
DRAFT SCOTTISH STATUTORY INSTRUMENTS

2021 No.

The Animal Welfare (Licensing of Activities Involving Animals) (Scotland) Regulations 2021

PART 4

Enforcement and notices

Grounds for suspension, variation (without consent) or revocation of a licence

17.—(1) A licensing authority may, without any requirement for the licence holder's consent, decide to suspend, vary or revoke a licence at any time on being satisfied that—

- (a) a licence condition is not being complied with,
- (b) there has been a failure to comply with these Regulations,
- (c) information supplied by the licence holder is false or misleading, or
- (d) it is necessary to protect the welfare of an animal.

(2) Variation of a licence under paragraph (1) means changing the details of a licence other than a standard condition and includes—

- (a) attachment of a condition to a licence of the same legal effect as if it has been attached under regulation 6(5), if the requirements for attachment of a licence under regulation 6(5) are also met, and
- (b) removal of a condition that has been attached to a licence under regulation 6(5) or by way of variation of a licence.

Procedure for suspension or variation without consent

18.—(1) Except as otherwise provided in this regulation, the suspension or variation of a licence following a decision under regulation 17 has effect at the end of a period of 7 working days beginning with the date on which notice of the decision is served on the licence holder or, if that date is not a working day, the next working day.

(2) If it is necessary to protect the welfare of an animal, the licensing authority may specify in the notice of its decision that the suspension or variation has immediate effect, in which case the suspension or variation will take effect on service of the notice.

(3) A decision to suspend or vary a licence must—

- (a) be notified by service of a notice on the licence holder,
- (b) state the licensing authority's grounds for suspension or variation,
- (c) state when it comes into effect,
- (d) specify measures that the licensing authority considers are necessary in order to remedy the grounds, and

- (e) explain the right of the licence holder to make representations in writing in accordance with paragraph (4) and give details of the person to whom such representations may be made and the date by the end of which they must be received.
- (4) The licence holder may make representations in writing to the licensing authority which must be received by the licensing authority within 7 working days beginning with the date of service of notice of the decision under regulation 17 to suspend or vary the licence or, if that date is not a working day, the next working day.
- (5) Except in relation to notices under paragraph (2), where a licence holder makes representations in writing which are received by the licensing authority within the period specified in paragraph (4), the suspension or variation is not to have effect unless the licensing authority, after considering the representations, suspends or varies the licence in accordance with paragraph (6)(a).
- (6) Within 14 working days beginning with the date of receipt of any representations made in accordance with paragraph (5) or beginning with the next working day if the date of receipt is not a working day, the licensing authority must after considering the representations serve notice on the licence holder of a decision to—
 - (a) suspend or vary the licence,
 - (b) cancel its decision under regulation 17 to suspend or vary the licence,
 - (c) confirm the suspension or variation of the licence under paragraph (2), or
 - (d) reinstate the licence if it has been suspended, or cancel its variation if it has been varied, under paragraph (2).
- (7) Notice of a decision under paragraph (6) must—
 - (a) state the reasons for the decision, and
 - (b) where the decision is to vary or confirm the variation of a licence, give notice of the licence holder’s right of appeal to the sheriff and the period within which such an appeal may be brought under regulation 27.
- (8) Paragraph (9) applies if the licensing authority fails to comply with paragraph (6) or (7).
- (9) Where this paragraph applies, after 14 working days beginning with the date of receipt of any representations made in accordance with paragraph (4) or, if that date is not a working day, beginning with the next working day—
 - (a) a licence suspended under paragraph (2) is deemed to be reinstated,
 - (b) a licence varied under paragraph (2) is deemed to have effect as if it had not been so varied,
 - (c) a licence suspended under paragraph (6)(a) is deemed to be reinstated,
 - (d) a licence varied under paragraph (6)(a) is deemed to have effect as if it had not been so varied,
 - (e) a licence held by the licence holder which the licensing authority decided to suspend or vary under regulation 17 is to remain in force and not to be so suspended or varied, if it was not a licence suspended or varied under paragraph (2) or (6)(a).
- (10) Once a licence has been suspended for 28 days, the licensing authority must within the next 14 working days—
 - (a) decide to—
 - (i) reinstate it without varying it,
 - (ii) vary and reinstate it as varied, or
 - (iii) revoke it, and
 - (b) serve on the licence holder a notice of the decision.

(11) If the licensing authority fails to comply with paragraph (10), the licence is deemed to have been reinstated without variation with immediate effect.

(12) A licensing authority's decision under paragraphs (6) or (10) has effect on service of the notice of the decision.

Reinstatement of a suspended licence by a licensing authority

19.—(1) A licensing authority must reinstate a suspended licence by way of notice once it is satisfied that the grounds specified in the notice of suspension have been or will be remedied.

(2) Where a licensing authority reinstates a licence under paragraph (1), it may reduce the period for which it is reinstated.

Revocation

20.—(1) A licensing authority may revoke a licence at any time on any of the grounds in regulation 17 by service of a notice on the licence holder.

