



Civic Government (Scotland) Act 1982

1982 CHAPTER 45

PART I

LICENSING—GENERAL PROVISIONS

1 Application of Parts I and II of this Act

This Part of this Act shall have effect with respect to the licensing of the activities for which licences are required under Part II of this Act.

2 Licensing authorities

- (1) For the administration of licensing in relation to the activities in connection with which licences are required under Part II of this Act there shall be a licensing authority for each district and islands area.
- (2) The licensing authority shall be the district or islands council within whose area the activity is, or is to be, carried on.
- (3) Notwithstanding subsection (2) above, a district or islands council shall not be exempt from any requirement to have a licence or any other obligation under this Part or Part II of this Act and a licensing authority shall have power to entertain and dispose of an application by a district or islands council for a licence or in respect of a licence held by them.

3 Discharge of functions of licensing authorities

- (1) For the purpose of the discharge of their functions under this Part of this Act, every licensing authority shall consider, within 3 months of its having been made to them under paragraph 1 of Schedule 1 to this Act, each application so made and, subject to the following provisions of this section, reach a final decision on it within 6 months.
- (2) On summary application by the licensing authority within the 6 month period referred to in subsection (1) above, the sheriff may, if it appears to him that there is good reason to do so, extend that period as he thinks fit.

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- (3) The applicant shall be entitled to be a party to a summary application under subsection (2) above.
- (4) Where the licensing 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) above, or
 - (b) such further period as the sheriff may have specified on application under subsection (2) above,
- the licence applied for shall be deemed to have been granted or, as the case may be, renewed unconditionally on the date of such expiry and shall remain in force for one year, but this subsection is without prejudice to the powers of revocation under section 7(6)(a) of this Act, of variation under paragraph 10 of Schedule 1 to this Act and of suspension under paragraphs 11 and 12 of that Schedule and to the provisions of paragraph 8(5) of that Schedule.
- (5) The licensing authority shall make out and deliver the licence to the applicant to whom it has been deemed to have been granted under subsection (4) above.

4 Further provisions as to licensing

Schedule 1 to this Act (which contains further provisions as to licensing and regulation in relation to the activities in connection with which licences are required under Part II of this Act) shall have effect.

5 Rights of entry and inspection

- (1) Without prejudice to any other provision of this Act, an authorised officer of the licensing authority or the fire authority or a constable may, for the purposes specified in subsection (2) below, at any reasonable time—
- (a) enter and inspect any premises, vehicle or vessel used or to be used for an activity in relation to which a licence is in force or has been applied for under this Act;
 - (b) require production of and inspect any equipment, plant, apparatus or stock-in-trade which is or is to be kept or used in connection with any such activity;
 - (c) require production of and inspect any records or other documents required by or under this Part or Part II of this Act to be kept by the holder of the licence and take copies of or extracts from any such record or document.
- (2) The purposes referred to in subsection (1) above are—
- (a) where a licence is in force—
 - (i) seeing whether the terms of the licence are being complied with and, if they are not, obtaining information in respect of such non-compliance ;
 - (ii) obtaining information relevant to the question whether the terms of the licence should be varied under paragraph 10 of Schedule 1 to this Act or whether the licence should be renewed or, under paragraph 11 or 12 of that Schedule, suspended; or
 - (b) where the grant of a licence has been applied for, obtaining information relevant to the question whether the application should be granted.
- (3) Any person who—

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- (a) being a person for the time being in charge of any premises, vehicle or vessel, fails without reasonable excuse to permit a constable or an authorised officer of a licensing authority or a fire authority who, in pursuance of subsection (1) above, demands to do so to enter or inspect the premises, vehicle or vessel or obstructs the entry thereto of a constable or such an officer, in pursuance of that subsection;
- (b) being a person in respect of whom powers are exercised under subsection (1) above, on being required under that subsection to do so by a constable or an authorised officer of the licensing authority or the fire authority, fails without reasonable excuse to produce any equipment, plant, apparatus or stock-in-trade or to permit a constable or such an officer, in pursuance of that subsection, to inspect any equipment, plant, apparatus or stock-in-trade;
- (c) being a holder of a licence, on being required by a constable or an authorised officer of the licensing authority or the fire authority, in pursuance of subsection (1) above, to produce any records or other document required by or under this Part or Part II of this Act to be kept by the holder of a licence, fails without reasonable excuse to produce them;

shall be guilty of an offence and liable, on summary conviction, to a fine not exceeding £200.

