

Guidance to Local Authorities on the Licensing System for Mobile Homes Sites With Permanent Residents

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CHAPTER 1 - INTRODUCTION

Background

1.1. On 1 May 2017 a new licensing system will come into force for relevant permanent sites. The new system puts in place a new, robust, licensing system. The key measures of the new licensing system are:

- giving local authorities a range of powers, and appropriate discretion in deciding how to use them, in relation to the granting, management, and revocation of licences;
- introducing a 5 year licence period;
- introducing the requirement that a site licence holder (and anyone directly managing a site) is a fit and proper person;
- an effective process for site owners and site licence applicants to appeal against decisions by the local authority.

1.2. The framework for the new system was considered and passed by the Scottish Parliament as Part 5 of the Housing (Scotland) Act 2014 (the 2014 Act). Part 5 of the 2014 Act inserts a new Part 1A in the Caravan Sites and Control of Development Act 1960 (the 1960 Act). The new system was developed over several years, and followed two public consultations, and research in 2013 by Consumer Focus Scotland. This research found residents and local authorities had experienced problems with maintenance, security or safety standards on sites; and issues around intimidation, abusive behaviour, vandalism, violence, or damage to property.

1.3. In February 2016 the Scottish Government finished consulting on the regulations that would help to support the operation of the new licensing system. Following consideration of the consultation responses we laid the final version of The Licensing of Relevant Permanent Sites (Scotland) Regulations 2016 before Parliament in December 2016, and they completed the Parliamentary process in March 2017.

Purpose and status of this guidance

1.4. This guidance is for local authorities, and is primarily for those local authority officers who will be involved in running the licensing system in their area. The intention is that it provides advice and suggestions for local authorities on how to operate the licensing system effectively. This guidance sets out what is required of a local authority (and others) under the Part 1 A of the 1960 Act, but is not a guide on how to operate the licensing system in every situation. It will be for local authorities to decide questions relating to individual cases in their area, within the framework of Part 1A of the 1960 Act and the 2016 Regulations.

1.5. Under section 32Z7 of the 1960 Act a local authority “must have regard to any guidance published when carrying out its functions” under Part 1A of the 1960 Act¹. This guidance is not a substitute for formal legal advice. The 2014 Act has been passed by the Scottish Parliament, and it is for the courts to interpret the law. Local

¹ Inserted by section 82 of the 2014 Act.

authority officers dealing with the licensing of relevant permanent sites should consider seeking legal advice if they believe they need advice on the legal aspect of a specific case.

1.6. While this guidance is for local authorities, it will be of interest to others connected with the licensing system, such as site owners, site residents, and other public bodies (e.g. the Scottish Fire and Rescue Service, the Scottish Environment Protection Agency, etc.). Alongside this guidance we will be publishing information on the new licensing system on the Scottish Government website.

Who is covered by the new licensing regime?

1.7. The new licence regime only applies to sites which are used as relevant permanent sites. This excludes land for which planning permission or the site licence is granted, for holiday use only or on the basis that there will be times of the year when no caravan may be stationed on the land for human occupation. In the main the regime covers sites which are residential mobile home sites that are licensed to have permanent residents. Holiday sites that do not require to be licensed to have permanent residents are not affected by the changes.

1.8. On mixed use sites the site owner will need to apply for a licence under the new system, and the new licensing regime will apply to them and others involved in running the site.

Private Gypsy/Traveller sites

1.9. Private Gypsy/Traveller sites are licensed as caravan sites by a local authority, and are therefore covered by the new licensing regime.

Showpeople sites

1.10. Some mobile home sites are used as homes by showpeople, people with small business who travel to fairs etc. to work. Under paragraph 10 of the first schedule of the 1960 Act showpeople sites that are only occupied for certain months of the year are exempt from the licensing regime. Local authorities will need to explore the circumstances of those living on showpeople sites in their area (e.g. for which months of the year someone lives on a site) to determine whether the exemption applies.

Who is not covered by the new licensing regime?

1.11. The new licensing regime does not cover sites, or parts of sites, that are not relevant permanent sites. So it does not include sites, and parts of sites, that are only used for holidays.

1.12. There are also some exemptions from the licensing regime. These are covered in more detail below in section 11. We will highlight here that a site where the only permanent occupiers are employees (for example a site manager living in a

mobile home on a site used for holidays), will not require a site licence under the new regime.²

Link to model standards

1.13. The Scottish Government publishes model standards for caravan / mobile home sites, which provide advice on the site licence conditions a local authority may want to put in place. The Scottish Government plans to publish updated model standards which will be available on the Scottish Government website. Until the new model standards are issued those set out in Circular 17/1990 continue to apply, although local authorities should use their judgement to make sure that licence conditions for sites reflect modern standards and practice.

Transitional arrangements

1.14. Those who already have a licence under Part 1 of the 1960 Act have until 1 May 2019 to apply for a new site licence. The new regime comes into force on the 1 May 2017 for those who are applying for a site licence for the first time.

Licensing Committees

1.15. There is no requirement in the 1960 Act that decisions on mobile home licensing be carried out by a committee of the Council, such as a licensing committee, as there is for some other licensing regimes. The duty falls on the local authority, so each authority can decide how it will handle and make decisions in relation to a site licence.

General approach to licensing

Scottish Regulators' Strategic Code of Practice

1.16. Local authorities should ensure that in running the new licensing system they take account of the approach to regulation set out in the Scottish Regulators' Strategic Code of Practice. The Code is focussed on the roles and responsibilities that regulators have, and sets out the approaches that regulators should adopt. The Code of Practice is available online at:
<http://www.gov.scot/Resource/0046/00467429.pdf>.

Getting it Right First time

1.17. A decision on a site licence, as with all decisions a local authority makes as a public body, must not be arbitrary and should follow basic rules of administrative justice. The Scottish Government guidance *Right First Time* provides a practical guide to help decision makers comply with these standards. It is available online at:
<http://www.gov.scot/Publications/2010/02/23134246/0>.

² In this situation the employee would be employed by the occupier of the land, and would not have a written agreement with the occupier. See section 32Z6 of the 1960 Act, inserted by section 82 of the 2014 Act.

GLOSSARY OF TERMS USED IN THIS GUIDANCE

In this guidance we have used the following terms. Please note this glossary defines these terms for the purposes of this guidance only, and is not (and is not intended to be) a reference for how these terms are used in all legislation or by Local Authorities and others. In this guidance:

‘1960 Act’ means the Caravan Sites and Control of Development Act 1960. The 1960 Act is available online at <http://www.legislation.gov.uk/ukpga/Eliz2/8-9/62/contents>.

‘1968 Act’ means the Caravan Sites Act 1968. The 1968 Act is available online at <http://origin-www.legislation.gov.uk/ukpga/1968/52/contents>

‘1983 Act’ means the Mobile Homes Act 1983. The 1983 Act is available online at <http://www.legislation.gov.uk/ukpga/1983/34/contents>.

‘2014 Act’ means the Housing (Scotland) Act 2014. The 2014 Act is available online at <http://www.legislation.gov.uk/asp/2014/14/contents>.

‘2016 Regulations’ means the Licensing of Relevant Permanent Sites (Scotland) Regulations 2016. The 2016 Regulations are available online at: <http://www.legislation.gov.uk/ssi/2016/433/contents/made>.

‘applicant’ means the person applying for a first site licence, a site licence holder applying to renew a licence, a site licence holder applying to transfer a licence, or the person seeking to have the licence transmitted to them.

‘caravan’ follows the definition given in the 1960 Act³ so is essentially any structure designed or adapted for human habitation which is capable of being moved from one place to another.

‘licence condition’ means any condition the local authority has place on a licence, such as a requirement to have adequate lighting on the site between dusk and dawn.

‘excepted permission’ means a permission (either by way of planning permission or a licence under Part 1 of the 1960 Act) to station a caravan on the land for human habitation all year round if the caravan is authorised to be occupied by the site occupier or a person employed by the site occupier (providing that the employee does not have a written agreement).

‘exemption’ means an exception to the requirement to have a licence under the 1960 Act.

‘first site licence application’ means the first application for site licence under the new licensing regime, either because the site is a new site, or because it is an existing site but this will be the first time it will have a licence under the new system.

³ The definition of caravan in Part 1 of the 1960 should be read with section 13 of the 1968 Act which clarifies how twin unit caravans are to be considered.

'licence renewal' means a renewal of an existing site licence issued under the new licensing system starting on 1 May 2017.

'mobile home' means a caravan within the meaning of Part 1 of the 1960 Act.

'model standards' means model standards for licence conditions that a local authority can put in place when it issues, or reviews, a licence for a mobile home, park home, or caravan site with permanent residents. The model standards are issued by the Scottish Government under section 5(6) of the 1960 Act. Until new standards are issued the model standards in Circular 17/1990 continue to apply, although local authorities should use their judgement to make sure that licence conditions reflect modern standards and practice.

'resident' refers to people who live on a permanent basis in a mobile home, where the mobile home is usually owned by the resident, and it is situated on a site that is licensed for year round occupation.

'relevant permanent site' has the meaning given in section 32Z6 of the 1960 Act.

'site licence' means a licence to run a relevant permanent site.

'site licence holder' means the person who holds the licence for a caravan site.

'site occupier' has the same meaning as "occupier" in section 1(3) of the 1960 Act⁴.

'transmission' means the procedure that takes place when an existing site licence holder dies, and the site is inherited.

'transfer' means the transfer of an existing site licence from the current licence holder to a new licence holder.

'transferee' means the person to whom a licence would be transferred, or is being transferred, either following a successful application or because of a decision by a local authority to transfer a site licence without an application.

'written agreement' means the legal agreement under the 1983 Act between a resident and site occupier.

⁴ As construed by reference to section 32(1)(d) of the 1960 Act.

CHAPTER 2 - OVERVIEW OF THE NEW SYSTEM

2.1. The principal law relating to caravan site licences is set out in the Caravan Sites and Control of Development Act 1960 (referred to as the 1960 Act in this guidance). The 2014 Act inserts a new Part 1A into the 1960 Act creating a new licensing system for relevant permanent sites.

2.2. The reformed licensing system sets out new processes and measures for:

- issuing a new site licence;
- renewing a site licence;
- transferring a site licence;
- enforcing the new licensing system;
- revoking a site licence.

2.3. The 2014 Act does not make any changes to the process for transmission of a site licence. Transmission of a licence takes place when a site licence holder dies, and the site licence is inherited. Please see section 10(4) of the 1960 Act which still applies in the case of a site licence where an estate or interest in land has transferred on the death of the occupier.

