

Status: Point in time view as at 01/04/2013.

Changes to legislation: Civic Government (Scotland) Act 1982, Cross Heading: Variation and suspension of licences is up to date with all changes known to be in force on or before 02 June 2024. There are changes that may be brought into force at a future date. Changes that have been made appear in the content and are referenced with annotations. (See end of Document for details)

SCHEDULES

SCHEDULE 1

LICENSING—FURTHER PROVISIONS AS TO THE GENERAL SYSTEM

Modifications etc. (not altering text)

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

Variation and suspension of licences

- 10 (1) A licensing authority may, at any time, whether or not upon an application made to them by the holder of the licence, vary the terms of a licence on any grounds they think fit.
- (2) A licensing authority, before proceeding to vary the terms of a licence under sub-paragraph (1) above—
- (a) shall, not later than 7 days before the day on which the proposed variation is to be considered, notify the holder of the licence, the chief constable and, where the licence relates to an activity wholly or mainly carried on in premises, the [^{F1}Scottish Fire and Rescue Service] of the proposed variation; and
 - (b) shall give each of the persons [^{F2}required to be notified under] sub-sub-paragraph (a) above an opportunity to be heard by the authority on that day.
- [^{F3}(2A) Where the premises mentioned in sub-paragraph (2)(a) above are premises to which Part 3 of the [Fire \(Scotland\) Act 2005 \(asp 5\)](#) applies, that sub-paragraph applies as if the reference to the [^{F4}Scottish Fire and Rescue Service] were a reference to the enforcing authority]
- (3) A licensing authority shall have complied with sub-paragraph (2)(b) above if they have invited each of the persons whom they must notify under that sub-paragraph to attend and to be heard by the authority when the variation of the licence is to be considered.
- (4) A licensing authority shall, within 7 days of their decision under sub-paragraph (1) above, send written notice of their decision to the holder of the licence and the chief constable and, where the licence relates to an activity wholly or mainly carried on
- [^{F5}(a) in premises to which Part 3 of the [Fire \(Scotland\) Act 2005 \(asp 5\)](#) applies, the enforcing authority;
 - (b) in any other premises] , to the [^{F6}Scottish Fire and Rescue Service] .
- (5) A variation in the terms of a licence shall come into force—
- (a) when the time within which an appeal under paragraph 18 below may be made has elapsed; or

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

Textual Amendments

- F1** Words in Sch. 1 para. 10(2)(a) substituted (1.4.2013) by Police and Fire Reform (Scotland) Act 2012 (asp 8), s. 129(2), sch. 7 para. 53(6); S.S.I. 2013/51, art. 2 (with transitional provisions and savings in S.S.I. 2013/121)
- F2** Words in Sch. 1 para. 10(2)(b) substituted (1.10.2006) by The Fire (Scotland) Act 2005 (Consequential Modifications and Savings) Order 2006 (S.S.I. 2006/475), art. 1, sch. 1 para. 11(6)(f)(i)
- F3** Sch. 1 para. 10(2A) inserted (1.10.2006) by The Fire (Scotland) Act 2005 (Consequential Modifications and Savings) Order 2006 (S.S.I. 2006/475), art. 1, sch. 1 para. 11(6)(f)(ii)
- F4** Words in Sch. 1 para. 10(2A) substituted (1.4.2013) by Police and Fire Reform (Scotland) Act 2012 (asp 8), s. 129(2), sch. 7 para. 53(6); S.S.I. 2013/51, art. 2 (with transitional provisions and savings in S.S.I. 2013/121)
- F5** Words in Sch. 1 para. 10(4) substituted (1.10.2006) by The Fire (Scotland) Act 2005 (Consequential Modifications and Savings) Order 2006 (S.S.I. 2006/475), art. 1, sch. 1 para. 11(6)(f)(iii)
- F6** Words in Sch. 1 para. 10(4)(b) substituted (1.4.2013) by Police and Fire Reform (Scotland) Act 2012 (asp 8), s. 129(2), sch. 7 para. 53(6); S.S.I. 2013/51, art. 2 (with transitional provisions and savings in S.S.I. 2013/121)