- (4) An authorised officer of a licensing authority or a constable may require any person who the officer or constable has reasonable ground to believe is carrying on an activity which requires to be licensed to produce his licence within 5 days of being required to do so.
- (5) Any person who, having been required under subsection (4) above to produce a licence, fails without reasonable excuse to do so within the period of 5 days specified in that subsection shall be guilty of an offence and liable, on summary conviction, to a fine not exceeding £25.
- (6) An authorised officer of a licensing authority or the fire authority shall not be entitled to exercise the powers which he may exercise under subsection (1) or (4) above until he has produced his authorisation—
 - (a) in relation to the exercise of powers under subsection (1)(a) above, to the person for the time being in charge of the premises, vehicle or vessel; and
 - (b) in any other case, to the person in respect of whom the powers are to be exercised.
- (7) A constable who is not in uniform shall not be entitled to exercise the powers which he may exercise under subsection (1) or (4) above until he has produced his identification—
 - (a) in relation to the exercise of powers under subsection (1)(a) above, to the person for the time being in charge of the premises, vehicle or vessel; and
 - (b) in any other case, to the person in respect of whom the powers are to be exercised.

6 Powers of entry to and search of unlicensed premises

- (1) If a justice of the peace or sheriff is satisfied by evidence on oath that there is reasonable ground for suspecting that –
 - (a) an activity in respect of which a licence under this Act is required is being carried on in any premises, vehicle, or vessel; and

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- (b) no such licence is in force,
he may grant a warrant authorising any constable to enter and search the premises, vehicle or vessel specified in the warrant.
- (2) A constable may use reasonable force in executing a warrant granted under subsection (1) above.
- (3) A constable who is not in uniform shall produce his identification if required to do so by any person in or upon any premises, vehicle or vessel which the constable is about to enter, is entering or has entered under the powers conferred under subsection (1) above, and if he has been so required to produce his identification, he shall not be entitled to enter or search the premises, vehicle or vessel or, as the case may be, remain there or continue to search the premises, vehicle or vessel until he has produced it.
- (4) Any person who fails without reasonable excuse to permit a constable in pursuance of a warrant granted under this section to enter and search any premises, vehicle or vessel or who obstructs the entry thereto or search thereof by a constable shall be guilty of an offence and liable, on summary conviction, to a fine not exceeding £200.

7 Offences, etc.

- (1) Any person who without reasonable excuse does anything for which a licence is required under Part II of this Act without having such a licence shall be guilty of an offence and liable, on summary conviction, to a fine not exceeding £500.
- (2) If a condition attached to a licence is not complied with, the holder of the licence shall, subject to subsection (3) below, be guilty of an offence and liable, on summary conviction, to a fine not exceeding £200.
- (3) It shall be a defence for a person charged with an offence under subsection (2) above to prove that he used all due diligence, to prevent the commission of the offence.
- (4) Any person who, in making an application under this Part of this Act to the licensing authority, makes any statement which he knows to be false or recklessly makes any statement which, is false in a material particular shall be guilty of an offence and liable, on summary conviction, to a fine not exceeding £500.
- (5) Any person who, being the holder of a licence—
- (a) fails without reasonable excuse to notify the licensing authority of a material change of circumstances in accordance with paragraph 9(1) of Schedule 1 to this Act;
 - (b) without reasonable excuse makes or causes or permits to be made any material change in any premises, vehicle or vessel in contravention of paragraph 9(2) of Schedule 1 to this Act;
 - (c) fails without reasonable excuse to deliver his licence to the licensing authority in accordance with paragraph 13(2) of Schedule 1 to this Act,
- shall be guilty of an offence and liable, on summary conviction, to a fine not exceeding, in the case of an offence under paragraph (a) or (b) above, £200, and in the case of an offence under paragraph (c) above, £25.
- (6) Where a holder of a licence is convicted of an offence under section 5 (other than subsection (5) thereof), 6 or this section, the court by which he is convicted may, in addition to any other penalty which the court may impose, make an order in accordance with one or both of the following paragraphs—

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- (a) that the licence shall be revoked ;
 - (b) that the holder of the licence shall be disqualified from holding a licence for a period not exceeding 5 years.
- (7) Where the holder of a licence is convicted of an offence under this section, an extract of such conviction and sentence (if any) shall, within 6 days after the date of the conviction, be transmitted by the clerk of the court to the licensing authority which granted the licence.
- (8) A person may appeal against an order under subsection (6) above in the same manner as against sentence and the court which made the order may, pending the appeal, suspend the effect of the order.
- (9) A person may, at any time after the expiry of the first year of his disqualification under subsection (6) above, apply to the court which ordered the disqualification to remove it, and, on such application, the court may by order remove the disqualification as from such date as may be specified in the order or refuse the application, and, in either case, may order the applicant to pay the whole or any part of the expenses of such application.
- (10) Where an offence is alleged to have been committed under subsection (2) above by an employee or agent named in a licence, proceedings in respect of that offence may be instituted against the joint licence holder who is the employer of the employee or principal of the agent, whether or not proceedings have been instituted against the employee or agent.

8 Interpretation of Parts I and II

In this Part and in Part II of this Act except where the context otherwise requires—

"chief constable" means, in relation to a licensing authority's area, the chief constable for the area which includes the area of the licensing authority;

" fire authority " means, in relation to a licensing authority's area, the authority discharging in that area the functions of fire authority under the Fire Services Acts 1947 to 1959 ;

" licence " means a licence granted under this Part and Part II of this Act, and cognate expressions shall be construed accordingly;

" premises " includes land.