CHAPTER 3 - PROCESSES IN THE NEW SYSTEM

What sites are covered by the new system?

3.1. Section 1 of the 1960 Act makes it a criminal offence for someone to run a caravan site without a licence, unless one of the exemptions applies. The new licensing system applies to any relevant permanent. A relevant permanent site is any land that requires a licence under Part 1 of the 1960 Act⁵, other than sites where the planning permission or site licence is clear that:

- the site is for holiday use only;
- there are times of the year when no caravan may be stationed on the land for human habitation;
- would meet the conditions above if any excepted permission is disregarded.

3.2 There are a number of exceptions where a site does not require a licence under Part 1 of the 1960 Act and consequently a licence will not be required under the new system either. These are set out in first schedule to the 1960 Act, and the full text of the schedule can be accessed online at: <http://www.legislation.gov.uk/ukpga/Eliz2/8-9/62/contents>. Local authorities are advised to familiarise themselves with these exemptions in full, but some of the most relevant are summarised below:

- use of a caravan situated within curtilage of a dwellinghouse, and incidental to the use of such a dwellinghouse;
- a caravan site on agricultural land “for the accommodation during particular season of a person or persons employed in farming operations on land in the same occupation”;
- a caravan site used for accommodation of a person or persons employed in connection with building or engineering work on the same land.

3.3. If a local authority does not wish an exemption to apply in their area (e.g. the exemptions for agricultural workers) they can apply to the Scottish Ministers to exempt specified land from the exemptions in the Act. If a local authority wishes to do this please get in contact with officials in the Better Homes Division of the Scottish Government. It is however worth noting that such sites are not exempt from meeting other relevant requirements as appropriate (such as those relating to fire safety).

3.4. Unless any of the exclusions apply a relevant permanent site will require a site licence. From 1 May 2017 any application for a site licence must be handled under the new licensing system. Existing site licence holders have until 1 May 2019 to apply for a site licence under the new system.

Unlicensed sites

3.5. If someone wants to run a relevant permanent site they are required to have a licence. To run such a site without a licence is an offence under section 32S of the

⁵ See the definition of relevant permanent site in section 32Z6 of the 1960 Act, inserted by section 82 of the 2014 Act.

1960 Act⁶, and if someone is convicted of the offence they can be fined up to £50,000. This section sets out the process to be followed for a first site licence application, as required under Part 1A of the 1960 Act and the 2016 Regulations.

Process for First Site Licence Applications

3.6. Under section 32B (2) of the 1960 Act⁷ and regulation 2 of the 2016 Regulations a site licence application must:

- a) be made by the occupier of the land.

The 'occupier' of the land will usually be the person who owns the land, or the person who has leased the land with the intention of setting up a caravan site.⁸

- b) be in writing and in such a format as the local authority decides.

The application must be in writing, and a local authority can require it to be sent in a particular format. For example a local authority could require the application to be made using a particular form, or require it to be made online.

- c) specify the land which the application is being made about.

This requirement will generally be met if the applicant provides the postal address for a site (which they are required to do under regulation 2(a) of the 2016 Regulations), and the site's name, if it has one. A local authority may choose to ask an applicant to provide a map of the site if the extent of the site to be licensed is unclear.

- d) include any information relevant to the fit and proper person test which the local authority will apply to:

- all site licence applicants;
- where the applicant is not an individual (i.e. is a partnership, company or other body) to the individual who holds the most senior position; within the management structure of the partnership company or body
- any person appointed by the applicant to manage the site; and
- where the person appointed to manage the site is not an individual to any individual who is to be directly concerned with the management of the site.

3.7. The table at Annex A sets out the information that is required to be submitted with a first site licence application, a site licence renewal application, and a site licence transfer application.

3.8. A local authority may wish to create a standard form for use by site licence applications, which covers the information above. Under section 32B of the 1960 Act

⁶ Inserted by section 74 of the 2014 Act.

⁷ Inserted by section 64 of the 2014 Act.

⁸ See sections 1(3) and 32(d) of the 1960 Act for the full relevant definition.

a local authority can specify that a site licence application is made on a particular form.

Fee

3.9. In addition to the information above an applicant is required to pay the fee the local authority has set for handling a site licence application. (More information for a local authority on how to decide on its fee is set out in section 4 of this guidance).

Local authority handling

3.10. Once a local authority has received an application it will need to:

- check that the application has been accompanied by the fee required by the local authority;
- assess if the information required under section 32B (2) of the 1960 Act and 2016 Regulations has been submitted;
- decide if it requires any further information, and if so decide what further information it needs, and ask the applicant to provide it⁹.

Timescales

3.11. A local authority has 3 months within which to make its decision on an application. The 3 month time limit for making a decision starts from the day the local authority receives the information required under section 32B (2) of the 1960 Act and the 2016 Regulations, together with any fee required. We therefore advise local authorities to assess as soon as an application is received if it provides the information required, and if any further information is needed. If the local authority requires further information, above and beyond what section 32B (2) of the 1960 Act and 2016 Regulations require, the time limit is not extended. It is therefore important that a local authority begins to process an application as soon as it is received, to avoid unnecessary delays in seeking any additional information. If a local authority does not make a decision within this timescale the application is automatically approved. If a local authority is considering refusing an application the time provided for an applicant to make written representations (or taken by an applicant, if shorter) is not counted as part of the three months. A local authority may apply to the sheriff for an extension to the 3 month period. That application must be made before the expiry of the 3 month period. The sheriff may extend the period by such further period as the sheriff thinks fit¹⁰.

Making a decision

3.12. Once the local authority is satisfied it has all the information it needs to decide an application, it can proceed to make its decision. The decision has two stages: firstly, establishing if the site has planning permission for use as a relevant

⁹ The applicant is required to provide such further information in terms of section 32B(3) of the 1960 Act.

¹⁰ Section 32F of 1960 Act

permanent site (other than by way of a development order); and secondly applying the fit and proper person test.

3.13. To establish if a site has planning permission we suggest that a local authority checks its General Register of planning applications. A local authority may also consider asking the applicant to provide the planning reference number, or certificate of lawfulness, of the site.

3.14. In applying the fit and proper person test a local authority should follow the guidance at section 5 of this guidance.

Telling the applicant of the decision if local authority grants licence

3.15. If the local authority decides to approve the application, it should consider what site licence conditions it wants to put in place. The Scottish Government publishes model standards, which provide advice on the site licence conditions a local authority may want to consider. The Scottish Government will publish new model standards and these will be available on the Scottish Government website. Once a local authority has completed this process it should contact the applicant, telling them their application has been approved and of any licence conditions the local authority is putting in place.

Communicating with the applicant if a local authority is considering rejecting an application

3.16. If a local authority is considering rejecting an application it is required, under section 32D (4) of the 1960 Act¹¹, to give the applicant notice that:

- the local authority it is considering refusing the application;
- give the reason(s) the local authority is considering refusal;
- inform the applicant that they have a right to make written representations. The local authority must give a date by which the applicant must submit any representations. This date must be at least 28 days after the date on which the notice is given. The time given for representations to be received does not count towards the 3 months a local authority has to make its decision¹².

3.17. If an applicant makes representations (for example by sending in further information or arguments) the local authority must consider them. The time taken to do this is part of the 3 month time limit an authority has to make its decision on an application¹³. If, after considering the representations, the local authority decides to reject the application it must:

- tell the applicant it has decided to refuse the application;

¹¹ Inserted by section 65 of the 2014 Act.

¹² If before the date set by the local authority, representations are received, or the applicant has confirmed in writing to the local authority that no representations will be made, then the time from the date of receipt of such representations or such confirmation is included in the 3 month time limit. See regulation 5(2) of the 2016 Regulations.

- give its reasons for refusal on the same day it tells the applicant of its decision;
- tell the applicant they can appeal, and how to do so;
- tell the applicant how long they have to lodge an appeal.

Appeals

3.18. If a local authority refuses an application for a site licence the applicant can appeal to the sheriff¹⁴.

Process for Site Licence Renewals

3.19. Previously caravan site licences were granted in perpetuity. Under the new licensing system a site licence runs for 5 years from the date the licence comes into operation¹⁵. The local authority must renew the licence if planning permission is in place, and the licence holder (and any other person falling within section 32D (2) (b) of the 1960 Act, such as a site manager) pass the fit and proper person test.

Application

3.20. Under section 32B of the 1960 Act¹⁶ and regulation 2 of the 2016 Regulations an application to renew a site licence must:

- a) be made by the occupier of the land.

The 'occupier' of the land will usually be the person who owns the land, or the person who has leased the land with the intention of setting up a caravan site.¹⁷

- b) be in writing and in such a format as the local authority decides.

The application must be in writing, and a local authority can require it to be sent in a particular format. For example a local authority could require the application to be made using a particular form, or require it to be made online.

- c) specify the land which the application is being made about (i.e. the location of the relevant permanent site).

This requirement will generally be met if the applicant provides the postal address for a site (which they are required to do under Regulation 2(a) of the 2016 Regulations), and the site's name (if it has one). A local authority may choose to ask an applicant to provide a map of the site's location, or the title deeds for the site, if they are unsure of the area to be licensed.

¹⁴ Under section 32M of the 1960 Act, inserted by section 69 of the 2014 Act.

¹⁵ Unless it is revoked or planning permission for the use of the relevant permanent site as a caravan site expires. See section 32J of the 1960 Act.

¹⁶ Inserted by section 64 of the 2014 Act.

¹⁷ See sections 1(3) and 32(d) of the 1960 Act for the full relevant definition.

3.21. The table at Annex A sets out the information that is required to be submitted with a first site licence application, a site licence renewal application, and a site licence transfer application. For a licence renewal applicant an applicant has to provide either:

- confirmation that there has been no change to the information already provided to the local authority in relation to the site licence; or
- details of any information that has changed.¹⁸

Fee

3.22. In addition to the information above an applicant is required to pay the fee the local authority has set for handling a renewing a site licence. (More information for a local authority on how to decide on its fee is set out in section 4 of this guidance).

Local authority handling

3.23. Once a local authority has received a renewal application it will need to:

- Check that the application has been accompanied by the fee required by the local authority;
- assess if the information required under section 32B(2) of the 1960 Act and the 2016 Regulations has been submitted;
- decide if it requires any further information, and if so decide what further information it needs, and ask the applicant to provide it.

