 2000 does not include—
- (a) a building society,
  - (b) a society registered as a credit union under the Co-operative and Community Benefit Societies Act 2014 or the [Credit Unions \(Northern Ireland\) Order 1985 \(S.I. 1985/1205 \(N.I. 12\)\)](#),
  - (c) a friendly society within the meaning given by section 116 of the Friendly Societies Act 1992, or
  - (d) an insurance company within the meaning of section 275 of the Finance Act 2004.”.

## **70 Metal dealers and itinerant metal dealers: records**

- (1) The 1982 Act is amended as follows.
- (2) Sections 30 (keeping of records) and 33 (receipts and invoices: itinerant metal dealers) are repealed.
- (3) After section 33B (as inserted by section 69 of this Act), insert—

### **“33C Requirement to keep records**

- (1) This section applies where a metal dealer or an itinerant metal dealer (“the dealer”), in the course of the dealer’s business—
  - (a) acquires any metal (whether or not for value), or
  - (b) processes or disposes of any metal (by any means).
- (2) In respect of any metal acquired, the dealer must record the following information—
  - (a) the description and weight of the metal,
  - (b) the date and time of the acquisition of the metal,
  - (c) if the metal is acquired from another person—
    - (i) the name and address of the person,
    - (ii) the means by which the person’s name and address was verified,

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- (d) the price, if any, payable in respect of the acquisition of the metal, if that price has been ascertained at the time when the entry in the record relating to that metal is to be made,
  - (e) the method of payment of the price (if applicable),
  - (f) where no price is payable for the metal, the value of the metal at the time when the entry is to be made as estimated by the dealer,
  - (g) in the case of metal delivered to the dealer by means of a vehicle, the registration mark (within the meaning of section 23 of the Vehicle Excise and Registration Act 1994) borne by the vehicle.
- (3) Where the dealer has paid for metal, the dealer must keep a copy of—
- (a) the cheque, or
  - (b) the document evidencing the electronic transfer of funds.
- (4) In respect of any metal processed or disposed of, the dealer must record the following information—
- (a) the description and weight of the metal immediately before its processing or disposal,
  - (b) in the case of metal which is processed, the process applied,
  - (c) in the case of metal disposed of by sale or exchange—
    - (i) the consideration for which it is sold or exchanged,
    - (ii) the name and address of the person to whom the metal is sold or with whom it is exchanged, and
    - (iii) the means by which the person's name and address was verified,
  - (d) in the case of metal disposed of otherwise than by sale or exchange, its value immediately before its disposal as estimated by the dealer.
- (5) The dealer must—
- (a) keep separate records in relation to—
    - (i) metal acquired, and
    - (ii) metal processed or disposed of,
  - (b) record the information immediately after the metal is acquired, processed or disposed of,
  - (c) keep a copy of any document produced by a person to verify that person's name or address, and
  - (d) retain information recorded or documents kept under this section for a period of not less than 3 years beginning with the date on which the information was recorded or document obtained.
- (6) The Scottish Ministers may by regulations—
- (a) specify the means by which a person's name and address may be verified for the purposes of this section,
  - (b) require further information to be recorded about any metal acquired, processed or disposed of by metal dealers or itinerant metal dealers.
- (7) Regulations under subsection (6)—
- (a) may make different provision for different purposes, and
  - (b) are subject to the negative procedure.

### **33D Form of records**

- (1) A metal dealer or an itinerant metal dealer (“a dealer”) must record the required information—
  - (a) in books with serially numbered pages, or
  - (b) by means of a device for storing and processing information.
- (2) Where a dealer records the required information in books, the dealer must use separate books for recording the required information about—
  - (a) metal acquired, and
  - (b) metal processed or disposed of.
- (3) Where a dealer uses a device for storing and processing information, the dealer must, by means of the device or otherwise, keep details of all modifications made in the records kept by the device.
- (4) Where a dealer is required to keep a copy of a document under section 33C, it is sufficient for the dealer—
  - (a) to keep an electronic copy of the document, and
  - (b) in relation to a document verifying a person’s name or address, keep only one copy of the document.
- (5) In this section, “required information” means the information about metal acquired, processed or disposed of that a dealer is required to record under or by virtue of section 33C(2), (4) or (6).

