

SECOND-HAND DEALERS LICENSING UNDER THE CIVIC GOVERNMENT (SCOTLAND) ACT 1982

NOTES FOR GUIDANCE

The following notes are a brief outline of the requirements for Second-Hand Dealers Licences under the above Act. They should be treated as **guidelines only and not an authoritative statement of law**. They do not purport to be more than a guide to the main provisions of the Act in order that would be applicants may consider if they need to apply for a Licence. Applicants are recommended to study the relevant provisions of the Act and obtain any further advice from their Solicitor.

Please note that as well as requiring a licence under the Civic Government (Scotland) Act 1982 in order to undertake this activity you may also require planning permission for the premises/land to be used.

Planning permission is separate to the licencing process and is administered by the Council's Planning Service. It is therefore recommended that you contact the Planning Service at epanning@highland.gov.uk to check whether planning permission is required.

Depending on the circumstances, it may be possible that a licence can be granted without planning permission having first been obtained (if permission is required). However, should you commence operating the licensed activity without first having the required planning permission in place, you will be in breach of planning legislation and relevant planning enforcement action may be taken against you.

1 INTRODUCTION

In accordance with the Civic Government (Scotland) Act 1982, a Second-Hand Dealer's Licence, issued by The Highland Council as licensing authority, is required to carry on business as a second-hand dealer.

2 DEFINITION

Second-Hand Dealer means a person carrying on a business as a dealer in second-hand goods or articles of any description.

3 PERSONS WHO REQUIRE TO BE LICENSED

A second-hand dealers licence is required by any company, firm, individual or agent dealing in the following categories of second-hand goods:

- i) Antiques;
- ii) Electrical Equipment;

- iii) Domestic Goods;
- iv) Photographic Equipment;
- v) Sports Goods
- vi) Jewellery;
- vii) Musical Instruments;
- viii) Computers; and
- ix) Computer Games.

4 PERSONS WHO DO NOT REQUIRE TO BE LICENSED

A second-hand dealer's licence is not required by:-

- (a) the business of a pawnbroker (that is to say, a person who, under a regulated agreement under the Consumer Credit Act 1974, takes an article in pawn);
- (b) a business as a wholesale dealer purchasing exclusively from second-hand dealers licensed under the Civic Government (Scotland) Act 1982;
- (c) a business which is charitable for the purposes of the Income Tax Acts;
- (d) a business as a dealer in second-hand goods incidental to another business not being that of a dealer in second-hand goods;
- (e) a business either of financing the acquisition of second-hand goods by means of hire-purchase agreements, conditional sale agreements or credit sale agreements (as defined in Section 189(1) of the Consumer Credit Act 1974) or of financing the use of goods by means of hiring agreements.

5 CONDITIONS

The dealer will be required to comply with the Standard Conditions attached to these Notes and which will form part of the Licence to be granted.

6 DISPOSAL OF STOCK IN TRADE - ITEMS TO BE RETAINED FOR 48 HOURS

- (a) A second-hand dealer shall not dispose of any items of his/her stock-in-trade until the expiry of 48 hours (excluding any time on Saturdays or Sundays) after he/she acquired it or such longer time as may be ordered by a court.
- (b) Paragraph (a) above shall not apply to any item acquired by the dealer in a public roup and disposed of by him/her without being brought to his/her place of business or to any item which is specifically exempted by the Council, or to any item which is to be sold to or disposed of to a licensed second-hand dealer.
- (c) Exemption from this requirement may be granted, on application, and at the discretion of the Council.

7 STORAGE OF ITEMS UNDER RETENTION ORDER

Where a second-hand dealer is required to retain items for at least 48 hours after acquiring them such items shall be kept at the dealer's premises or by a person

authorised by the dealer until the expiry of that time and shall be made available for inspection if required by any authorised officer of the Council or a police officer.

8 STOLEN GOODS OFFERED TO SECOND-HAND DEALER

- (a) Section 26(2) of the Civic Government (Scotland) Act 1982 provides that a second-hand dealer who has reason to believe that any item being offered to him/her in the course of his/her business is stolen or has been unlawfully obtained, may detain the person offering it, but for no longer than is reasonably necessary for obtaining the attendance of a police officer.
- (b) A police officer may arrest that person and take possession of the items in question.
- (c) No civic liability shall arise as a result only of the detention, in good faith, of a person in terms of Section 26(2) of the Act.

9 DETERMINATION OF AND DURATION OF LICENCES

- (i) **Full licences:** a licence will normally be issued after the elapse of 28 days from receipt of an application. In certain circumstances, eg where objections have been received, applications can take considerably longer to be determined. A Licence shall remain in force, unless previously suspended or revoked, for a period of three years from the date when it comes into force, or such shorter period as the Council thinks fit. The Licence is not normally transferable.
- (ii) **Temporary Licences:** application may be made for a temporary licence which on being granted by the Council may have effect for a period not exceeding 6 weeks. A temporary licence is not capable of being renewed, but where application has also been made for a full licence for the same activity, the temporary licence, if granted, shall continue to have effect until the application for the full licence has been determined. Temporary licences may be granted earlier than the 28 day period specified for a full licence and the fee for a temporary licence can be found on the Council's website, see link below

http://www.highland.gov.uk/info/1125/licences_permits_and_permissions/306/licence_application_fees

- (iii) **Determination Period:** The Council have 6 months (9 months from 1st May 2017) in which to determine an application for a licence under the Civic Government (Scotland) Act 1982. If an application cannot be determined by officers using delegated powers and the 6 month (or, from 1st May 2017, 9 month) deadline is approaching then the application may require to be submitted to the Council's Highland Licensing Committee for their consideration. The Committee have the power to grant or refuse applications for a licence.