Timescales

3.24. A local authority has 3 months within which to make its decision on an application. The 3 month time limit for making a decision starts from the day the local authority receives the information required under section 32B (2) of the 2006 Act and the 2016 Regulations, together with any fee required. We therefore advise local authorities to assess as soon as an application is received if it provides the information required, and if any further information is needed. If the local authority requires further information, above and beyond what section 32B(2) of the 1960 Act and the 2016 Regulations require, the time limit is not extended. It is therefore important that a local authority begins to process an application as soon as it is received, to avoid unnecessary delays in seeking any additional information. If a local authority does not make a decision within this timescale the application is automatically approved. If a local authority is considering refusing an application the time provided for an applicant to make written representations (or taken by an applicant, if shorter) is not counted as part of the 3 months. A local authority may apply to the sheriff for an extension to the 3 month period. That application must be made before the expiry to the 3 month period. The sheriff may extend the period by such further period as the sheriff thinks fit¹⁹.

Making a decision

¹⁸ See Regulation 3 of the 2016 Regulations.

¹⁹ Section 32F of 1960 Act inserted by section 65 of the 2014 Act.

3.25. Once the local authority is satisfied it has all the information it needs to decide an application, it can proceed to make its decision. The decision has two stages: firstly, establishing if the site has planning permission for use as a relevant permanent site (other than by way of a development order); and secondly applying the fit and proper person test. If the site has planning permission, and the fit and proper person test is passed, a local authority must issue a site licence.

3.26. To establish if a site has planning permission we suggest that a local authority checks its General Register of planning applications. A local authority may also consider asking the applicant to provide the planning reference number, or certificate of lawfulness, of the site.

3.27. In applying the fit and proper person test a local authority should follow the guidance at section 5 of this guidance.

Telling the applicant of the decision if local authority renews a licence

3.28. If the local authority decides to renew a site licence, it should consider if it wants to change the site licence conditions it has in place. The Scottish Government publishes model standards, which provide advice on the site licence conditions a local authority must want to consider, alongside this guidance. The Scottish Government intends to publish new model standards, and these will be available on the Scottish Government website. Once a local authority has completed this process it should contact the applicant, telling them their licence has been renewed and to inform them of any licence conditions the local authority is putting in place.

Communicating with the applicant if a local authority is considering rejecting an renewal application

3.29. If a local authority is considering rejecting an application it is required, under section 32D (4) of the 1960 Act²⁰, to give the applicant notice that:

- states the local authority it is considering refusing to renew the site licence;
- give the reason(s) the local authority is considering refusal;
- inform the applicant that they have a right to make written representations. The local authority must give a date by which the applicant must submit any representations. This date must be at least 28 days after the date on which the notice is given. The time given for any representations to be received does not count towards the 3 months a local authority has to make its decision²¹.

3.30. If an applicant makes representations (for example by sending in further information or arguments) the local authority must consider them. The time taken to

²⁰ Inserted by section 65 of the 2014 Act.

²¹ If before the date set by the local authority, representations are received, or the applicant has confirmed in writing to the local authority that no representations will be made, then the time from the date of receipt of such representations or such confirmation is included in the 3 month time limit. See regulation 5(2) of the 2016 Regulations

do this is part of the 3 month time limit an authority has to make its decision on an application. If, after considering the representations, the local authority decides not to renew the licence it must:

- tell the applicant it has decided to refuse the application;
- give its reasons for refusal on the same day it tells the applicant of its decision;
- tell the applicant they can appeal, and how to do so;
- tell the applicant how long they have to lodge an appeal.

Appeals

3.31. If a local authority refuses to renew a site licence the applicant can appeal to the sheriff²².

Process for Transferring a Site Licence

3.32. The process for transferring a site licence is set out in section 32E of the 1960 Act²³. Under section 10(1) of the 1960 Act where a site licence holder will cease to be the occupier of the land they can apply to transfer the site licence to the person who will be becoming the occupier of the land. For example, this will be necessary where an existing site licence holder is selling a site as a going concern, and the new owner needs a licence.

3.33. A local authority can also transfer a site licence without an application, in particular circumstances. This is covered in section 10 of this guidance.

Application

3.34. The application is made by the person who currently holds the licence, but will need to include information about the person who is to become the occupier of the site (the ‘transferee’) and any others to whom the fit and proper test is applied under section 32E(2). Regulation 4 of the 2016 regulations sets out the information which must be included in the application.

3.35. In addition there is a duty on both the applicant and the transferee, either at the time of making the application or subsequently, to provide the local authority with such information as the authority may reasonably require in order to determine if the persons mentioned in section 32E(2) are fit and proper²⁴. The table at Annex A sets out the information that is required to be submitted with a first site licence application, a site licence renewal application, and a site licence transfer application.

3.36. To determine if a person is fit and proper a local authority has to have regard to all the circumstances of the case and the full requirement is set out in section 32O

²² Under section 32M of the 1960 Act, inserted by section 69 of the 2014 Act.

²³ Inserted by section 65 of the 2014 Act.

²⁴ Section 32E(3) of the 1960 Act as inserted by section 65 of the 2014 Act.

(2) and we advise local authorities to consult that section directly. A local authority may wish to consider what information it will require from an applicant or transferee.

Fee

3.37. A local authority cannot charge a fee for handling a site licence transfer application.

Local authority handling and timescales

3.38. A local authority has 3 months within which to make its decision on an application. The 3 month time limit for making a decision starts from the day the local authority receives the information required under the 2016 Regulations. We would therefore advise local authorities to assess the information provided by the applicant and call for such further information as may be required under section 32E(3), especially from the transferee. If the local authority does require such further information, the time limit is not extended. It is therefore important that a local authority begins to process an application as soon as it is received, to avoid unnecessary delays in seeking any additional information. If a local authority does not make a decision within this timescale the application is automatically approved.

3.39. We recommend that local authorities should consider a site licence transfer application speedily. Although there is a 3 month time limit within which the decision must be made, transfer applications will often be taking place as part of a commercial transaction to sell the park to a new owner. It is therefore important that a decision is made quickly, and we would suggest 2 months is an appropriate timescale for all but the most complex cases.

Making a decision

3.40. When transferring a site licence the fit and proper person test must be applied to the transferee (the person who will be taking on the licence) and any others to whom the fit and proper test is applied under section 32E(2). In applying the fit and proper person test a local authority should follow the guidance at section 5 of this guidance.

Communicating with the applicant if a local authority is considering rejecting an transfer application

3.41. If a local authority is considering rejecting an application to transfer a licence it is required, under section 32E (4) of the 1960 Act²⁵, to give the applicant notice that:

- states the local authority it is considering refusing the application;
- give the reason(s) why the local authority is considering refusal;
- inform the applicant that they have a right to make written representations. The local authority must give a date by which the applicant must submit any representations. This date must be at least 28 days after the date on which the notice is given. The time provided for representations to be received, or

²⁵ Inserted by section 65 of the 2014 Act.

the time taken (if shorter), does not count towards the 3 months a local authority has to make its decision²⁶.

3.42. If an applicant makes representations (for example by sending in further information or arguments) the local authority must consider them. The time taken to do this is part of the 3 month time limit an authority has to make its decision on an application. If, after considering the representations, the local authority decides not to transfer the licence it must:

- tell the applicant it has decided to refuse the application;
- give its reasons for refusal on the same day it tells the applicant of its decision;
- tell the applicant they can appeal, and how to do so; and
- tell the applicant how long they have to lodge an appeal.

Appeals

3.43. If a local authority refuses to consent to transfer a site licence the applicant (who currently holds the licence) and/or the transferee (the person who wants to become the holder of the licence) can appeal to the sheriff²⁷.

Transmission of a Site Licence

3.44. A site licence is transmitted when an existing site licence holder dies, and the site is inherited. This is covered by section 10(4) of the 1960 Act, and the process has not been changed by the 2014 Act. Under section 10 the person inheriting the site is to be:

“treated as having become the holder of the licence on the day on which he became the occupier of the land, and the local authority in whose area the land is situated shall, if an application in that behalf is made to them, endorse his name and the said date on the licence.”

3.45. A local authority cannot charge a fee for the transmission of a site licence. A local authority may choose to apply the fit and proper person test to the new licence holder, once they have the licence, under section 32L of the 2014 Act. This is covered in more detail in section 4 of this guidance.

²⁶ If before the date set by the local authority, representations are received, or the applicant has confirmed in writing to the local authority that no representations will be made, then the time from the date of receipt of such representations or such confirmation is included in the 3 month time limit. See regulation 5(2) of the 2016 Regulations

²⁷ Section 32M of the 1960 Act, inserted by section 69 of the 2014 Act.

CHAPTER 4 - FEES

4.1. Under the new licensing system a local authority is able to charge a fee for handling a first site licence application, and for a licence renewal. It cannot charge a fee for handling a site licence transfer application, or for transmission of a site licence.

4.2. Under section 32C(2) of the 1960 Act²⁸ the fee “must not exceed an amount which it considers represents the reasonable costs of an authority in deciding a relevant permanent site application”. The fee set should therefore reflect what the local authority believes will be the reasonable cost of handling a first site licence application, and the average cost to it of handling a site licence renewal application.

4.3. A local authority can charge a different fee for a first site licence application and for a renewal. A local authority can also choose to charge different fee levels for different sizes of sites (e.g. a local authority could charge a lower fee for a site with fewer mobile homes).

4.4. It is important to note that the fee charged cannot be used to cover the cost of enforcement action. The 2014 Act puts in place a separate procedure for recovering the costs of enforcement action, discussed further in section 6 below.

4.5. The matters that a local authority is to take into account when fixing a fee for a relevant permanent site application are set out in the 2016 Regulations. The expenses that the authority can take into account are those that it reasonably expects to incur in relation to—

- (a) receiving, logging and storing an application and any further information given to the authority;
- (b) checking an application;
- (c) requesting further information and checking that information once received;
- (d) arranging any appointments and attending any meetings, required in relation to an application;
- (e) checking that an applicant is entitled to the benefit of planning permission for the use of the land as a relevant permanent site otherwise than by a development order;
- (f) satisfying itself that the persons mentioned in paragraphs (1) (b) or (2) (b) of section 32D to the Act are fit and proper persons;
- (g) carrying out any risk assessment of the site that the authority considers necessary;
- (h) carrying out one inspection of a site, including the cost of travelling to and from a site;
- (i) drafting, revising and finalising a licence;
- (j) deciding whether to issue or refuse a licence and informing an applicant of a decision;

²⁸Inserted by section 64 of the 2014 Act.

(k) considering any representations made by the applicant, following the local authority informing the applicant that it considering refusing an application in accordance with section 32D(4)(b) of the Act; and

(l) the cost of obtaining expert advice (including legal advice).