### **33E Metal dealer to keep records for each place of business**

- (1) A metal dealer must keep separate records of the required information in relation to—
  - (a) each place of business operated by the dealer, and
  - (b) any metal acquired, processed or disposed of otherwise than at such a place of business.
- (2) Where a metal dealer records the required information in books, the dealer must not, at any time at a place of business, use more than—
  - (a) one book for recording the required information about metal acquired, and
  - (b) one book for recording the required information about metal processed or disposed of.
- (3) In this section—

“place of business” means a place of business operated by a metal dealer in the ordinary course of that dealer’s business as a metal dealer,

“required information” means the information about metal acquired, processed or disposed of that a dealer is required to record under or by virtue of section 33C(2), (4) or (6).”
- (4) In section 34 (offences relating to metal dealing)—
  - (a) after subsection (2) insert—

- “(2A) Any metal dealer or itinerant metal dealer who fails to comply with a requirement of section 33C, 33D or 33E commits an offence and is liable, on summary conviction, to a fine not exceeding level 3 on the standard scale.”,
- (b) in subsection (3), for the words from “furnishes” to “keep” substitute “produces any information or document which the dealer is required to record or keep under section 33C which is false or misleading in a material particular”.

## 71 Register of dealers in metal

After section 35 of the 1982 Act, insert—

### “35A Register of metal dealers and itinerant metal dealers

- (1) The Scottish Ministers may by regulations make provision for and about the establishment, keeping and maintaining of a register of metal dealers and itinerant metal dealers.
- (2) Regulations under subsection (1) may, in particular, make provision—
- (a) about who is to keep and maintain the register,
  - (b) requiring the provision of information to the person who keeps the register,
  - (c) specifying the information to be included in the register in relation to each person who holds a licence as a metal dealer or itinerant metal dealer,
  - (d) about the form and publication of the register,
  - (e) for the charging of fees in such circumstances as may be specified in the regulations.
- (3) Regulations under subsection (1) may—
- (a) make incidental, supplementary, consequential, transitional, transitory or saving provision,
  - (b) modify this or any other enactment.
- (4) Regulations under subsection (1) which contain provision which adds to, replaces, or omits any part of an Act are subject to the affirmative procedure.
- (5) Otherwise, regulations under subsection (1) are subject to the negative procedure.”.

## 72 Interpretation of provisions relating to metal dealers etc.

- (1) Section 37 of the 1982 Act (interpretation of sections 28 to 36) is amended as follows.
- (2) In subsection (1), for the definition of “itinerant metal dealer” substitute—
- ““itinerant metal dealer” means a person who—
- (a) carries on a business which consists wholly or substantially of buying or selling for scrap—
    - (i) metal articles that are old, broken, worn out or defaced, or

- (ii) partly manufactured articles that are made wholly or partly from metal,
  - (b) collects articles of the kind described in paragraph (a)(i) and (ii) by means of visits from place to place, and
  - (c) disposes of such articles without causing them to be kept in a metal store or other premises (including by disposing or giving custody of the articles to a person who keeps a metal store),”.
- (3) For subsection (2) substitute—
- “(2) For the purposes of sections 28 to 36, a person carries on business as a metal dealer if the person—
- (a) carries on a business which consists wholly or substantially of buying or selling for scrap—
    - (i) metal articles that are old, broken, worn out or defaced, or
    - (ii) partly manufactured articles that are made wholly or partly from metal, or
  - (b) carries on business as a motor salvage operator (so far as that does not fall within paragraph (a)).
- (3) For the purposes of subsection (2)(b), a person carries on business as a motor salvage operator if the person carries on a business which consists wholly or substantially of—
- (a) recovering salvageable parts from motor vehicles for re-use or sale and selling or disposing of the rest of the vehicle for scrap,
  - (b) buying significantly damaged motor vehicles and subsequently repairing and reselling them, or
  - (c) buying or selling motor vehicles which are to be the subject (whether immediately or upon a subsequent resale) of any of the activities mentioned in paragraphs (a) and (b).”.

### 73 Exemptions from requirements of sections 28 to 37 of 1982 Act

After section 37 of the 1982 Act insert—

#### “37A Exemptions

- (1) The Scottish Ministers may by regulations make provision specifying circumstances in which the provisions of sections 28 to 37 are not to apply.
- (2) Regulations under subsection (1)—
  - (a) may make transitional, transitory or saving provision,
  - (b) are subject to the negative procedure.”.

#### *Public entertainment venues*

### 74 Licensing of theatres etc.

- (1) In section 41 of the 1982 Act (public entertainment licences)—
  - (a) in subsection (2)(d), the words “the Theatres Act 1968, or” are repealed,
  - (b) after subsection (3) insert—



“(3A) In relation to a public entertainment licence which authorises the use of premises for the performance of plays, no condition may be attached to the licence as to the nature of the plays which may be performed, or the manner of performing plays, under the licence.

(3B) Subsection (3A) does not prevent a licensing authority from attaching, by virtue of section 3B or in accordance with subsection (3) or paragraph 5 of Schedule 1, any condition which they consider appropriate on the grounds of public safety.”.