- 11 (1) A licensing authority may, whether upon a complaint made to them or not, suspend a licence in accordance with the provisions of this paragraph.
- (2) A licensing authority may order the suspension of a licence if in their opinion—
- (a) the holder of the licence or, where the holder is not a natural person, any director of it or partner in it or any other person responsible for its management, is not or is no longer a fit and proper person to hold the licence;
 - (b) the activity to which the licence relates is being managed by or carried on for the benefit of a person, other than the licence holder, who would have been refused the grant or renewal of the licence under paragraph 5(3) above;
 - (c) the carrying on of the activity to which the licence relates has caused, is causing or is likely to cause undue public nuisance or a threat to public order or public safety;
 - (d) a condition of the licence has been contravened.
- (3) A licensing authority may make an order under sub-paragraph (2)(d) above in respect of a contravention of a condition of a licence notwithstanding that there has been no conviction in that respect.
- (4) In considering whether to suspend a licence the licensing authority may—
- (a) have regard to—
 - (i) any misconduct on the part of the holder of the licence, whether or not constituting a breach of any provision of Part I or II of this Act or this Schedule, which in the opinion of the authority has a bearing on his fitness to hold a licence;
 - (ii) where the licence relates to an activity consisting of or including the use of premises or a vehicle or vessel, any misconduct on the part of persons frequenting or using the premises, vehicle or vessel occurring there or any misconduct in the immediate vicinity of the premises, vehicle or vessel which is attributable to those persons;

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- (b) make such reasonable inquiries as they think fit and, subject to sub-paragraph (5) below, include the results of their inquiries in the matters to which they have regard in such consideration.
- (5) Where a licensing authority intend to include any of the results of their inquiries under sub-paragraph (4)(b) above in the matters to which they have regard for the purposes of sub-paragraph (4) above, they shall notify the holder of the licence of that intention.
- (6) A licensing authority may, whether upon an application made to them or not, recall an order made under this paragraph.
- (7) A licensing authority in considering whether or not to suspend a licence may, but before deciding to do so shall, give—
- (a) the holder of the licence;
 - (b) any person who has made a complaint relevant to the matters to be considered at the hearing;
 - (c) the chief constable; and
 - (d) where the licence relates to an activity wholly or mainly carried on
 - [^{F7}(a) in premises to which Part 3 of the [Fire \(Scotland\) Act 2005 \(asp 5\)](#) applies, the enforcing authority;
 - (b) in any other premises], the [^{F8}Scottish Fire and Rescue Service] ,an opportunity to be heard by the licensing authority.
- (8) The licensing authority shall have complied with their duty under sub-paragraph (7) above if they have caused to be sent to the persons entitled under that sub-paragraph to an opportunity to be heard, not later than [^{F9}14] days before the hearing, notice in writing that the authority propose to hold a hearing, together with a copy of any complaints relevant to the matters to be considered at the hearing and a note of the grounds upon which the suspension of the licence is to be considered and, where they decide to exercise their power under that sub-paragraph, they shall cause such notice, copy and note to be sent to those persons not later than that time.
- (9) Where a licensing authority decide to order the suspension of a licence, the suspension shall not, subject to sub-paragraph (10) below, take effect until the expiry of the time within which the holder of the licence may appeal under paragraph 18 below against the suspension or, if such an appeal has been lodged, until it has been abandoned or determined in favour of the suspension.
- (10) If, in deciding to order the suspension of a licence, a licensing authority determine that the circumstances of the case justify immediate suspension they may, without prejudice to their other powers under this paragraph, order that the licence shall be suspended immediately.
- (11) The period of suspension of a licence under this paragraph shall be the unexpired portion of the duration of the licence, or such shorter period as the licensing authority may fix; and the effect of suspension shall be that the licence shall cease to have effect during the period of the suspension.
- (12) A licensing authority shall, within 7 days of their decision under sub-paragraph (1) above, send written notice of their decision to the persons referred to in sub-paragraph (7)(a), (c) and (d) above in relation to the licence and to any person who, in pursuance of sub-paragraph (7)(b) above, was heard by the authority before they reached that decision.