4.6. The basis on which a local authority has calculated the fees it charges in the licensing system should be made available on request, and authorities should be open and transparent about the factors they have taken into account and how they have calculated the fees charged.

4.7. In preparing the proposals for the new licensing system the Scottish Government carried out research and discussions to establish the potential level of fees. Based on the research and the interviews undertaken, we estimated that the fee associated with granting the licence to the residential mobile home parks would be approximately £600. The table over the page sets out how that cost was calculated, and may be helpful to local authorities as their set their fees.

Tasks	Indicative Time (days Full Time Equivalent)	Indicative Salary (including National Insurance and other contributions)	Cost per day	Cost	Total Cost
<i>Statutory minimum application criteria</i>					
Receiving, logging, and storing information relating to the application	0.5	£35,000	£95.89	£47.95	£109.59
Checking and authorising	0.5	£45,000	£123.29	£61.64	
<i>Fit and Proper Person Test</i>					
Compiling information, reviewing records	1	£45,000	£123.29	£123.29	£123.29
<i>Visiting site</i>					
Transport costs (distance)	N/A			£80.00	£381.37
Visit x 2 officials	2	£35,000	£95.89	£191.78	
Reporting	0.5	£35,000	£95.89	£47.95	
Informing site owner	0.5	£45,000	£123.29	£61.64	
TOTAL COST	£614.25				
Statutory minimum application criteria	£109.59				
Fit and Proper Person Test	£123.29				
Visiting site	£381.37				

4.8. Costs will vary from local authority to local authority, and will depend on a range of factors. As one example a local authority could decide that a licence renewal does not require a site visit to take place, in which case the cost of a site visit would not be included in the renewal fee. It is important that local authorities set the fees for first site licence applications and renewals separately, and do not charge the same fee for both if a different level of work is required.

CHAPTER 5 - FIT AND PROPER PERSON TEST

Purpose

5.1. The purpose of the fit and proper person test is to ensure that the person holding a site licence and the person managing a site (if they are not the same person) is an appropriate person to do so. Local authorities will be aware of a number of other situations where a fit and proper person test is run on those holding a licence, such as in relation to landlord registration and Houses of Multiple Occupation.

When it is applied

5.2. The fit and proper person test is applied:

- when someone applies for a first site licence;²⁹
- when someone applies to renew a site licence;³⁰
- when someone applies to transfer a site licence;³¹
- if a local authority is considering revoking a licence. If someone is not a fit and proper person to hold a licence that can be a reason for a local authority to consider revoking a licence.³²

Who does it apply to?

5.3. For a first site licence application the fit and proper person test is applied to:

- the applicant;
- if the applicant is not an individual (e.g. a company, partnership or a charity), the test is also applied to the person who holds the most senior position within the management structure of the body applying for a licence (for example, the Chief Executive of a company);
- any person to be appointed by the applicant to manage the site; and
- if the person to be appointed to manage the site is not an individual then the test is also applied to any individual who is to be directly concerned with the management of the site on behalf of that manager.

5.4. For a licence renewal application the fit and proper person test is applied to:

- the applicant;
- if the applicant is not an individual (e.g. a company, partnership or a charity), then the test should be applied to the person who holds the most senior position within the management structure of the body applying for a licence (for example, the Chief Executive of a company);

²⁹ Under section 32D of the 1960 Act, inserted by section 65 of the 2014 Act.

³⁰ Under section 32D of the 1960 Act, inserted by section 65 of the 2014 Act.

³¹ Under section 32E of the 1960 Act, inserted by section 65 of the 2014 Act.

³² Under section 32L of the 1960 Act, inserted by section 68 of the 2014 Act.

- any person appointed or to be appointed by the applicant to manage the site; and
- if the person appointed or to be appointed to manage the site is not an individual then the test is also applied to any individual who is, or is to be, directly concerned with the management of the site on behalf of that manager.

5.5. For a licence transfer application the fit and proper person test is applied to:

- the transferee, i.e. the person to whom the licence would be transferred if the application is successful;
- if the transferee is not an individual (e.g. a company, partnership, or a charity), then the test is also applied to the person who holds the most senior position within the management structure of the body applying for a licence (for example, the Chief Executive of a company);
- any person to be appointed by the transferee to manage the site;
- if the person to be appointed to manage the site is not an individual then the test is also applied to any individual who is to be directly concerned with the management of the site.

5.6. The process for transmission of a licence is set out in section 10 of the 1960 Act. The local authority is not required to run the fit and proper person test before a licence is transmitted. However under section 32L of the 1960 Act³³ the local authority could run the fit and proper person test on the new licence holder once it was transmitted, and it could choose to do this if it had concerns that the new holder is not a fit and proper person to hold a licence.

Factors in making the decision

5.7. It is for a local authority to make the final decision on whether someone passes the fit and proper person test, and an authority should put in place a standard procedure that it will follow in making this decision. Section 32O of the 1960 Act sets out the fit and proper person test considerations³⁴. A local authority must have regard to all the circumstances of the case. Some matters are specifically included but this does not prevent a local authority from considering other matters which it considers relevant. A local authority must consider material that shows that a person has:

- been convicted of any of the offences set out in section 32O (including offences involving fraud, violence, or drugs) although a spent conviction should not be considered³⁵;
- broken the law relating to caravans, housing, landlords and tenants;
- breached a written agreement made under the Mobile Homes Act 1983;

³³ Inserted by section 68 of the 2014 Act.

³⁴ Inserted by section 71 of the 2014 Act. A local authority will want to look at the precise wording of each of the requirements in section 32O.

³⁵ Section 32O(3)

- broken the rules that apply to charges and reselling of electricity, gas, and water;
- breached site licence conditions;
- engaged in anti- social behaviour within the meaning of section 143 of the Antisocial Behaviour etc. (Scotland) Act 2004.

5.8 The local authority is also required to consider any complaint about such antisocial behaviour on the site if the local authority is aware of the complaint. The type of behaviour is set out in section 143 of the Antisocial Behaviour etc. (Scotland) Act 2004.

5.9. It is for each local authority to decide who will make the final decision on the fit and proper person test. There is no requirement in the 2014 Act that it be carried out by a committee of the Council (such as a licensing committee). So each authority can decide how it will handle and make decisions in relation to a site licence.

Criminal conviction certificate

5.10. Under Section 32P of the 1960 Act³⁶ if a local authority is applying the fit and proper person test to someone, the local authority can require that person to provide a criminal conviction certificate. A criminal conviction certificate will show any unspent criminal convictions. The information from a criminal conviction certificate will then be considered, along with all other relevant information, as part of considering whether someone is a fit and proper person to hold a site licence.

5.11. A local authority can only require a criminal conviction certificate to be provided if it has reasonable grounds to suspect that the information it has been given with the application is, or has become, inaccurate³⁷. Requesting a criminal conviction certificate should not be part of a local authority's standard procedures when processing applications, and can only be used when a local authority has reasonable grounds for believing the information they have been provided (in relation to past convictions) is inaccurate.

False and misleading information

5.12. Under section 32R(1) of the 1960 Act it is an offence for a person to knowingly or recklessly provide information which is false or misleading in a material respect to a local authority in purported compliance with;

- a requirement under section 32B (this covers information which must be included in a first site licence application or in an application to renew a site licence and other information that the authority may reasonably require),
- a requirement under section 32E(3) (this covers the information required from the applicant and the transferee to allow the fit and proper test to be carried out in relation to an application for a transfer),
- a requirement under section 32H (this covers the information which must be provided on the transmission of a site licence)

³⁶ Inserted by section 72 of the 2014 Act.

³⁷ See section 32P (2) of the 1960 Act, inserted by section 72 of the 2014 Act.

- a requirement under section 32K (this covers the information regarding the appointment of a new site manager and change in circumstances)

5.13. As regards a first site application or an application to renew, the offence applies whether someone provides the false or misleading information as part of the information submitted with their application, or in response to a local authority's request for further information. The offence also applies when someone is required to inform the local authority of a change under section 32K of the 1960 Act.

5.14. Section 32K(1) of the 1960 Act³⁸ requires that a site licence holder must notify a local authority when:

- a new person is appointed to manage a site;
- if any information provided by the site licence holder to the local authority at the time of an application becomes inaccurate.

5.15. The notification regarding the appointment of a new site manager must be made at the latest on the day the appointment takes effect. For any other changes the notification must be made within 28 days of the information becoming inaccurate.

5.16. It is also important that site licence holders and others affected by the licensing system inform the local authority of any important changes. It is therefore also a criminal offence for someone, without reasonable excuse, to fail to inform a local authority of a change of circumstances under section 32K(1) within the required timescales.

5.17 It is also an offence for someone to knowingly or recklessly provide information to a local authority which is false or misleading in a material respect as part of the process if a local authority has decided to transfer a licence without an application³⁹.

5.18. All the offences related to providing false and misleading information in the new site licensing system carry a penalty of a maximum fine of level 3 on the standard scale (£1000 at time of publication), if a person is convicted of them.

5.19. If a local authority believes that someone has committed the offences above they should contact their local Procurator Fiscal, to make them aware and provide any evidence. The Fiscal will then decide whether or not to prosecute.

³⁸ Inserted by section 67 of the 2014 Act.

³⁹ See section 32G (5), (6) and (7) of the 1960 Act, inserted by section 65 of the 2014 Act.

CHAPTER 6 - ENFORCEMENT

6.1. The large majority of site owners of Scotland run effective businesses that comply with the law. However it is important to have in place effective measures that can be used to tackle those site owners who do not comply with the licensing system and any site licence conditions. This section sets out the tools a local authority has to enforce a site licence condition, and when it may wish to consider using them. Section 8 below covers the procedures in Part 1A of the 1960 Act in relation to recovering the costs of enforcement action.

6.2. Many of the offences are related to a failure by the site licence holder to meet the conditions placed on a site licence. This highlights the importance of a local authority putting appropriate site licence conditions in place when it issues, or renews, a site licence. The Scottish Government publishes model standards (which a local authority must have regard to) which provide advice on the site licence conditions a local authority may wish to put in place. The Scottish Government intends to publish new model standards, and these will be available on the Scottish Government website.

6.3. We would stress that the use of the enforcement powers should be considered carefully, and usually only used after informal measures (such as discussions with the site manager, letters drawing attention to any potential breaches or problems, and visits to the site) have been undertaken. Enforcement action without any of these preceding informal steps would be unusual and we would recommend only taken where there were very serious concerns about breaches, the breaches needed to be addressed urgently, or where the site licence holder and/or manager had previously demonstrated they were unable or unwilling to improve the site.