- (2) In section 1 of the Theatres Act 1968 (“the 1968 Act”) (abolition of censorship of the theatre), subsection (2) is repealed.
- (3) Sections 12 to 14 of the 1968 Act (licensing of premises for public performances of plays) are repealed.
- (4) In section 15 of the 1968 Act (powers of entry and inspection)—
  - (a) in subsection (1)—
    - (i) the word “or” immediately following paragraph (a) is repealed,
    - (ii) paragraph (b) is repealed,
    - (iii) the words “or, in a case falling within paragraph (b) above, any police officer or authorised officer of the licensing authority” are repealed,
    - (iv) paragraph (ii) is repealed,
  - (b) subsections (2), (3), (5) and (6) are repealed.
- (5) In section 18 of the 1968 Act (interpretation), in subsection (1), the definition of “licensing authority” is repealed.
- (6) Schedule 1 to the 1968 Act (provision about licenses to perform plays) is repealed.

## **75      Restriction of exemption from requirement for public entertainment licence**

In section 41(2) of the 1982 Act (places not requiring public entertainment licences), in paragraph (f), for the words from “licensed” where first occurring to “(asp 16)” substitute “premises in respect of which a premises licence within the meaning of section 17 of the Licensing (Scotland) Act 2005 has effect”.

### *Sexual entertainment venues*

## **76      Licensing of sexual entertainment venues**

- (1) The 1982 Act is amended as follows.
- (2) In section 41(2) (definition of place of public entertainment), after paragraph (aa) insert—
  - “(ab) a sexual entertainment venue (as defined in section 45A) in relation to which Schedule 2 (as modified for the purposes of section 45B) has effect, while being used as such;”.
- (3) After section 45 insert—

**“45A Licensing of sexual entertainment venues: interpretation**

- (1) This section applies for the purposes of the interpretation of section 45B and Schedule 2 (as modified for the purposes of section 45B).
- (2) “Sexual entertainment venue” means any premises at which sexual entertainment is provided before a live audience for (or with a view to) the financial gain of the organiser.
- (3) For the purposes of that definition—
  - “audience” includes an audience of one,
  - “financial gain” includes financial gain arising directly or indirectly from the provision of the sexual entertainment,
  - “organiser”, in relation to the provision of sexual entertainment in premises, means—
    - (a) the person (“A”) who is responsible for—
      - (i) the management of the premises, or
      - (ii) the organisation or management of the sexual entertainment, or
    - (b) where A exercises that responsibility on behalf of another person (whether by virtue of a contract of employment or otherwise), that other person,
  - “premises” includes any vehicle, vessel or stall but does not include any private dwelling to which the public is not admitted,
  - “sexual entertainment” means—
    - (a) any live performance, or
    - (b) any live display of nudity,
 which is of such a nature that, ignoring financial gain, it must reasonably be assumed to be provided solely or principally for the purpose of sexually stimulating any member of the audience (whether by verbal or other means).
- (4) For the purposes of the definition of “sexual entertainment”, “display of nudity” means—
  - (a) in the case of a woman, the showing of (to any extent and by any means) her nipples, pubic area, genitals or anus,
  - (b) in the case of a man, the showing of (to any extent and by any means) his pubic area, genitals or anus.
- (5) Sexual entertainment is provided if (and only if) it is provided (or allowed to be provided) by or on behalf of the organiser.
- (6) References in Schedule 2 (as modified for the purposes of section 45B) to the use of any premises by a person as a sexual entertainment venue are to be read as references to their use by the organiser.
- (7) The following are not sexual entertainment venues—
  - (a) a sex shop (within the meaning of paragraph 2(1) of Schedule 2),
  - (b) such other premises as the Scottish Ministers may by order specify.

- (8) An order under subsection (7)(b) may make different provision for different purposes.
- (9) Premises at which sexual entertainment is provided as mentioned in subsection (2) on a particular occasion (“the current occasion”) are not to be treated as a sexual entertainment venue if sexual entertainment has not been provided on more than 3 previous occasions which fall wholly or partly within the period of 12 months ending with the start of the current occasion.
- (10) For the purposes of subsection (9)—
  - (a) each continuous period during which sexual entertainment is provided on the premises is to be treated as a separate occasion, and
  - (b) where the period during which sexual entertainment is provided on the premises exceeds 24 hours, each period of 24 hours (and any part of a period of 24 hours) is to be treated as a separate occasion.
- (11) The Scottish Ministers may by order provide for—
  - (a) descriptions of performances, or
  - (b) descriptions of displays of nudity,which are not to be treated as sexual entertainment for the purposes of this section.
- (12) An order under subsection (7)(b) or (11) is subject to the negative procedure.

