



Criminal Justice and Licensing (Scotland) Act 2010

2010 asp 13

PART 8

LICENSING UNDER CIVIC GOVERNMENT (SCOTLAND) ACT 1982

172 Conditions to which licences under 1982 Act are to be subject

- (1) The 1982 Act is amended as follows.
- (2) In section 3(4) (automatic grant or renewal of licence where application not determined within specified period), the word “unconditionally” is repealed.
- (3) After section 3 insert—

“3A Mandatory licence conditions

- (1) The Scottish Ministers may by order made by statutory instrument prescribe conditions to which licences granted by licensing authorities under this Act 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) No order may be made under subsection (1) unless a draft of the statutory instrument containing the order has been laid before and approved by resolution of the Scottish Parliament.
- (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 licensing authorities under this Act are to be subject, or
 - (b) to be imposed by licensing authorities in granting or renewing licences under this Act.

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- (5) The following conditions are referred to in this Part and Part 2 of this Act 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 or Part 2 of this Act.
- (6) In this section and section 3B, references to licences granted by licensing authorities include references to—
- (a) licences renewed by licensing authorities, and
 - (b) licences deemed by virtue of section 3(4) to be granted or renewed by licensing authorities.

3B Standard licence conditions

- (1) A licensing authority may determine conditions to which licences granted by them under this Act are to be subject.
- (2) Conditions determined under subsection (1) are referred to in this Part and Part 2 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 licensing 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 5(1A)(a) of Schedule 1 to this Act.”.
- (4) In section 27C (conditions in respect of knife dealers’ licences)—
- (a) in subsection (1)—
 - (i) in paragraph (b), after “prejudice to” insert “section 3B and”, and
 - (ii) in paragraph (c), after “that” insert “section and”, and
 - (b) subsection (2) is repealed.
- (5) In section 41(3) (power to attach conditions to public entertainment licences), after “prejudice to” insert “section 3B of and”.
- (6) In Schedule 1 (further provisions as to the general licensing system), in paragraph 5—
- (a) in sub-paragraph (1)—
 - (i) in paragraph (a), the word “unconditionally” is repealed, and
 - (ii) paragraph (b) is repealed,
 - (b) after that sub-paragraph insert—

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

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- (a) disapply or vary any standard conditions so far as applicable to the licence,
- (b) impose conditions in addition to any mandatory or standard conditions to which the licence is subject.”,
- (c) in sub-paragraph (2), for “(1)(b)” substitute “(1A)(b)”, and
- (d) after that sub-paragraph insert—
 - “(2A) A variation made under sub-paragraph (1A)(a) or condition imposed under sub-paragraph (1A)(b) has no effect so far as it is inconsistent with any mandatory condition to which the licence is subject.”.

173 Licensing: powers of entry and inspection for civilian employees

- (1) The 1982 Act is amended as follows.
- (2) In section 5 (rights of entry and inspection)—
 - (a) in subsection (1), after “licensing authority” insert “, an authorised civilian employee”,
 - (b) in subsection (3)(a) and (b)—
 - (i) after “constable” where it first occurs insert “, an authorised civilian employee”, and
 - (ii) after “such an” insert “employee or”,
 - (c) in subsection (3)(c), after “constable” insert “, an authorised civilian employee”,
 - (d) in subsection (4)—
 - (i) after “licensing authority” insert “, an authorised civilian employee”, and
 - (ii) after “the officer” insert “, employee”, and
 - (e) in subsection (6), after “licensing authority” insert “or authorised civilian employee”.
- (3) In section 8 (interpretation of Parts 1 and 2), after the definition of “appropriate relevant authority” insert—
 - ““authorised civilian employee” means a person—
 - (a) employed by a police authority under section 9(1)(a) of the Police (Scotland) Act 1967 (c.77), and
 - (b) authorised by the chief constable for the purposes of sections 5 and 11 of this Act;”.
- (4) In section 11 (inspection and testing of vehicles), in subsection (2)—
 - (a) after “the authority” insert “, an authorised civilian employee”,
 - (b) in paragraph (b), after “licensing authority” insert “, an authorised civilian employee”, and
 - (c) after “authorised officer” where it last occurs, insert “, employee”.
- (5) In paragraph 3 (miscellaneous definitions) of Schedule 2 (control of sex shops), after the definition of “appropriate relevant authority” insert—
 - ““authorised civilian employee” means a person—
 - (a) employed by a police authority under section 9(1)(a) of the Police (Scotland) Act 1967 (c.77), and

- (b) authorised by the chief constable for the purposes of paragraph 20 of this Schedule;”.
- (6) In paragraph 20 of that Schedule (rights of entry and inspection)—
 - (a) in sub-paragraph (1), after “local authority” insert “, an authorised civilian employee”,
 - (b) in sub-paragraph (3), after “local authority” insert “or an authorised civilian employee”, and
 - (c) in sub-paragraph (5)—
 - (i) after “constable” where it first occurs insert “, an authorised civilian employee”, and
 - (ii) after “such” insert “employee or”.