Improvement Notices

6.4. This is the first of the formal enforcement measures, which we would expect a local authority to use as an initial measure after informal measures have failed. Under section 32U of the 1960 Act⁴⁰ if it appears to a local authority that a site licence holder is failing, or has failed, to comply with a site licence condition then the local authority can serve an Improvement Notice on the site licence holder.

6.5. In deciding the terms of the Improvement Notice we recommend that a local authority considers:

- what licence condition is not being met;
- what actions the site licence holder would need to take to meet the licence condition;
- how long the site licence holder should have to carry out those actions.

6.6. If the local authority decides to use the power to issue an Improvement Notice it must then formally serve the Improvement Notice on the site licence holder⁴¹.

⁴⁰ Inserted by section 75 of the 2014 Act.

⁴¹ Under section 32U of the 1960 Act.

The Improvement Notice must⁴²:

- set out the site licence condition that the local authority believes has not been complied with;
- set out the details of the failure to comply;
- require the licence holder “to take such steps as the local authority considers appropriate and as are specified in the notice” in order to ensure that the licence condition is complied with;
- specify the period within which a site licence holder has to take those steps;
- explain the site licence holders right of appeal.

6.7. The period specified in an improvement notice must begin on the day that the period during which an appeal (against the decision to issue the notice) can be made expires or the day on which such an appeal is finally determined or abandoned whichever is the later. The period given should be one that gives a site licence holder a reasonable period of time to carry out any works required by the Improvement Notice.

6.8. Once an Improvement Notice has been issued a local authority can suspend it or revoke it. The circumstances where a local authority might consider using the power to revoke the improvement notice include a situation where, for some reason beyond the site licence holder’s control, it has become much more difficult or impossible to comply with the Improvement Notice. A local authority can also increase the period a site licence holder has to comply with the notice. This could be used if a site licence holder had shown good faith and started the works to comply with the site licence but they would not be completed within the deadline set. Suspending, revoking, or varying an Improvement Notice is something the local authority can do on its own initiative or in response to an application from the site licence holder. The local authority must make the site licence holder aware of any changes to the Improvement Notice as soon as is reasonably practicable.

6.9. Failure to comply with an Improvement Notice is a criminal offence. Compliance is judged on whether a site licence holder has taken the steps specified in the Improvement Notice in the timescale the Notice requires⁴³. If a local authority considers an offence has potentially been committed in relation to an Improvement Notice it should consider contacting the local Procurator Fiscal who will assess the evidence presented, and decide whether or not to bring a prosecution. If convicted the site licence holder can be fined up to £10,000. For further details see section 7, on offences.

6.10. Failure to comply with an Improvement Notice will also open the way to a local authority carrying out the steps in the Notice themselves, or contracting out someone else to do the work at the request of the local authority⁴⁴. If a licence holder has been served with an Improvement Notice, and has not carried out the steps it requires within the timescales set, then the local authority may carry out the steps itself (and any further action it considers necessary to meet the site licence condition specified in the Improvement Notice).

⁴² See section 32U of the 1960 Act for further details.

⁴³ See section 32V of the 1960 Act, inserted by section 75 of the 2014 Act.

⁴⁴ Under section 32W of the 1960 Act, inserted by section 75 of the 2014 Act.

6.11. If a local authority decides to carry out the work required by an Improvement Notice it must serve a further notice on the site owner⁴⁵, which sets out:

- the land and the Improvement Notice to which it relates;
- states that the local authority intends to enter the land;
- describes the action the local authority intends to take on the land;
- if the person carrying out the work is not the local authority itself, then the name of the person who will be carrying out the work on its behalf;
- the dates and times on which the local authority intends to carry out the work (in particular when the work will start and when it expects the work to be complete).

6.12 The Improvement Notice must be served sufficiently in advance of the date when the local authority intends to enter the land to give the site licence holder sufficient advance notice of that intended entry.

6.13. In deciding whether to take the action itself a local authority will need to consider whether the matters covered in the Improvement Notice are of such importance, or urgency, that they need to be addressed. As part of this we recommend that the local authority takes into account what danger or nuisance the breach causes for site residents and those visiting or working on the site, and how likely the site licence holder is to address the breach if further enforcement measures are taken (such as a Penalty Notice). It should also consider whether other enforcement action is necessary, and whether the failure to comply with the Improvement Notice is indicative of a general disregard by the site owner for the site licence conditions and other legal requirements.

6.14. In many cases the serving of an Improvement Notice, and the actions it brings about, will be enough to improve a site and bring it into line with the site licence conditions. It is intended to be a useful first step in formal action, for cases where informal attempts to resolve an issue have failed and more serious action is not judged to be necessary by the local authority. However, if an Improvement Notice is not complied with a local authority can then serve a Penalty Notice.

Penalty Notices

6.15. A Penalty Notice is the next step on the ladder of formal measures that can be taken by a local authority to enforce site licence conditions and ensure compliance with the licensing system. A Penalty Notice can only be served⁴⁶ if:

- land is being used as a site without a site licence; or
- an Improvement Notice has been served and the site licence holder has failed to take the steps specified in the Improvement Notice in the time limit required.

⁴⁵ See section 32W (3) of the 1960 Act for further details.

⁴⁶ See section 32X of the 1960 Act, inserted by section 76 of the 2014 Act.

6.16. The effect of a Penalty Notice is to reduce the income that can come from a site, either because such a site is being run without a licence, or without compliance with a site licence condition which has not been addressed after an Improvement Notice. The effect of a Penalty Notice is that for the duration of the Penalty Notice anyone living on the site will not have to pay to the site licence holder:

- any amount due for the right to station a caravan on the site;
- any amount due for the rent of a caravan on the site;
- any amount due for the use of common areas on the site, and their maintenance;
- any commission due if a resident sells their mobile home on the site.

Residents will still be required to pay any amount due for utilities (gas, electricity, and water) provided to them on the site during the period of a Penalty Notice.

6.17. Serving a Penalty Notice is a serious step as it will lead to a reduction in the income from a site, and a local authority should carefully consider if it is an appropriate and effective action to take. Situations where it may be appropriate include:

- where an important site licence condition has not been met, and informal enforcement action and an Improvement Notice have been ignored by the site licence holder;
- where a site is being used without a licence, and the person running the site has taken no active steps to apply for a licence;
- where residents on such a site have poor services and amenities because of the failure to meet licence conditions.

6.18. The local authority must also decide what period a Penalty Notice will run for. The period the Penalty Notice runs for must begin on the day the period someone has to appeal the Penalty Notice has elapsed or on the day any appeal made has been determined or abandoned, whichever is the later. The 1960 Act gives someone 28 days to lodge an appeal, beginning with the day on which the Penalty Notice was served⁴⁷.

6.19. In terms of section 32X of the 1960 Act⁴⁸ a Penalty Notice is a notice which:

- a) sets out the condition in question and details of the failure to comply with it;
- b) explains the effect of the Penalty Notice in removing the requirement on site residents to pay for certain things, as set out in section 32X(3) of the 1960 Act;
- c) specifies the period which the Penalty Notice runs for;
- d) explains that the person who has had the Penalty Notice served on them has a right of appeal.

⁴⁷ See section 32X (7) of the 1960 Act.

⁴⁸ Inserted by section 76 of the 2014 Act.

6.20. As soon as practicable after serving a Penalty Notice the local authority must notify those living on the site that a Penalty Notice has been served. The local authority can decide the best way to do this, but it would include fixing a notice in a prominent place at or near the main site entrance⁴⁹.

Revoking a Licence

6.21. As it is a local authority who issues a site licence it is also a local authority who can decide if a site licence should be revoked. Revoking a site licence is a very serious step, and one that a local authority should only consider as a last resort. Under section 32L of the 1960 Act⁵⁰ a local authority can only revoke a licence if it is satisfied:

- a) that the licence holder is not, or is no longer, a fit and proper person to hold a site licence;
- b) where the licence holder is not an individual, that the person who holds the most senior position within the management structure of the partnership, company or body is not, or is no longer, a fit and proper person to hold a site licence;
- c) that any person appointed by the licence holder to manage the site is not, or is no longer, a fit and proper person to do so;
- d) where the person appointed to manage the site is not an individual, that any individual who is directly concerned with the management of the site is not, or is no longer, a fit and proper person to do so.

6.22. In considering revoking a licence we recommend that a local authority considers:

- any enforcement action taken;
- the seriousness of any breaches of licence conditions;
- the site licence holder, or site manager's, behaviour on a site, including any reports of threatening or intimidating behaviour to residents, local authority officers, or others; and
- persistent failures to address site licence conditions breaches, or to co-operate with local authority officers investigating such breaches.

6.23. It is important that the local authority tells the site licence holder it is considering revoking the site licence. Where a local authority is considering revoking a licence it is therefore required to serve on the licence holder a notice⁵¹ which states:

- a) that the local authority is considering revoking the site licence, and its reasons for doing so;

⁴⁹ See sections 32X (5) and 32X (6) of the 1960 Act for further details.

⁵⁰ Inserted by section 68 of the 2014 Act.

⁵¹ Under section 32L of the 1960 Act.

- b) that the site licence holder has the right to make written representations before a specified date (which is at least 28 days from the date on which the notice is given).

6.24. The local authority must consider any representations made to it by the site licence holder in response to its notice. If, after considering any representations, the local authority decides to revoke the licence it must tell the person who held the licence⁵² that it has revoked the licence, its reasons for doing so and the rights of appeal that they have.

Interim Manager

6.25. Revoking a licence could potentially leave a site without anyone to manage it. This could be detrimental to the interests of residents, so the new licensing regime allows for the appointment of an interim manager to run the site⁵³. The interim manager would be put in place to run the site in the short to medium term, while the future of the site was established after revocation or if no one was managing a site.

6.26. As it is giving a person the power to oversee someone else's property an interim manager is appointed by a sheriff, on application from a local authority. A sheriff will consider the local authority's application and decide whether an interim manager should be appointed, and if so the terms of their appointment. Under section 32Y of the 1960 Act a sheriff can only appoint an interim manager if:

- the local authority has refused to renew a site licence; or
- the authority has revoked a site licence; or
- the sheriff is satisfied that the licence holder is failing or has failed, either seriously or repeatedly, to comply with a site licence condition; or
- the sheriff is satisfied that the site is not being managed by a person who is a fit and proper person to manage a site;
- the sheriff is satisfied that no one is managing the site.

6.27. In addition to considering carefully whether asking a sheriff to appoint an interim manager is appropriate, a local authority should take time to identify who they want to appoint as an interim manager. This person should have the relevant skills and experience to manage a site, and be trustworthy and competent. It will be for a local authority to identify the right person or organisation, but possible interim managers could include former site owners or site managers with a good track record of running a site; business administrators with experience of the mobile home sector; or specialist businesses involved in the running and maintenance of sites.