#### **45B Licensing of sexual entertainment venues**

- (1) A local authority may resolve that Schedule 2 (as modified for the purposes of this section) is to have effect in their area in relation to sexual entertainment venues.
- (2) If a local authority passes a resolution under subsection (1), Schedule 2 (as so modified) has effect in their area from the day specified in the resolution.
- (3) The day mentioned in subsection (2) must not be before the expiry of the period of one year beginning with the day on which the resolution is passed.
- (4) A local authority must, not later than 28 days before the day mentioned in subsection (2), publish notice that they have passed a resolution under this section.
- (5) The notice must—
  - (a) state the general effect of Schedule 2 (as modified for the purposes of this section), and
  - (b) be published electronically or in a newspaper circulating in the local authority’s area.
- (6) For the purposes of this section, paragraphs 1 and 3 to 25 of Schedule 2 apply with the following modifications—
  - (a) references to a sex shop are to be read as references to a sexual entertainment venue,
  - (b) references to the use by a person of premises, vehicles, vessels or stalls as a sexual entertainment venue are to be read as references to their use by the organiser,

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- (c) in paragraph 1—
  - (i) in sub-paragraph (b)—
    - (A) the word “or” immediately following paragraph (i) is omitted,
    - (B) paragraph (ii) is omitted, and
  - (ii) sub-paragraph (c) is omitted,
- (d) in paragraph 7—
  - (i) in sub-paragraph (2), at the beginning insert “Subject to sub-paragraph (3A),” and
  - (ii) after sub-paragraph (3) insert—
    - “(3A) If a local authority consider it appropriate to do so in relation to an application, the local authority may dispense with the requirement to publish an advertisement under sub-paragraph (2) and may instead publish notice of the application electronically.
    - (3B) Publication under sub-paragraph (3A) must be not later than 7 days after the date of the application.
    - (3C) The applicant must also, not later than 7 days after the date of the application—
      - (a) send a copy of the application to each person or body listed in the local authority’s determination under sub-paragraph (3D), and
      - (b) submit to the local authority a certificate stating that the applicant has complied with this sub-paragraph.
    - (3D) For the purposes of sub-paragraph (3C), a local authority must—
      - (a) from time to time determine the persons or bodies who must receive a copy of the application, and
      - (b) publicise the determination in such manner as they consider appropriate.”,
- (e) in paragraph 9—
  - (i) in sub-paragraph (5)(c)—
    - (A) after the word “in” insert “the local authority’s area or”,
    - (B) after the word “for” insert “their area or”,
  - (ii) after sub-paragraph (5) insert—
    - “(5A) For the purposes of sub-paragraph (5)(c), a local authority must—
      - (a) from time to time determine the appropriate number of sexual entertainment venues for their area and for each relevant locality, and
      - (b) publicise the determination in such manner as they consider appropriate.”,
    - (iii) after sub-paragraph (6) insert—

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- “(6A) A local authority may refuse an application for the grant or renewal of a licence despite the fact that a premises licence under Part 3 of the Licensing (Scotland) Act 2005 is in effect in relation to the premises, vehicle, vessel or stall to which the application relates.”,
- (f) in paragraph 12(2)(b), for “shorter” substitute “other”,
  - (g) in paragraph 19(1)(e), for the words from “without” to the end of paragraph (e) substitute “knowingly permits any person under the age of 18 to enter the sexual entertainment venue—
    - (i) at a time when sexual entertainment is being provided, or
    - (ii) without reasonable excuse, at any other time,”, and
  - (h) in paragraph 25, in each of sub-paragraphs (1)(a) and (2), for “45” substitute “45B”.
- (7) In carrying out functions conferred by virtue of this section, a local authority must have regard to any guidance issued by the Scottish Ministers.

#### **45C Statements of policy in relation to sexual entertainment venues**

- (1) This section applies where a local authority passes a resolution under section 45B(1).
- (2) The local authority must prepare a statement of their policy with respect to the exercise of their functions in relation to the licensing of sexual entertainment venues (a “SEV policy statement”).
- (3) In preparing a SEV policy statement, a local authority must—
  - (a) consider the impact of the licensing of sexual entertainment venues in their area, having regard, in particular, to how it will affect the objectives of—
    - (i) preventing public nuisance, crime and disorder,
    - (ii) securing public safety,
    - (iii) protecting children and young people from harm,
    - (iv) reducing violence against women, and
  - (b) consult such persons or bodies as they consider appropriate.
- (4) The local authority must publish the SEV policy statement at the same time and in the same manner as they publish the notice of the resolution under section 45B(4).
- (5) The local authority must—
  - (a) from time to time review the SEV policy statement and make such revisions as they consider appropriate (if any), and
  - (b) publish the revised statement in such manner as they consider appropriate.
- (6) Subsection (3) applies to a review of a SEV policy statement as it applies to preparing such a statement.
- (7) In exercising their functions in relation to the licensing of sexual entertainment venues, a local authority must have regard to their SEV policy statement or revised statement.