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Textual Amendments

- F7** Words in Sch. 1 para. 11(7)(d) substituted (1.10.2006) by [The Fire \(Scotland\) Act 2005 \(Consequential Modifications and Savings\) Order 2006 \(S.S.I. 2006/475\)](#), art. 1, **sch. 1 para. 11(6)(g)**
- F8** Words in Sch. 1 para. 11(7)(d) substituted (1.4.2013) by [Police and Fire Reform \(Scotland\) Act 2012 \(asp 8\)](#), s. 129(2), **sch. 7 para. 53(6)**; S.S.I. 2013/51, art. 2 (with transitional provisions and savings in S.S.I. 2013/121)
- F9** Word in Sch. 1 para. 11(8) substituted (28.2.2011) by [Criminal Justice and Licensing \(Scotland\) Act 2010 \(asp 13\)](#), **ss. 178(2)(h)**, 206(1); S.S.I. 2010/413, art. 2, sch. (with sch.)

- 12 (1) A licensing authority shall, whether upon a complaint made to them or not, order the suspension under this paragraph of a licence if they are of the opinion that the carrying on of the activity to which the licence relates is causing or is likely to cause a serious threat to public order or public safety.
- (2) In considering whether to suspend a licence under this paragraph, a licensing authority may make such reasonable inquiries as they think fit and include the results of their inquiries in the matters to which they have regard in such consideration.
- (3) Where a licensing authority intend to include any of the results of their inquiries under sub-paragraph (2) above in the matters to which they have regard for the purposes of this paragraph they shall notify the holder of the licence of that intention.
- (4) A licensing authority shall, before reaching a decision on the question whether or not to suspend a licence under this paragraph, consult the chief constable and, where the licence relates to an activity wholly or mainly carried on
- [^{F10}(a) in premises to which Part 3 of the [Fire \(Scotland\) Act 2005 \(asp 5\)](#) applies, the enforcing authority;
- (b) in any other premises] , the [^{F11}Scottish Fire and Rescue Service] .
- (5) An order under this paragraph suspending a licence shall have effect from the date on which it is made until whichever is the earlier of the following two dates—
- (a) a date six weeks after the order was made;
- (b) the date of any decision of the leasing authority whether or not to suspend the licence under paragraph 11 above.
- (6) A licensing authority may, whether upon an application made to them or not, recall an order made under this paragraph.
- (7) A licensing authority shall, within 7 days of their decision under sub-paragraph (1) or (6) above, send written notice of their decision to the holder of the licence, the chief constable and, where the licence relates to an activity wholly or mainly carried on
- [^{F12}(a) in premises to which Part 3 of the [Fire \(Scotland\) Act 2005 \(asp 5\)](#) applies, the enforcing authority;
- (b) in any other premises] , to the [^{F13}Scottish Fire and Rescue Service] .

Textual Amendments

- F10** Words in Sch. 1 para. 12(4) substituted (1.10.2006) by [The Fire \(Scotland\) Act 2005 \(Consequential Modifications and Savings\) Order 2006 \(S.S.I. 2006/475\)](#), art. 1, **sch. 1 para. 11(6)(h)(i)**
- F11** Words in Sch. 1 para. 12(4)(b) substituted (1.4.2013) by [Police and Fire Reform \(Scotland\) Act 2012 \(asp 8\)](#), s. 129(2), **sch. 7 para. 53(6)**; S.S.I. 2013/51, art. 2 (with transitional provisions and savings in S.S.I. 2013/121)

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- F12** Words in Sch. 1 para. 12(7) substituted (1.10.2006) by [The Fire \(Scotland\) Act 2005 \(Consequential Modifications and Savings\) Order 2006 \(S.S.I. 2006/475\)](#), art. 1, [sch. 1 para. 11\(6\)\(h\)\(ii\)](#)
- F13** Words in Sch. 1 para. 12(7)(b) substituted (1.4.2013) by [Police and Fire Reform \(Scotland\) Act 2012 \(asp 8\)](#), s. 129(2), [sch. 7 para. 53\(6\)](#); S.S.I. 2013/51, art. 2 (with transitional provisions and savings in S.S.I. 2013/121)

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