6.28. The sheriff will hear the application from the local authority, and decide whether or not to appoint an interim manager. Under the 2016 Regulations a sheriff can only appoint an interim manager if the sheriff "is satisfied that the proposed interim manager has the relevant skills and experience to manage the site"⁵⁴. It is

⁵² See section 32L (4) of the 1960 Act.

⁵³ Under section 32Y of the 1960 Act.

⁵⁴ See regulation 9(4) of the 2016 Regulations.

therefore important that a local authority is clear about the reason(s) it believes an interim manager should be appointed, and why the person it has suggested appointed has the relevant skills and experience.

6.29. If the sheriff agrees to the local authority's application they will make an order appointing the interim manager. This order must cover "the amount of the interim manager's remuneration or the method of calculation of such remuneration"⁵⁵, and under the 2016 Regulations the remuneration of the interim manager is paid out of the income from the site which the interim manager is managing⁵⁶. The order must also "confer on the interim manager such powers as the sheriff considers necessary for the management of the site"⁵⁷. Under the 2016 Regulations these powers can include the power to carry out the licence holder's business on the site, the power to carry out works, the power to make and receive payments, and the power to appoint and dismiss agents and staff. The range of possible powers are set out in regulation 9(2) of the 2016 Regulations. The order can also set out how long the interim manager is appointed for, and/or how the appointment can be terminated⁵⁸.

6.30. The licence holder, or any person appointed by the licence holder to manage the site, must comply with any reasonable direction that the interim manager makes in the exercise of the powers the sheriff has given them. In particular they must give the interim manager such information as they reasonably require.⁵⁹

6.31. Once an interim manager has been appointed the local authority should regularly monitor how they are managing the site. If an interim manager is being obstructed in performing their duties such obstruction is an offence⁶⁰, and the local authority should consider taking the matter up with the local Procurator Fiscal. (See section 7 of this guidance on offences). If a local authority is not satisfied with the interim manager's performance the local authority should take the matter up with the interim manager, and can potentially use whatever arrangements the sheriff has made for terminating the appointment.

Emergency action on a site

6.32. There may be situations where a local authority considers it needs to carry out work on a site urgently (whether or not that site has a licence). Section 32Z of the 1960 Act⁶¹ allows a local authority to do this when it appears to that authority that:

- the licence holder is failing, or has failed, to comply with a site licence condition and as a result of that failure there is "an imminent risk of serious harm to the health or safety of any person who is or may be on the land"⁶²; or
- the site has no licence and there is that same level of risk⁶³.

⁵⁵ See regulation 9(7) of the 2016 Regulations.

⁵⁶ See regulation 9(8) of the 2016 Regulations.

⁵⁷ See regulation 9 of the 2016 Regulations.

⁵⁸ See regulation 9(3) of the 2016 Regulations.

⁵⁹ See regulation 10 of the 2016 Regulations.

⁶⁰ See regulation 11 of the 2016 Regulations.

⁶¹ Inserted by section 78 of the 2014 Act.

⁶² Section 32Z(1) of the 1960 Act.

⁶³ Section 32Z(2) of the 1960 Act.

6.33. If a local authority decides to use the power it must serve on the site licence holder (or, if the site has no licence the occupier of the site) an emergency action notice. This notice must:

- identify the land to which it relates;
- state that the authority intends to enter onto the land;
- describes the emergency action the authority proposes to take;
- if someone other than the local authority will be carrying out the action, the name of that person;
- specifies the powers under sections 26 and 32Z of the 1960 Act under which the authority intends to enter onto the land.

The emergency action notice may state that if entry to the land is refused then the local authority would propose to apply for a warrant under section 26(2) of the 1960 Act.

6.34. Within 7 days of beginning to carry out the emergency action on the site the local authority must serve the site licence holder, or the occupier of the site if it is unlicensed, with an emergency action report. Among other things this must describe the imminent risk of serious harm that was the cause of the emergency action, and the action that has been taken. Please see section 32Z(8) of the 1960 Act for more details on what an emergency action report must contain.

6.35. The site licence holder, or occupier if the site is unlicensed, can appeal against the emergency action⁶⁴. This can be on the grounds that:

- there was, or is, no imminent risk of serious harm;
- that the action the authority has taken was not necessary, or is not necessary, to remove the imminent risk of serious harm.

6.36. This power can only be used in situations where there is an “imminent risk of serious harm”. In deciding whether to use the power the local authority should consider whether the situation meets those criteria. The power gives a local authority a legal mechanism that they can use when they believe there is a real risk of serious harm to someone on the land.

⁶⁴ Under section 32Z (10) and (11) of the 1960 Act.

CHAPTER 7 - OFFENCES

7.1. For any licensing system to work effectively there must be consequences for not complying with the licensing regime and the measures it puts in place. The new mobile home licensing system introduced by the 2014 Act therefore includes a number of offences. For ease of reference these are set out below:

- Under section 32G of the 1960 Act it is an offence for a person to knowingly or recklessly provide information which is false or misleading in a material respect to a local authority in purported compliance with a request under section 32G(5). This covers information requested by a local authority to allow it to decide whether to transfer a licence without an application. If someone is convicted of this offence they can be fined up to level 3 on the standard scale (£1,000 at the time this guidance was published).
- Under section 32R(1) of the 1960 Act it is an offence for a person to knowingly or recklessly provide information which is false or misleading in a material respect to a local authority in purported compliance with
 - a requirement under section 32B (this covers information which must be included in a first site licence application or in an application to renew a site licence and other information that the authority may reasonably require),
 - a requirement under section 32E(3) (this covers the information required from the applicant and the transferee to allow the fit and proper test to be carried out in relation to an application for a transfer),
 - a requirement under section 32H (this covers the information which must be provided on the transmission of a site licence)
 - a requirement under section 32K (this covers the information regarding the appointment of a new site manager and change in circumstances)
- If someone is convicted of an offence under this section they can be fined up to level 3 on the standard scale (£1,000 at the time this guidance was published).
- Under section 32R(2) of the 1960 Act it is an offence for a site licence holder, without reasonable excuse-
 - to fail to notify a local authority in accordance with section 32K(1) and (2) of the 1960 (section 32K(1) requires notification to a local authority of the appointment of a new person to manage a site and any change in information held by the local authority caused by a change of circumstances and section 32K(2) sets out when those notifications must be made).
 - to fail to provide information in accordance with section 32K(3) and (4)(section 32K(3) requires the provision of additional information that the local authority may reasonably require in connection with the appointment and section 32K(4) provides the timescale for the provision of that information)
- If someone is convicted of this offence they can be fined up to level 3 on the standard scale (£1,000 at the time this guidance was published).

- Under section 32S of the 1960 Act it is an offence to run a relevant permanent site without a licence. If someone is convicted of the offence they can be fined up to £50,000.
- Under section 32T it is an offence for the holder of a Part 1A site licence to fail to comply with a site licence condition. If someone is convicted of this offence they can be fined up to £10,000.
- Under section 32V it is an offence to fail to take the steps specified in an Improvement Notice within the period specified. If someone is convicted of this offence they can be fined up to £10,000.
- Under regulation 11(1) of the 2016 Regulations it is an offence, if without reasonable excuse, the person contravenes regulation 10 (assistance to be provided to an interim manager).
- Under regulation 11(2) of the 2016 Regulations it is an offence for someone to intentionally obstruct an interim manager in the exercise of a power conferred on them under the 2016 Regulations.
- Regulation 12 of the 2016 Regulations makes provision whereby certain individuals can be liable where a body corporate, Scottish partnership or other unincorporated association has committed an offence under those Regulations.

7.2. Section 32Z5 of the 1960 Act⁶⁵ makes similar provision whereby certain individuals can be liable where a body corporate, a Scottish partnership, or another unincorporated association has committed an offence under Part 1 of the 1960 Act.

7.3 Section 1 of the 1960 Act makes it a criminal offence for someone to run a caravan site without a licence (unless one of the exemptions in the 1960 Act applies). However section 1 is modified so that it does not apply to the holder of a Part 1A site licence in relation to that person's use of the relevant permanent site which is the subject of a licence.

7.4. If a local authority considers an offence has been committed, it should consider contacting the local Procurator Fiscal who will assess the evidence presented, and decide whether or not to bring a prosecution.

⁶⁵ Inserted by section 81 of the 2014 Act.

CHAPTER 8 - COST RECOVERY

8.1. One of the key principles underpinning the new licensing system is that the cost of enforcement action should not fall on those site owners that are complying with the system. As outlined above in the section on fees a local authority cannot, therefore, include the costs of enforcement action in the fees it charges for issuing or renewing a site licence. Instead Part 1A of the 1960 Act gives a local authority the power to reclaim the expenses of enforcement action from the person it has taken that action against. Sections in that Part cover recovering the cost of issuing notices; the cost of taking action under an Improvement Notice or emergency action notice; and the cost inspecting a site to ascertain if a licence conditions have been met, and assessing compliance after such a visit. These sections are taken in turn below.

8.2. Section 32Z2 of the 1960 Act⁶⁶ covers recovering the expenses of issuing notices. It applies where a local authority has served:

- an Improvement Notice; or
- a Penalty Notice; or
- an emergency action notice; or
- an emergency action report.

8.3. Under the section a local authority can, if it chooses, recover from the site licence holder (or if the site has no licence, the occupier of the site) the expenses incurred by the local authority in:

- deciding whether or not to serve a notice or report;
- preparing and serving the notice or report;
- interest at such reasonable rate as the local authority may determine, in respect of the period beginning on a date specified by the authority until the whole amount is paid.

The expenses can include the costs to the local authority of obtaining expert advice, including legal advice.

8.4. Section 32Z3 of the 1960 Act allows a local authority to recover the cost of taking action under an Improvement Notice or Emergency Action Notice. For example, if a local authority served an Improvement Notice on a site owner, and the steps required by the Notice were not carried out, a local authority could decide to take the action itself. It could then recover the expenses of taking that action, if it wished, under this section of the 1960 Act. The expenses which a local authority can recover from the site licence holder (or site occupier, if the site is unlicensed) are:

- expenses incurred by the local authority in deciding whether to take the action (including the cost of expert advice, such as legal advice);
- expenses incurred in taking the action;

⁶⁶ Inserted by section 80 of the 2014 Act.

- interest (at such reasonable rate as the local authority may determine) in respect of the period beginning on a date specified by the local authority, until the whole amount is paid.