174 Licensing of taxis and private hire cars

- (1) The 1982 Act is amended as follows.
- (2) In section 13 (taxi and private hire car licences), in subsection (3), for “during any continuous period of 12 months” substitute “throughout the period of 12 months immediately”.
- (3) In section 17 (taxi fares)—
 - (a) for subsections (2) to (4) substitute—
 - “(2) The licensing authority must fix scales for the fares and other charges mentioned in subsection (1) within 18 months beginning with the date on which the scales came into effect.
 - (3) In fixing scales under subsection (2), the licensing authority may—
 - (a) alter fares or other charges,
 - (b) fix fares or other charges at the same rates.
 - (4) Before fixing scales under subsection (2), the licensing authority must review the scales in accordance with subsection (4A).
 - (4A) In carrying out a review, the licensing authority must—
 - (a) consult with persons or organisations appearing to it to be, or to be representative of, the operators of taxis operating within its area,
 - (b) following such consultation—
 - (i) review the existing scales, and
 - (ii) propose new scales (whether at altered rates or the same rates),
 - (c) publish those proposed scales in a newspaper circulating in its area—
 - (i) setting out the proposed scales,
 - (ii) explaining the effect of the proposed scales,
 - (iii) proposing a date on which the proposed scales are to come into effect, and
 - (iv) stating that any person may make representations in writing until the relevant date, and
 - (d) consider any such representations.

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- (4B) In subsection (4A)(c)(iv) “the relevant date” is a date specified by the licensing authority falling at least one month after the first publication by the authority of the proposed scales.
- (4C) After fixing scales under subsection (2), the licensing authority must give notice in accordance with subsection (4D).
- (4D) The licensing authority must—
 - (a) set out, and explain the effect of, the scales as fixed,
 - (b) notify the persons mentioned in subsection (4E) of—
 - (i) the date on which the scales as fixed are to come into effect, and
 - (ii) the rights of appeal under section 18.
- (4E) Those persons are—
 - (a) all operators of taxis operating within their area, and
 - (b) the persons and organisations consulted under subsection (4A)(a).”, and
- (b) in subsection (5)—
 - (i) for “(4)” where it first occurs substitute “(4D)(b)”, and
 - (ii) in paragraph (a)—
 - (A) for “(4)” where it first occurs substitute “(4E)”, and
 - (B) for “five days after the decision referred to in subsection (4)” substitute “seven days after the scales are fixed under subsection (2)”.
- (4) In section 18 (appeals in respect of taxi fares)—
 - (a) for subsection (1) substitute—

“(1) Any person mentioned in subsection (1A) may, within 14 days of notice being given under section 17(4C), appeal against those scales to the traffic commissioner for the Scottish Traffic Area as constituted for the purpose of the Public Passenger Vehicles Act 1981.”,
 - (b) after that subsection insert—

“(1A) Those persons are—

 - (a) any person who operates a taxi in an area for which scales have been fixed under section 17(2), and
 - (b) any person or organisation appearing to the traffic commissioner to be representative of such taxi operators.”,
 - (c) in subsection (3)—
 - (i) the words “to them” are repealed,
 - (ii) in paragraph (b) the word “may” is repealed, and
 - (iii) in paragraph (b)(i), for “on the grounds that” substitute “if”, and
 - (d) subsection (9) is repealed.
- (5) After section 18 insert—

“18A Publication and coming into effect of taxi fares

- (1) Following the fixing of scales by a licensing authority under section 17(2), the licensing authority must—
 - (a) determine the date on which the scales are to come into effect, and
 - (b) publish the scales in accordance with subsections (3) to (5).
- (2) The scales may come into effect no earlier than seven days after the date on which they are published.
- (3) The licensing authority must—
 - (a) give notice of the scales by advertisement in a newspaper circulating in its area, and
 - (b) specify in that advertisement the date on which the scales are to come into effect.
- (4) The authority must give notice of the scales—
 - (a) where no appeal has been lodged under subsection (1) of section 18, as soon as practicable after the expiry of the period of 14 days mentioned in that subsection,
 - (b) where such an appeal has been lodged, as soon as practicable after the determination of the appeal.
- (5) For the purposes of subsection (4), an appeal is determined on the date on which the appeal is abandoned or notice is given to the appellant of its disposal.”.

