



# Air Weapons and Licensing (Scotland) Act 2015

2015 asp 10

## PART 3

### CIVIC LICENSING

#### *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    - (i) the words “applied for” are repealed,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    - (iii) the words from “and” where first occurring to the end are repealed,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.

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(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.

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- (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.
- (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.
- (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—

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- (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,



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

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- (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—
      - (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

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- 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—
- (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,

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“electronic signature” is to be construed in accordance with section 7(2) of the Electronic Communications Act 2000.”.