- (8) In this section—  
     “children” means persons under the age of 16,  
     “young people” means persons aged 16 or 17.”
- (4) The title of Part 3 becomes “**Control of sex shops and sexual entertainment venues**”.

*Miscellaneous and general*

**77 Deemed grant of applications**

- (1) The 1982 Act is amended as follows.
- (2) In section 3 (discharge of functions of licensing authorities)—
- (a) in subsection (1), for the words from “shall” to the end substitute “must—
- (a) consider each relevant application made to them within the period of 3 months beginning with the date on which the application was made, and
- (b) subject to the following provisions of this section, reach a final decision on the application within the period of 6 months beginning with the end of the 3 month period referred to in paragraph (a).”
- (b) in subsection (4)—
- (i) the words “applied for” are repealed,
- (ii) for “or, as the case may be, renewed” substitute “, renewed or, as the case may be, varied”,
- (iii) the words from “and” where first occurring to the end are repealed,
- (c) after subsection (4) insert—
- “(4A) A licence deemed to have been granted or renewed under subsection (4) is—
- (a) in the case of a temporary licence, to remain in force for the duration of the period sought in the application (up to a maximum period of 6 weeks), or
- (b) in any other case, to remain in force for the period of one year.
- (4B) A variation of the terms of a licence deemed to have been granted under subsection (4) is to have effect for the remaining period of the licence.
- (4C) Subsections (4) and (4B) do not affect—
- (a) the powers of revocation under section 7(6)(a),
- (b) paragraph 8(5) of Schedule 1 (which relates to renewals of existing licences),
- (c) the powers of variation under paragraph 10 of that Schedule, or
- (d) the powers of suspension and revocation under paragraphs 11 and 12 of that Schedule.”
- (d) for subsection (5) substitute—
- “(5A) The deemed grant, renewal or variation of the terms of a licence under subsection (4) is, for the purposes of Schedule 1, to be treated as a

decision of the licensing authority to grant, renew or vary the terms of a licence.

(5B) For the purposes of this section, a “relevant application” is an application under paragraph 1, 7 or 10 of Schedule 1.”.

(3) After section 45C (as inserted by section 76 of this Act) insert—

**“45D Deemed grant of applications**

(1) For the purpose of the discharge of their functions under this Part, every local authority must—

- (a) consider each relevant application made to them within the period of 3 months beginning with the date on which the application was made, and
- (b) subject to the following provisions of this section, reach a final decision on the application within the period of 6 months beginning with the end of the 3 month period referred to in paragraph (a).

(2) On an application by the local authority within the 6 month period referred to in subsection (1)(b), the sheriff may, if it appears that there is a good reason to do so, extend that period as the sheriff thinks fit.

(3) The applicant is entitled to be a party to proceedings on an application under subsection (2).

(4) Where the local authority have failed to reach a final decision on the application before the expiry of—

- (a) the 6 month period referred to in subsection (1)(b), or
- (b) such further period as the sheriff may have specified on application under subsection (2),

the licence is deemed to have been granted, renewed or, as the case may be, varied on the date of such expiry.

(5) A licence deemed to have been granted or renewed under subsection (4) is to remain in force for the period of one year.

(6) A deemed variation of the terms of a licence deemed under subsection (4) is to have effect for the remaining period of the licence.

(7) Subsections (4) and (6) do not affect—

- (a) the powers of revocation under paragraph 13 of Schedule 2, and
- (b) the powers of variation under paragraph 15 of that Schedule.

(8) The deemed grant, renewal or variation of the terms of a licence under subsection (4) has the same effect, for the purposes of Schedule 2, as a decision of the licensing authority to grant, renew or vary the terms of a licence.

(9) For the purposes of this section, a “relevant application” is an application under paragraph 6 or 15 of Schedule 2.”.

(4) In Schedule 1 (licensing: further provisions as to the general system), in paragraph 10, after sub-paragraph (5) insert—

“(6) Sub-paragraph (5) does not apply to a deemed variation of the terms of a licence under section 3(4).”.

(5) In Schedule 2 (control of sex shops and sexual entertainment venues), in paragraph 15, after sub-paragraph (4) insert—

“(4A) Sub-paragraph (4) does not apply to a deemed variation of the terms of a licence under section 45D(4).”.

## 78 Revocation of Part 2 licences

(1) The 1982 Act is amended as follows.

(2) In section 5 (rights of entry and inspection), in subsection (2)(a)(ii), after “suspended” insert “or revoked”.

