

# **CRIMINAL JUSTICE AND LICENSING (SCOTLAND) ACT 2010**

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## **EXPLANATORY NOTES**

### **COMMENTARY ON SECTIONS**

#### **Part 8 - Licensing under Civic Government (Scotland) Act 1982**

730. Part 8 of the Act makes various changes to the general licensing provisions of the Civic Government (Scotland) 1982 Act and to its specific provisions on metal dealers, market operators, public entertainment, late hours catering, and taxis and private hire cars.

#### ***Section 172 - Conditions to which licences under 1982 Act are to be subject***

731. This section amends the 1982 Act to provide powers for mandatory and standard conditions to be imposed on licences issued under the 1982 Act and makes consequential amendments.
732. As amended, section 3A of the 1982 Act allows the Scottish Ministers to make an order setting out mandatory licence conditions that licences issued under the 1982 Act, included deemed licences, are to be subject. Such an order is subject to the affirmative resolution procedure.
733. As amended, section 3B of the allows a licensing authority to determine standard conditions. Licences issued under the 1982 Act by that authority will be subject to those standard conditions. The standard conditions must not be inconsistent with any mandatory conditions Licensing authorities have a duty (section 3B(4)) to publish standard conditions determined by them. The standard conditions apply to deemed grants or renewals of licences (i.e. grant or renewal of licences where the authority has failed to reach a decision on an application within the statutory period allowed).
734. For both mandatory and standard conditions, different sets of conditions can be determined for different types of licence (e.g. boat-hire licences or street traders' licences under sections 38 and 39 of the 1982 Act respectively).
735. **Section 172(6)** amends Schedule 1 to the 1982 Act to enable licensing authorities, when granting or renewing licences under the 1982 Act to impose further conditions, as well as omit or vary any of the standard conditions applicable to licences.

#### ***Section 173 - Licensing: powers of entry and inspection for civilian employees***

736. Section 5 of the 1982 Act empowers a constable or authorised officer to enter and inspect premises to ensure compliance with licence conditions. This section extends these powers to civilian staff employed by the police (under the provisions of section 9 of the Police (Scotland) Act 1967) and makes consequential amendments to other parts of the 1982 Act.

### ***Section 174 – Licensing of taxis and private hire cars***

737. Subsection (2) amends section 13(3) of the 1982 Act to provide that an applicant for a taxi or private hire car driver's licence must have held throughout the period of 12 months immediately prior to the date of the application a licence authorising the person to drive a motor car issued under Part III of the Road Traffic Act 1988 or a licence which would at the time of the application entitle the person to such a licence without taking a test, not being a provisional licence.
738. Subsection (3) inserts new subsections (2) to (4E) into section 17 which provide that a licensing authority must fix scales for the fares and other charges referred to in subsection (1) within 18 months beginning with the date on which the scales came into effect. Subsection (3) provides that in fixing the scales under subsection (2) a licensing authority may alter the fares or other charges or fix fares or other charges at the same rates. Subsection (4) provides that the licensing authority review the scales in accordance with subsection (4A) before fixing scales under subsection (2). Subsection (4A)(a) provides that a licensing authority, in carrying out a review, consult with persons or organisations appearing to be representative of taxi operators in the area. Subsections (4A)(b) and (c) set out procedures for consultation and notification of the licensing authority's proposals and subsection (d) provides that they consider any representations received thereon. Subsection (4C) sets out the duty to give notice as to the effect of the fare scales fixed and subsection (4D) contains the notification requirements. Subsection (4E) provides that after fixing scales, the licensing authority must notify all operators of taxis within their area and the persons and organisations consulted under subsection (4A)(a). Section 17(5)(a) is amended to extend the period provided for notification of a licensing authority's decision from 5 days to 7 days.
739. Subsection (4) amends section 18(1) and introduces a new section 18(1A) to extend the right of appeal against the decision by a licensing authority in regard to the fixing of taxi fare scales or review to persons or bodies representative of taxi operators in the licensing area.
740. Subsection (5) inserts a new section 18A(1) which provides that following the fixing of scales the licensing authority must determine the date upon which the scales are to come into effect and publish them in accordance with the terms of section 18A(3) to (5). Section 18A(2) provides that the revised scales may not come into effect earlier than 7 days after the date on which they were published. Sections 18A(3) to (5) set out the notification procedures and the timescale to be followed. Section 18(9) is repealed in consequence.

### ***Section 175 – Licensing of street trading: food hygiene certificates***

741. Section 175 amends section 39 (street traders' licences) of the 1982 Act to amend the requirements of the certificate that must accompany certain applications for a street trader's licence. The effect is to provide that the certificate must state that the vehicle, kiosk or moveable stall complies with any requirements set out in an order made by the Scottish Ministers. This will enable the requirements set out in the certificate to be amended following any changes in food safety legislation.

### ***Section 176 – Licensing of public entertainment***

742. Subsection (2) repeals the words "on payment of money or money's worth" from section 41(2) of the 1982 Act. This allows licensing authorities to require large-scale public entertainments that are free to enter to be licensed. Authorities retain discretion as to whether events such as gala days or school fetes should be licensed.
743. Subsection (2) also updates some references to gambling legislation for premises that are exempt from the public entertainment licensing provisions (sections 41(2)(d) and (e) of the 1982 Act refer). It also allows the Scottish Ministers, by order, to add other

*These notes relate to the Criminal Justice and Licensing (Scotland)  
Act 2010 (asp 13) which received Royal Assent on 6 August 2010*

premises to the list of premises that are exempt from requiring a public entertainment licence. Such an order will be subject to the negative resolution procedure.

***Section 177 - Licensing of late night catering***

744. Under section 42 of the 1982 Act, premises providing meals and refreshments between 11pm and 5am require to be licensed, where licensing authorities have opted to have a late night catering licensing regime. This section replaces the references to “meals or refreshments” with “food”, thus bringing late-night grocers and 24-hour stores within the scope of the provisions. It will continue to be for licensing authorities to determine which classes of premises actually require to be licensed.

***Section 178 - Applications for licences***

745. This section amends Schedules 1 and 2 to the 1982 Act.
746. It amends Schedule 1 to require individuals applying for licences under the 1982 Act to provide details of their date and place of birth on the application forms. Subsection 2(c) and (d) ensures that an applicant’s date and place of birth are not included within the notices required for display and publication for the purposes of a licence application under Part 2 of the 1982 Act.
747. **Section 178** also amends amend various time limits of the application process to: make representations; provide reasons for decisions; give notice of hearings; and for licensing authorities to consider licence renewal applications received after the expiry date as renewals, rather than new applications.
748. Subsection (3)(e) amends paragraph 9(3) of Schedule 2 to the 1982 Act to reflect the position of the United Kingdom as a member state of the European Union and its obligations under EC law.