175 Licensing of street trading: food hygiene certificates

- (1) Section 39 of the 1982 Act (street traders’ licences) is amended as follows.
- (2) In subsection (4), for the words from “the requirements” to the end substitute “such requirements as the Scottish Ministers may by order made by statutory instrument specify”.
- (3) After subsection (4), insert—
 - “(5) An order under subsection (4) may specify requirements by reference to provision contained in another enactment.
 - (6) A statutory instrument containing an order made under subsection (4) is subject to annulment in pursuance of a resolution of the Scottish Parliament.”.

176 Licensing of public entertainment

- (1) Section 41 of the 1982 Act (public entertainment licences) is amended as follows.
- (2) In subsection (2)—
 - (a) the words “, on payment of money or money’s worth,” are repealed,
 - (b) in paragraph (d), for “, section 1 of the Cinemas Act 1985 or Part II of the Gaming Act 1968” substitute “or section 1 of the Cinemas Act 1985”,
 - (c) for paragraph (e), substitute—

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- (e) premises in respect of which there is a club gaming permit (within the meaning of section 271 of the Gambling Act 2005 (c.19)) or a prize gaming permit (within the meaning of section 289 of that Act of 2005);”,
 - (d) the word “or” immediately preceding paragraph (g) is repealed, and
 - (e) after paragraph (g), add “, or
 - (h) such other premises as the Scottish Ministers may by order made by statutory instrument specify.”.
- (3) After subsection (2) insert—
- “(2A) A statutory instrument containing an order made under subsection (2)(h) is subject to annulment in pursuance of a resolution of the Scottish Parliament.”.

177 Licensing of late night catering

- (1) Section 42 of the 1982 Act (late hours catering) is amended as follows.
 - (2) In subsections (1) and (2), for “meals or refreshment” in each place where those words occur substitute “food”.
 - (3) In subsection (2), for “they are” substitute “it is”.
 - (4) In subsection (3), for “meals or refreshments” in both places where those words occur substitute “food”.
 - (5) After subsection (6), add—
- “(7) In this section “food” has the meaning given in section 1 of the Food Safety Act 1990 (c.16).”.

178 Applications for licences

- (1) The 1982 Act is amended as follows.
 - (2) In Schedule 1 (further provisions as to the general licensing system)—
- (a) in paragraph 1(2)(b), for “and address” in both places where those words occur substitute “, address and date and place of birth”,
 - (b) in paragraph 1(2)(c)—
- (i) in sub-paragraph (iii), for “and private addresses” substitute “, private addresses and dates and places of birth”, and
 - (ii) in sub-paragraph (iv), for “and address” substitute “, address and date and place of birth”,
- (c) in paragraph 2(3)(b), after “application” insert “(other than the date and place of birth of any person)”,
 - (d) in paragraph 2(8)(a), after “application” insert “(other than the date and place of birth of any person)”,
 - (e) in paragraph 3(1)(e), for “21” substitute “28”,
 - (f) in paragraph 4(2), for “7” substitute “14”,
 - (g) in paragraph 8, after sub-paragraph (5) insert—
- “(5A) On good cause being shown, a licensing authority may, for the purposes of sub-paragraph (5), deem an application for renewal of

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a licence made up to 28 days after the expiry of the licence to be an application made before the expiry.”,

- (h) in paragraph 11(8), for “21” substitute “14”, and
- (i) in paragraph 17(2), for “28” substitute “21”.

(3) In Schedule 2 (control of sex shops)—

- (a) in paragraph 6(2), for paragraph (b) substitute—
 - “(b) the date and place of birth of the applicant;”,
- (b) in paragraph 6(2)(c), for “age” substitute “date and place of birth”,
- (c) in paragraph 6(3)—
 - (i) in paragraph (c), for “and private addresses” substitute “, private addresses and dates and places of birth”, and
 - (ii) in paragraph (d), for “age” substitute “date and place of birth”,
- (d) in paragraph 8(7), after “them” insert “and, where they propose to do so, must, within such reasonable period (not being less than 14 days) of the date of the hearing, notify the applicant and each such person of that date”,
- (e) in paragraph 9(3), in both paragraphs (e) and (f), for “the United Kingdom” substitute “a member state of the European Union”,
- (f) in paragraph 12, after sub-paragraph (3) insert—
 - “(3A) On good cause being shown, a local authority may, for the purposes of sub-paragraph (3), deem an application for renewal of a licence made up to 28 days after the expiry of the licence to be an application made before the expiry.”,
- (g) in paragraph 13(6), for “21” substitute “14”, and
- (h) in paragraph 23(2), for “28” substitute “21”.