(2) The revocation takes effect on service of the notice if served in accordance with regulation 21.

Notices of revocation and variation upon reinstatement

21.—(1) A notice of a decision to—

- (a) revoke a licence regardless of whether under regulation 18(10)(a)(iii) or 20,
- (b) vary and reinstate a licence as varied under regulation 18(10)(a)(ii).

must comply with paragraph (2).

(2) The notice must—

- (a) state the licensing authority's reasons for the decision, and
- (b) give notice of the licence holder's right of appeal to the sheriff and the period under regulation 27 within which such an appeal may be brought.

Obstruction of inspectors

22. A person must not intentionally obstruct an inspector appointed for the purposes of these Regulations in the exercise of any powers conferred by or under these Regulations.

Offences and penalties

23.—(1) It is an offence for a person without reasonable excuse—

- (a) subject to the exceptions provided for in paragraph (2), to breach a standard licence condition,
- (b) to fail to comply with regulations 3 (carrying on a licensable activity without the authority of a licence), 10 (duty to assist in the taking of samples from animals) or 22 (obstruction of inspectors),
- (c) to provide to an inspector information required by or under these Regulations which the person knows, or ought reasonably to have known, is to a material extent false or misleading, or
- (d) for the purposes of obtaining or holding a licence under these Regulations—
 - (i) to make a statement required by or under these Regulations to the licensing authority (or someone acting on its behalf) which the person knows, or ought reasonably to have known, is to a material extent false or misleading, or

(ii) recklessly to make a statement required by or under these Regulations to the licensing authority (or someone acting on its behalf) which is to a material extent false or misleading.

(2) A person does not commit an offence by reason of breaching the licence conditions provided for in—

- (a) paragraph 3 of schedule 6,
- (b) paragraph 3 of schedule 7,
- (c) paragraph 3 of schedule 8.

(3) A person who commits an offence under—

- (a) paragraph (1)(a) is liable on summary conviction to a fine not exceeding level 5 on the standard scale,
- (b) paragraph (1)(b) to (d) is liable on summary conviction to a fine not exceeding £40,000, or to imprisonment for a term not exceeding 12 months, or both.

Powers of entry

24.—(1) Any inspector may enter any premises except domestic premises at all reasonable times and inspect such premises and any animals found there for the purposes of preparing an inspector's report.

(2) An inspector may enter any premises except domestic premises at all reasonable times for the purpose of ascertaining whether any requirement of these Regulations or any licence condition is being, or has been, complied with and, in particular, may—

- (a) inspect the premises,
- (b) inspect and copy any records (in whatever form they are held) kept under these Regulations or any licence condition, or remove such records to enable them to be copied,
- (c) inspect and check the operation of any computer and any associated apparatus or material which is or has been in use in connection with the records,
- (d) for that purpose, require any person having charge of, or otherwise concerned with, the operation of the computer, apparatus or material to afford the inspector such assistance as the inspector may reasonably require (including giving access to password protected materials and systems),
- (e) where a record is kept by means of a computer, require the record to be produced in a form in which it may be taken away,
- (f) examine, or require the examination of, any animal kept on the premises,
- (g) exercise the power in regulation 9 (power to take samples from animals), and
- (h) take on to the premises such persons to give the inspector such assistance and such equipment as the inspector considers necessary.

(3) An inspector must produce evidence of the inspector's authority to enter the premises if such evidence is requested by an owner or occupant of the premises when the inspector is exercising, or seeking to exercise, either of the powers of entry in paragraphs (1) or (2).

(4) If a sheriff or justice of the peace is satisfied by evidence on oath laid by any inspector that there are reasonable grounds for suspecting that an offence against these Regulations has been or is being committed at any domestic premises in the area of the licensing authority, the sheriff or justice may issue a warrant authorising any inspector to enter those premises, by reasonable force if need be, and inspect the premises and any animals or anything found there.

(5) A warrant issued under paragraph (4) above—

- (a) may authorise persons to accompany the person who is executing the warrant, and
 - (b) continues in force for the period of one month beginning with the date of issue.
- (6) The power of entry conferred by the warrant may be exercised at all reasonable times and any person entering the premises in exercise of that power must—
- (a) produce the warrant if so required, and
 - (b) comply with such precautions (if any) as the sheriff or justice of the peace may specify to prevent the spread among animals of infectious or contagious diseases.
- (7) If an inspector enters any unoccupied premises, the inspector must leave them as effectively secured against entry as the inspector found them.

Post-conviction powers

25.—(1) The post-conviction powers contained in sections 39 (deprivation orders) and 40 (disqualification orders) of the Act apply in relation to a conviction for an offence under regulation 23.

(2) Sections 41 (seizure orders where disqualification breached), 42 (termination or variation of disqualification) and 43 (appeal against orders) of the Act apply to an order made by virtue of paragraph (1) as if the order had been made in relation to an offence under the Act.

Notices

26. Any notice served by a licensing authority under these Regulations may be amended, suspended or revoked by further notice served by the licensing authority at any time.