(3) In Schedule 1 (licensing: further provisions as to the general system)—

(a) the italic heading preceding paragraph 10 becomes “*Variation, suspension and revocation of licences*”,

(b) in paragraph 11—

(i) in sub-paragraph (1), after “suspend” insert “or revoke”,

(ii) in sub-paragraph (2), after “suspension” insert “or revocation”,

(iii) in sub-paragraph (4), after “suspend” insert “or revoke”,

(iv) in sub-paragraph (6), after “order” insert “to suspend a licence”,

(v) in sub-paragraph (7), after “suspend” insert “or revoke”,

(vi) in sub-paragraph (8), after “suspension” insert “or revocation”,

(vii) in sub-paragraph (9)—

(A) after “suspension” where first occurring insert “or revocation”,

(B) after each subsequent occurrence of “suspension” insert “or, as the case may be, revocation”,

(viii) in sub-paragraph (10), after “suspension” where first occurring insert “or revocation”,

(c) in paragraph 12(5)(b), after “suspend” insert “or revoke”,

(d) in paragraph 13—

(i) in sub-paragraph (2)(a), after “suspend” insert “, revoke”,

(ii) in sub-paragraph (3), after “suspending” insert “or revoking”,

(iii) in sub-paragraph (4), after “suspension” where first occurring insert “or revocation”,

(e) in paragraph 14(2)(b), after “terms,” insert “revocation”,

(f) in paragraph 17, in sub-paragraph (1)(d), before paragraph (i) insert—

“(ai) to revoke a licence or to refuse to do so”,

(g) in paragraph 18(10)—

(i) after “suspension” where first occurring insert “or revocation”,

(ii) the words “above that the suspension be immediate” are repealed.

## 79 Procedure for hearings

(1) The 1982 Act is amended as follows.



- (2) In Schedule 1 (licensing: further provisions as to the general system), after paragraph 18 insert—

*“Power to make provision about hearings*

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

- (3) In Schedule 2 (control of sex shops and sexual entertainment venues), after paragraph 24 insert—

*“Power to make provision about hearings*

- 24A (1) The Scottish Ministers may by regulations make provision as to the procedure to be followed at, or in connection with, any hearing to be held by a local authority under this Schedule.
- (2) Regulations under this paragraph may, in particular, make provision—
- (a) for notice of the hearing to be given to such persons as may be prescribed in the regulations,
  - (b) about the rules of evidence which are to apply for the purposes of the hearing,
  - (c) about the representation of any party at the hearing,
  - (d) as to the times by which any step in the procedure must be taken, and
  - (e) as to liability for expenses.
- (3) Regulations under this paragraph may make different provision for different purposes, including, in particular, different types of licence.
- (4) Regulations under this paragraph are subject to the negative procedure.”.

## **80      Conditions for Part 3 licences**

- (1) The 1982 Act is amended as follows.
- (2) After section 45D (as inserted by section 77 of this Act) insert—

*“Conditions of licences granted under this Part*

**45E Mandatory licence conditions**

- (1) The Scottish Ministers may by order prescribe conditions to which licences granted by local authorities under this Part are to be subject.
- (2) Different conditions may be prescribed under subsection (1)—
  - (a) in respect of different licences or different types of licence,
  - (b) otherwise for different purposes, circumstances or cases.
- (3) An order under subsection (1) is subject to the affirmative procedure.
- (4) Subsection (1) does not affect any other power of the Scottish Ministers under this Act or any other enactment to prescribe conditions—
  - (a) to which licences granted by local authorities under this Part are to be subject, or
  - (b) to be imposed by local authorities in granting or renewing licences under this Part.
- (5) The following conditions are referred to in this Part as “mandatory conditions”—
  - (a) conditions prescribed under subsection (1),
  - (b) conditions prescribed under any power referred to in subsection (4), and
  - (c) conditions imposed, or required to be imposed, by any provision of this Part.
- (6) In this section and section 45F, references to licences granted by local authorities include references to—
  - (a) licences renewed by local authorities, and
  - (b) licences deemed by virtue of section 45D to have been granted or renewed by local authorities.

**45F Standard licence conditions**

- (1) A local authority may determine conditions to which licences granted by them under this Part are to be subject.
- (2) Conditions determined under subsection (1) are referred to in this Part as “standard conditions”.
- (3) Different conditions may be determined under subsection (1)—
  - (a) in respect of different licences or different types of licence,
  - (b) otherwise for different purposes, circumstances or cases.
- (4) A local authority must publish, in such manner as they think appropriate, any standard conditions determined by them.
- (5) Standard conditions have no effect—
  - (a) unless they are published, and
  - (b) so far as they are inconsistent with any mandatory conditions.