The expenses can include the costs to the local authority of obtaining expert advice, including legal advice.

8.5. Section 32Z4 of the 1960 Act⁶⁷ covers the expenses a local authority may incur in visiting a site to establish if there is, or has been, any contravention of the provisions of the 1960 Act. The expenses that the local authority may recover are those incurred by it in relation to:

- inspecting a site for the purposes of ascertaining whether there is, or has been, any contravention of the provisions of the 1960 Act;
- assessing or investigating compliance by the site licence holder with the provisions of the 1960 Act following an inspection.

8.6. Section 32Z4 therefore gives a local authority the power to recover from a site owner the expenses of visiting a site if the purpose of the visit is to ascertain whether there is a breach of the 1960 Act. It also allows a local authority to recover the costs of the process of investigating or assessing compliance in light of the site visit.

8.7. These cost recovery provisions give a local authority the option to recover costs when it has found it necessary to take enforcement action under the new licensing regime. However a local authority does not have to recover costs, and may decide not to in some circumstances. In considering whether or not to recover costs we recommend that a local authority takes into account:

- the seriousness of any breaches of the 1960 Act or licence conditions;
- how much it will cost the local authority to pursue costs, and how this balances against the amount to be recovered;
- the level of resources that have been dedicated to taking action by the local authority;
- if the costs are not recovered, what impact that will have on other work the local authority wishes to carry out;
- whether a site owner has made their best efforts to comply with any enforcement action taken, or has been obstructive and uncooperative and thereby increased the costs of the local authority.

8.8. The cost recovery measures in the 2014 Act mean that the cost of enforcement action cannot fall on those site licence holders who comply with the law and licence conditions. It will be for a local authority to decide in each case whether it wishes to seek to recover the costs of enforcement action from a site licence owner.

⁶⁷ Inserted by section 80 of the 2014 Act.

CHAPTER 9 - INFORMATION HANDLING AND SHARING

9.1. Under the new licensing system local authorities will be collecting, and holding, more information in relation to site owners and those involved in running sites (such as site managers) than previously. It is important that this information is collected and held in line with a local authority's responsibilities under the Data Protection Act 1998 and the Public Records (Scotland) Act 2011. This includes measures around the secure storage, appropriate access, and processing of information. We encourage local authorities to review the measures they have in place in relation to handling information in the site licensing system, and to put in place any additional measures necessary.

9.2. A local authority's Data Protection Officer should be informed of the greater amount of information that will be collected by authorities in running the new mobile home site licensing system, and their advice sought as appropriate. A local authority may also wish to carry out a privacy impact assessment on how they will hold, process and share the information, given that under the new system a local authority will be collecting, and potentially sharing, more information on site owners than they have previously held.

9.3. While many site owners will only have one site (or more) in one local authority area, there are some site owners that have sites in two or more local authority areas. To help ensure consistency in decisions across the country, and to enable local authorities to have all the information they need in taking decision on site licensing, the new licensing system therefore allows local authorities to share information related to making decisions under the new site licensing system.

9.4. Under Section 32Q of the 1960 Act⁶⁸ one local authority may provide another local authority with information relevant to the fit and proper person test. The sort of information that could fall within under this provision would be, for example:

- information about a breach of licence conditions;
- information about any enforcement action a local authority has had to take;
- information about an unlicensed site.

9.5. The information can be shared even if there is a duty of confidentiality owed to the person the information is about. This enables local authorities to share relevant information even though it may contain information that would normally be confidential. However it should be noted that a local authority can only share the information if another local authority is applying the fit and proper person test, and that it can only be shared for that purpose.

9.6. The purpose of this measure is to enable local authorities to share relevant information. This is so that in deciding whether or not someone is a fit and proper person under the licensing regime (for example when renewing a licence) a local authority is aware of relevant issues or problems in another local authority area. Effective use of this measure will therefore depend on a local authority making other local authorities aware that they have received an application, so that information

⁶⁸ Inserted by section 73 of the 2014 Act.

can be shared. One way of doing this may be for a local authority which has received an application contacting other local authorities where the applicant has a site, so they can share any relevant information.

CHAPTER 10 - TRANSFERRING A SITE LICENCE WITH NO APPLICATION

10.1. The new licensing system gives a local authority a new power to transfer a site licence by its own volition, rather than in response to an application. Under section 32G of the 1960 Act⁶⁹ this power can be used where:

- it appears to the local authority that the site licence holder is no longer the occupier of the site; and
- the existing site licence holder has not applied to the local authority to transfer a licence.

10.2. This power could be used when it is clear to a local authority that the occupier of the site is someone other than the licence holder, and the licence holder has not applied to transfer the licence. The purpose of the section is to give local authorities a tool they can use if a licence has not been transferred as it should have been, either deliberately or accidentally.

10.3. Following its own internal decision making process, if a local authority decides to take this step it must:

- give notice to the existing licence holder, and the person it plans to transfer the licence to (the transferee) that it intends to transfer the licence, and its reasons for doing so;
- give the existing licence holder and transferee at least 28 days to make any written representations about the local authority's transfer plan.

10.4. A local authority must also consider any written representations the existing licence holder and transferee make to it in the time limit it has set out. The existing licence holder and transferee must also give a local authority any information it reasonably requires to make its decision.

10.5. Before transferring a licence without an application a local authority will need to consider its grounds for doing so, and what evidence it has that someone other than the existing licence holder is the occupier of the site. It is a serious step to transfer a licence to another holder, and we would expect a local authority to consider such a step carefully, and only take it when there was clear evidence that an existing site licence holder was not running a site.

⁶⁹ Inserted by section 65 of the 2014 Act.

CHAPTER 11 - EXEMPTIONS

11.1. In the 1960 Act there are some situations where a caravan site does not require a site licence. These are set out in the schedule 1 of the 1960 Act⁷⁰, and include

- use of the land as a caravan site if the use of a caravan is incidental to the enjoyment of a dwellinghouse within the curtilage of which the land is situated.
- use as a caravan site of agricultural land for the accommodation during a particular season of a person or persons employed in farming operations on land in the same occupation.
- use as a caravan site of land which forms part of, or adjoins, land on which building or engineering operations are being carried out if that use is for the accommodation of a person or persons employed in connection with the operation
- if the occupier of the land is the local authority within whose area the site is located.

11.2. Local authorities will need to make their own assessment of whether a site is covered by an exemption, and may want to take their own legal advice. Even if an exemption applies, and therefore a site does not require a site licence, other legislation will still apply (for example legal requirements under health and safety legislation).

⁷⁰ See the schedule 1 of the 1960 Act for details of these and the other exemptions.

INFORMATION TO BE PROVIDED BY APPLICANTS

Information required to be provided under the 1960 Act and 2016 Regulations	Required for First Site Licence	Required for Site Licence renewal	Required for Transfer of a Site Licence
Specify the land which the application is being made about (i.e. the location of the relevant permanent site).	✓	Confirmation that information has not changed from that provided to the local authority previously. If any information has changed, then the applicant must provide the new information	✓
Information ⁷¹ (unless a conviction is now spent under the Rehabilitation of Offenders Act 1974) that shows if an applicant (transfer, for a transfer application) has : <ul style="list-style-type: none"> • been convicted of an offence involving fraud or dishonesty, violence, drugs, firearms, or a sexual offence; • practised unlawful discrimination; • has broken the law relating to caravans, housing, or landlords and tenants; • breached an agreement to which the Mobile Homes Act 1983 applies (i.e. a written agreement); • broken the rules stopping the reselling of gas, electricity, or for water charges; • engaged in anti-social behaviour, or had a complaint made about their anti-social behaviour; • breached a site licence condition for a previous mobile home site licence. 	✓		✓ (see paragraph 3.39)
For each occupier (and transferee, for a transfer application) provide their name, and if an occupier uses or has used more than one name, each of those names	✓		✓

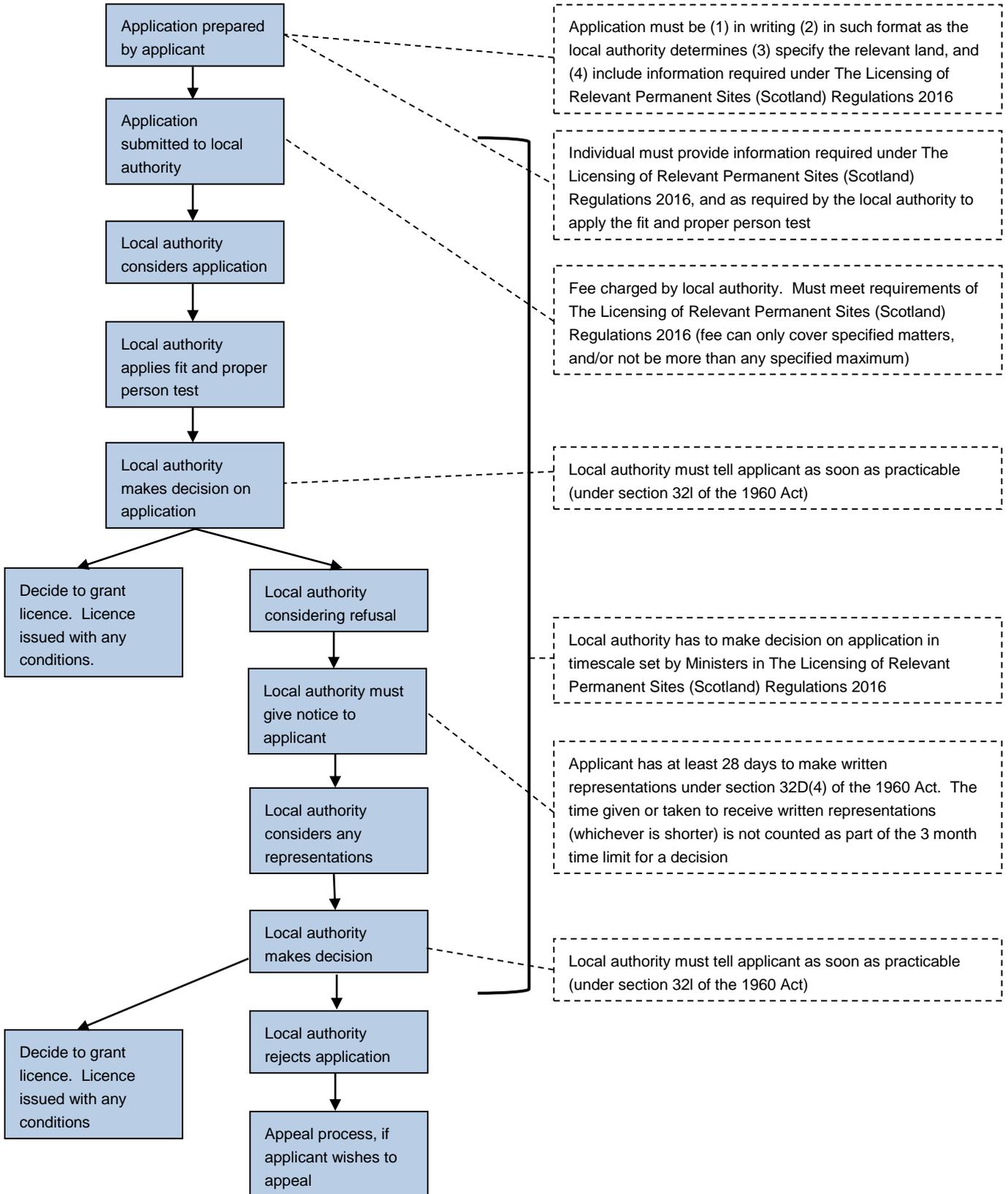
⁷¹ We advise local authorities to examine section 32O of the 1960 Act for the exact wording of these requirements.

