

Civic Government (Scotland) Act 1982
Procedure for Consideration of Suspension of Licences

Report by Director, Corporate Resources

1 Purpose of Report

This report outlines the procedure to be adopted for a Hearing relating to the consideration of suspension of a licence.

2 Report Summary

This report should be considered along with each submission.

3 Introduction

The Chief Constable has made representation that in view of the circumstances, a private hire car licence driver's licence be suspended. The particulars are as narrated in the relative report by the Chief Constable which will be circulated at the meeting.

4 Civic Government (Scotland) Act 1982

The procedural requirements of the Act are described in paragraph 5. In particular, the Committee is advised:-

- (a) in considering whether to suspend a Licence, the Licensing Authority may have regard to any misconduct on the part of the holder of the Licence which, in the opinion of the Authority, has a bearing on his fitness to hold a Licence; and
- (b) a Licensing Authority, in considering whether or not to suspend a Licence may, but before deciding to do so shall, give the holder of the Licence; and the Chief Constable an opportunity to be heard.

I confirm that a copy of the Police Report has been given to the licence holder.

Where a licence is suspended the Licence-holder has the right of appeal to the Sheriff who may uphold the Appeal only if he considers that the Licensing Authority in arriving at their decision (a) erred in law; (b) based their decision on any incorrect material fact; (c) acted contrary to natural justice; or (d) exercised their discretion in an unreasonable manner.

Treatment of Fixed Penalties, Police Warnings and other Alternatives to Prosecution

In terms of the Rehabilitation of Offenders Act 1974 certain convictions become “spent” after several years and cannot be considered by the Committee ie with the exception of taxi and private hire car drivers, which Licensing Authorities are permitted to consider.

Representations by the Chief Constable either objecting to applications or seeking suspension may also contain details of conduct of the applicant which are not convictions, classed as ATPs, the main types of which include (1) warnings given by the Police or Procurator Fiscal; (2) Conditional Offers and Compensation Offers made by the Procurator Fiscal under Section 302 of the Criminal Procedure (Scotland) Act 1995; (3) a Fixed Penalty offered by the Police under Section 129 of the Antisocial Behaviour etc (Scotland) Act 2004; and (4) certain foreign warnings or fixed penalties.

ATPs are “spent”; warnings become “spent” as soon as they are issued; and the remainder are regarded as “spent” within three months of issue.

Most ATPs appearing on such objections will be “spent”; offences that resulted in ATPs which are “spent” cannot be considered by the Committee; and the exemption allowing the Committee to consider “spent” convictions do not apply to ATPs.

The Chief Constable can ask the Committee to consider “spent” ATPs, by exercising discretion under Section 7(3) of the Rehabilitation of Offenders Act 1974, which permits the Committee to consider them if it is satisfied that justice cannot be done except by considering them ie subject to the driver being asked for a view as to whether the information should be submitted (and before the Committee decide whether or not to consider any ATPs).

Many road traffic offences are dealt with through the issue of Conditional Offers of Fixed Penalties under the Road Traffic Offenders Act 1988 which are not ATPs and therefore can be considered by the Committee.

Letters from the Chief Constable requesting suspension of licences may also contain details of complaints and allegations against the driver which have not resulted in conviction or ATPs and details of pending criminal court cases; and as these are not convictions or ATPs, can be considered by the Committee.

5 Procedure at Hearings

While in terms of Paragraph 11 of Schedule I to the Act, the Police and the licence holder should be given the opportunity to be heard, there is nothing in the Schedule which sets out the procedure for a Hearing.

At the Hearing, the Police, as “complainer” should be given the opportunity to explain their representations, the licence-holder should be given the opportunity to cross-examine the Police, and Members, in addition to having the right to seek clarification during the statement by the Police, should also have the opportunity to put questions.

Thereafter, the licence holder or his agent should be allowed to respond to the Police and the Members to put questions to the licence holder or the licence-holder’s agent. The licence holder and the Police are entitled to put reasonable questions to each other. Then the Police and the licence holder should be invited to give a closing speech if they wish to sum up their cases.

Thereafter a decision should be reached on the basis of a motion duly made and seconded. If the decision is to suspend the licence, the ground should be given eg that the licensee is no longer a fit and proper person to be the holder of the licence.

It may be appropriate to have an adjournment to seek advice on matters of law and procedure, with the Chairman stating that these are the reasons for the temporary suspension of the Hearing.

- 6 It is recommended that the Committee having afforded the licence-holder and the Police an opportunity to be heard, (a) determine whether it wishes to suspend the licence held by the licence-holder; and (b) if so, determine the period of suspension ie the unexpired portion of the duration of the licence or such shorter period as the Committee may fix.

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Background Papers:	File CG10.7(d)() (RGA)	