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- (6) Subsection (1) is subject to paragraph 9(1A) of Schedule 2.”.
- (3) In paragraph 9 of Schedule 2 (disposal of applications for licences)—
- (a) in sub-paragraph (1)—
    - (i) in paragraph (a), the word “unconditionally” is repealed,
    - (ii) paragraph (b) is repealed,
  - (b) after sub-paragraph (1) insert—

“(1A) In granting or renewing a licence under sub-paragraph (1)(a), a local authority may (either or both)—

    - (a) disapply or vary any standard conditions,
    - (b) impose conditions in addition to any mandatory or standard conditions to which the licence is subject.”,
  - (c) in sub-paragraph (2)—
    - (i) for “sub-paragraph” where first occurring substitute “sub-paragraphs (2ZA) and”,
    - (ii) for “(1)” substitute “(1A)(b)”,
  - (d) after sub-paragraph (2) insert—

“(2ZA) A variation made under sub-paragraph (1A)(a) or a condition imposed under sub-paragraph (1A)(b) has no effect in so far as it is inconsistent with any mandatory condition to which the licence is subject.”,
  - (e) in sub-paragraph (2A), for “(1)” substitute “(1A)(b)”.

## **81 Conditions for Part 3 licences: displays or advertising**

In paragraph 9(2) of Schedule 2 to the 1982 Act (examples of conditions which may be imposed in relation to Part 3 licences), in paragraph (b), after “on or in” insert “or otherwise connected with”.

## **82 Civic licensing standards officers**

After Part 3 of the 1982 Act insert—

### **“PART 3A**

#### **CIVIC LICENSING STANDARDS OFFICERS**

##### **45G Civic licensing standards officers**

- (1) Each local authority must appoint for their area one or more officers (a “civic licensing standards officer”)—
- (a) to exercise, in relation to the authority’s area, the general functions conferred on civic licensing standards officers by virtue of section 45H, and
  - (b) to exercise any other functions that may be conferred on such an officer by virtue of this or any other enactment.

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*Status: This is the original version (as it was originally enacted).*

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- (2) A civic licensing standards officer appointed by a local authority is taken to be an authorised officer of the authority for the purposes of Parts 1 to 3.
- (3) A person may hold more than one appointment under subsection (1) (so as to be a civic licensing standards officer for more than one local authority area).
- (4) Nothing in this section prevents an officer of a local authority other than a civic licensing standards officer from being an authorised officer of the authority for a purpose of Parts 1 to 3.
- (5) In this Part, a reference to a local authority includes a reference to that authority acting as the licensing authority for their area and a reference to an authorised officer of a local authority (however expressed) is to be construed accordingly.

#### **45H General functions of a civic licensing standards officer**

- (1) The general functions of a civic licensing standards officer are—
  - (a) to provide to any interested person information and guidance concerning the operation of Parts 1 to 3 in the officer’s area,
  - (b) to supervise the compliance by the holder of a licence granted under Parts 1 to 3 in the officer’s area with—
    - (i) the conditions of the licence, and
    - (ii) the other requirements of Parts 1 to 3,
  - (c) to provide mediation services for the purposes of avoiding or resolving disputes or disagreements between—
    - (i) the holder of a licence granted under Parts 1 to 3 in the officer’s area, and
    - (ii) any other person,concerning any matter relating to compliance with the conditions of the licence or the other requirements of Parts 1 to 3.
- (2) The function under subsection (1)(b) includes, in particular, power for a civic licensing standards officer, where the officer believes that a condition to which the licence is subject has been or is being breached—
  - (a) to give a notice to the holder of the licence requiring such action to be taken to remedy the breach as may be specified in the notice, and
  - (b) to refer the breach to the local authority which granted the licence for consideration at a meeting of the authority.
- (3) A civic licensing standards officer may only refer a breach of a condition under subsection (2)(b) if—
  - (a) the officer has given notice under subsection (2)(a) and the holder of the licence has failed to comply with it, or
  - (b) the officer considers that it is appropriate for the breach to be referred to the authority without such a notice being given.
- (4) In this section, a reference to an officer’s area is a reference to—
  - (a) the local authority area for which the officer is appointed under section 45G(1), or
  - (b) where the officer is appointed for more than one local authority area, the area for which the officer is exercising a function at the relevant time.”.

### 83 Electronic communications under the 1982 Act

- (1) The 1982 Act is amended as follows.
- (2) In Schedule 1 (licensing: further provisions as to the general system)—
- (a) after paragraph 3(3), insert—

“(3A) Where a licensing authority have determined to accept objections and representations by means of an electronic communication under paragraph 16A, an objection or representation is made for the purpose of sub-paragraph (1) of this paragraph if it is sent—

- (a) to the authority by means of an electronic communication which complies with the determination, and
- (b) within the time specified in sub-paragraph (1).

(3B) Sub-paragraph (3A) is without prejudice to sub-paragraph (3).”

- (b) after paragraph 16 insert—

#### *“Electronic communications*

16A (1) A licensing authority may determine to accept—

- (a) applications for the grant or renewal of a licence under paragraph 1,
- (b) objections or representations under paragraph 3,
- (c) notifications of a change to a licence under paragraph 9,
- by means of an electronic communication.