10 LICENCE TO BE RETAINED

The licence must not be altered, erased or defaced in any way, must be kept clean and legible and must not be lent to or used by any other person. Should the licence be lost or become defaced or illegible the licence holder shall obtain a replacement

from the Council on payment of the appropriate fee which can be found on the Council's website, see link below

http://www.highland.gov.uk/info/1125/licences_permits_and_permissions/306/licence_feeapplication_fees

The licence holder shall produce his/her licence within five days of being requested to do so by a police officer or authorised officer of the Council or Fire Authority.

11 RETURN OF LICENCE

A Second-Hand Dealer shall deliver his/her Licence to the Council:-

- (a) upon ceasing to act or trade as a Second-hand Dealer;
- (b) within seven days of receiving notice of the coming into effect of a decision of the Council to suspend or vary the terms of the Licence, or the decision of a Court to revoke it.

12 NOTIFICATION OF CONVICTIONS OR MATERIAL CHANGE OF CIRCUMSTANCES

The Licence holder shall notify the Council as soon as is reasonably practicable with any **convictions or other material change** in circumstances affecting him/her or the activity to which the Licence relates, including any particulars referred to in the application for grant, or latest application for renewal, of the Licence. **If in doubt, notify the Council of any changes.**

13 NOTIFICATION OF MATERIAL ALTERATIONS

The Licence holder shall not make or permit to be made any material change to the premises without the prior **written** consent of the Council unless in accordance with a requirement imposed by or in pursuance of any enactment other than parts I or II of the Civic Government (Scotland) Act 1982. **If in doubt as to whether consent is required, contact the Council.**

14 ADDITIONAL LICENCE

Where a person carries on business as a second-hand dealer and as a metal dealer and as an itinerant metal dealer or as any two of these kinds of dealer, he/she shall require the appropriate licence in terms of the Act in respect of each activity.

15 APPLICATION FORM AND FEES

Application forms are available from Council Offices or Service Points shown at the end of these Notes.

You should take care in completing the application form to list, subject to the terms of the Rehabilitation of Offenders Act 1974, all convictions against you. If you are in doubt as to whether or not to list a conviction you should seek independent advice on this matter.

In order to apply for a licence, the application form must be returned along with the appropriate fee which can be found on the Council's website, see link below

http://www.highland.gov.uk/info/1125/licences_permits_and_permissions/306/licence_application_fees

Please note that the fee which is paid on submission of your application will not be refunded if your application is refused or withdrawn.

An application for Exemption from the 48 hour requirement as explained in note 6 above may be submitted with the licence application or at a later date. If application is made for this exemption after a licence has been granted it should be accompanied with the appropriate fee which can be found on the Council's website, see link below

http://www.highland.gov.uk/info/1125/licences_permits_and_permissions/306/licence_application_fees.

As soon as your application is submitted you should post a Notice on the Premises in the style attached. This requirement is not applicable to applications for temporary licences (see note 9(ii) above).

NB Where the application has been made by or on behalf of a company or partnership (i.e. a non-natural person) the address of the registered or principal office and the names of and the private addresses of the directors, partners or others responsible for its management should also be stated on the Notice. You should attempt to keep the Notice on display for a period of at least 21 DAYS and try and ensure that it does not become defaced or destroyed during that period, replacing the Notice if necessary.

When the required Notice has been displayed in accordance with the legislation, you should, on expiry of the 21 DAYS, complete and sign the Certificate of Compliance and send it to the office you submitted the application form to.

Your application will be referred to the Police, TEC Services, Planning, Building Control and the Firemaster for comment.

16 PRIOR REFUSAL

Please note that if you have applied for and been refused an application for a second-hand dealer's licence in one Area of The Highland Council then, unless your circumstances have altered, you will be unlikely to be granted an application made in another Highland Council Area.

If refused, you cannot apply for the same kind of licence in respect of the same activity or for the same premises, within one year of that refusal unless there has been a material change in circumstances.

17 HEARINGS

Occasionally, and always if there is an objection to the granting of a Licence, a Hearing of the Area Committee of the Council will be held to decide whether or not a Licence should be granted. If the application is to be referred to a Hearing you will be invited to attend and notified in writing of the date, time and venue. A further appeal lies to the Sheriff Court.

18 OFFENCES

The following are criminal offences liable, on summary conviction, to a fine:-

- (a) Carrying on an activity for which a Licence under the Civic Government (Scotland) Act 1982 is required without such a Licence;
- (b) Failing to comply with a Condition of a Licence;
- (c) Failing to notify the Council of a material change in the circumstances of a Licensee;
- (d) Failing to obtain the consent of the Council before making any material change to any premises, vehicle or vessel to which the Licence relates;
- (e) Failing to surrender the Licence (1) after it has been superseded or (2) when the Licensee has given up the activity to which it relates;
- (f) Failing to disclose convictions in the Application Form;
- (g) Making a false statement when filling in the Application Form.

The above list is not exhaustive and reference should be made to the Civic Government (Scotland) Act 1982 for all offences under the Act.