For each occupier (or transferee, for a transfer application) who is an individual (e.g. not a company) provide their date of birth, and home address (and if they have lived there for less than 5 years, their previous home address for the previous five years.	✓		✓
For each occupier (transferee, for a transfer application) who is not an individual e.g., who is a company, provide the name and address of the person who has the most senior position within the management structure of the body. For example this may be the Chief Executive of a company that runs the mobile home site to be licensed.	✓	Confirmation that information has not changed from that provided to the local authority previously. If any information has changed, then the applicant must provide the new information	✓
If the occupier (transferee, for a transfer application) is a registered company, provide the company's registered number.	✓		✓
If the occupier (transferee, for a transfer application) is a charity, provide the body's charity number.	✓		✓
Provide a correspondence address for the applicant (transferee, for a transfer application) in relation to the management of the site and any email address to which correspondence can be sent.	✓		✓
Provide a contact phone number for the applicant (transferee, for a transfer application)	✓		✓
Provide the name of any person appointed to manage a site (e.g. the site manager), and where that person uses a number of names all of the names they use.	✓		✓
Provide for each site manager who is an individual (e.g. not a company) their date of birth, and home address (and if they have lived there for less than 5 years, their previous home address back for the previous five years.	✓		✓
Provide for each site manager occupier who is not an individual e.g. who is a company; provide the name and address of the person who has the most senior position within the management structure of the body. For example this may be a company's Chief Executive, or the Director who oversees sites.	✓		✓

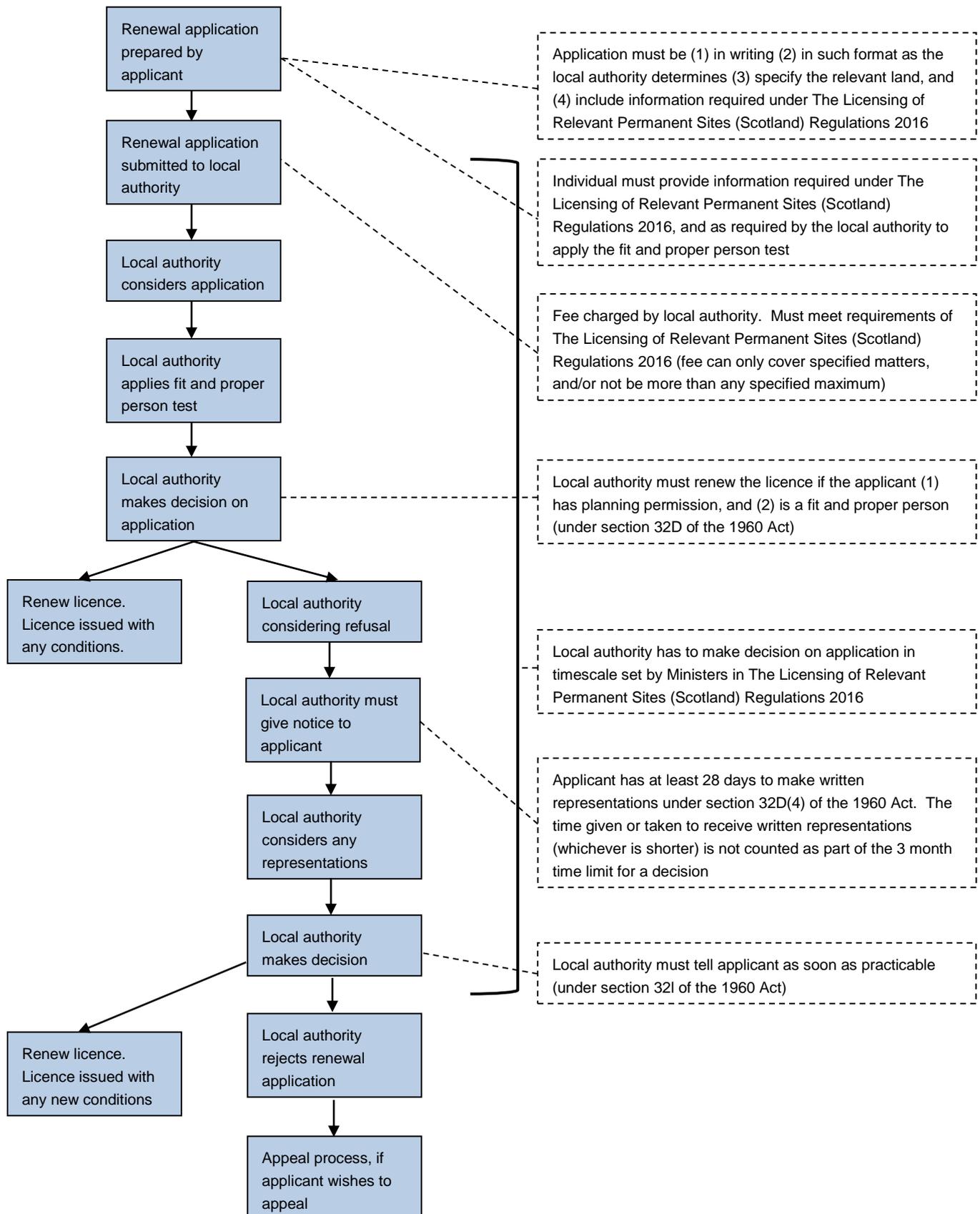
Any information relevant to the fit and proper person test which the local authority will apply to the transferee, any person nominated by the applicant to manage the site, and any other person which the local authority is required to be satisfied is a fit and proper person under the Act.			✓
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FLOWCHARTS OF PROCESSES

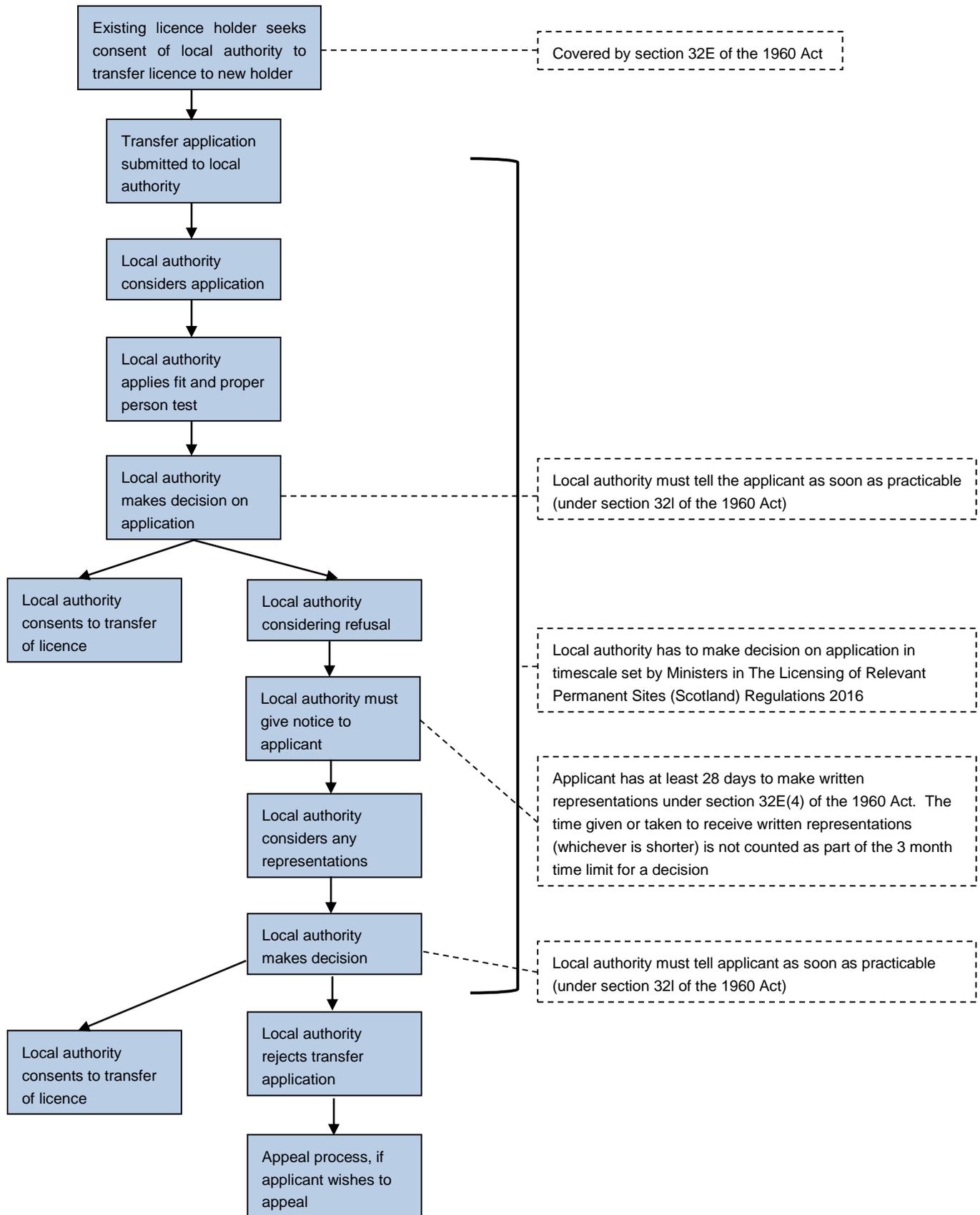
First site licence Application



Site Licence Renewal Application



Site Licence Transfer Application





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