(2) Where a licensing authority make a determination under sub-paragraph (1) they must—

- (a) specify in the determination—
- (i) the form of electronic communication by which applications, objections, representations or notifications may be made or given,
- (ii) the electronic address to be used for making or giving applications, objections, representations or notifications, and
- (iii) any means of authentication (in addition to an electronic signature) that are acceptable, and
- (b) publicise the determination as they consider appropriate.

(3) In relation to an application, objection, representation or notification made or given by means of an electronic communication, any requirement of this Schedule for the application, objection, representation or notification—

- (a) to be in writing is satisfied if the communication is—
- (i) in the form specified under sub-paragraph (2)(a)(i), and
- (ii) sent to the address specified under sub-paragraph (2)(a)(ii),
- (b) to be signed is satisfied if the communication includes an electronic signature or is authenticated by a means specified under sub-paragraph (2)(a)(iii).

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*Status: This is the original version (as it was originally enacted).*

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- (4) A licensing authority may determine to—
    - (a) give notices under paragraphs 5, 9, 10, 11 or 12, and
    - (b) give reasons under paragraph 17,by means of an electronic communication.
  - (5) A licensing authority may only give a notice or reasons by means of an electronic communication if—
    - (a) the person to whom the notice or reasons is or are to be given has agreed to receive notices and reasons by means of an electronic communication, and
    - (b) the communication is sent to an electronic address, and is in an electronic form, specified for that purpose by the person.
  - (6) In relation to any notice or reasons given by means of an electronic communication, any requirement of this Schedule for the notice or reasons to be given in writing is satisfied if the communication is sent in accordance with sub-paragraph (5).
  - (7) When a licensing authority gives a notice or reasons by means of an electronic communication then, unless the contrary is proved, it is to be treated as having been received by the person to whom it was sent on the second working day after the day on which it was sent.
  - (8) For the purposes of sub-paragraph (7), “working day” means a day which is not—
    - (a) a Saturday or Sunday,
    - (b) Christmas Eve or Christmas Day,
    - (c) a day which is a bank holiday in Scotland under the Banking and Financial Dealings Act 1971,
    - (d) a day appointed for public thanksgiving or mourning, or
    - (e) a day which is a local or public holiday in the area in which the electronic communication is to be sent.
  - (9) A licensing authority may make different determinations for different purposes including, in particular, for different types of licence.
  - (10) In this Schedule—
    - “electronic communication” is to be construed in accordance with section 15(1) of the Electronic Communications Act 2000,
    - “electronic signature” is to be construed in accordance with section 7(2) of the Electronic Communications Act 2000.”.
- (3) In Schedule 2 (control of sex shops and sexual entertainment venues)—
- (a) after paragraph 8(4) insert—
    - “(4A) Where a local authority have determined to accept objections and representations by means of an electronic communication under paragraph 22A, an objection or representation is made for the purpose of sub-paragraph (2) of this paragraph if it is sent—

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- (a) to the authority by means of an electronic communication which complies with the determination, and
  - (b) within the time specified in sub-paragraph (2).
- (4B) Sub-paragraph (4A) is without prejudice to sub-paragraph (4).”,
- (b) after paragraph 22 insert—

*“Electronic communications*

- 22A (1) A local authority may determine to accept—
- (a) applications for the grant or renewal of a licence under this Schedule,
  - (b) objections or representations under paragraph 8,
  - (c) notifications of a change to a licence under paragraph 14,
- by means of an electronic communication.
- (2) Where a local authority make a determination under sub-paragraph (1) they must—
- (a) specify in the determination—
    - (i) the form of electronic communication by which applications, objections, representations or notifications may be made or given,
    - (ii) the electronic address to be used for making or giving applications, objections, representations or notifications, and
    - (iii) any means of authentication (in addition to an electronic signature) that are acceptable, and
  - (b) publicise the determination as they consider appropriate.
- (3) In relation to an application, objection, representation or notification made or given by means of an electronic communication, any requirement of this Schedule for the application, objection, representation or notification—
- (a) to be in writing is satisfied if the communication is—
    - (i) in the form specified under sub-paragraph (2)(a)(i), and
    - (ii) sent to the address specified under sub-paragraph (2)(a)(ii),
  - (b) to be signed is satisfied if the communication includes an electronic signature or is authenticated by a means specified under sub-paragraph (2)(a)(iii).
- (4) A local authority may determine to—
- (a) give notices under paragraphs 8, 10, 13, 14 or 15, and
  - (b) give reasons under paragraph 23,
- by means of an electronic communication.
- (5) A local authority may only give a notice or reasons by means of an electronic communication if—

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*Status: This is the original version (as it was originally enacted).*

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