

BOAT HIRE LICENSING UNDER THE CIVIC GOVERNMENT (SCOTLAND) ACT 1982

NOTES FOR GUIDANCE

The following notes are a brief outline of the requirements for Boat Hire 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.

1 INTRODUCTION

In accordance with the Civic Government (Scotland) Act 1982 a Boat Hire Licence, issued by The Highland Council as licensing authority, is required for the use of a vessel, in the course of a trade or business carried on in or from any place for the purpose of:-

- (a) letting it on hire; or
- (b) carrying for reward 12 or fewer passengers,

for pleasure, recreational, educational or sporting purposes.

2 DEFINITIONS

(a) Vessel

means any kind of watercraft including a hovercraft within the meaning of the Hovercraft Act 1968 but not including a vessel in Her Majesty's service.

(b) Number of Vessels

A Boat Hire Licence may relate to one or more vessels or classes of vessel and shall specify:-

- (a) vessels or classes of vessels to which it relates; and
- (b) the maximum number of vessels or of each class of vessel which might be used under the Licence.

3 SUBSTITUTE VESSEL

The Boat Hire Licence shall extend to vessels added to or substituted for the vessels to which the Licence relates if:-

- (a) the additional or substitute vessel is of an identical type to a vessel of a class to which the Licence relates; and
- (b) The maximum number of vessels or of each class of vessel which may be used under the Licence is not exceeded.

4 EXEMPTIONS

There are a number of specific exemptions from Licensing contained within the Act and a Boat Hire Licence will not be required in respect of the use of the vessel as follows:-

- (a) a vessel in respect of which there is in force a passenger certificate, loadline certificate or loadline exemption certificate under the Merchant Shipping Acts 1995;

PLEASE NOTE

From 1st April, 2000 a new code of practice was introduced by the Maritime and Coastguard Agency (MCA) called "The Code of Practice for the Safety of Small Vessels in Commercial Use for Sport or Pleasure Operating from a Nominated Departure Point" (The NDP Code).

The NDP Code applies to small vessels (power or sail driven of less than 24 metres in length) which:

- **are in commercial use for sport or pleasure and carry no more than 12 passengers and do not carry cargo; and**
- **go to sea from a nominated departure point(s) in the United Kingdom; and**
- **operate in favourable weather and daylight in designated areas of the sea which will be defined on the Certificate.**

Those designated areas may be:

- **up to 3 miles from the nominated departure point(s) named in the Certificate but never more than 3 miles from land; or**
- **up to 20 miles from the nominated departure point(s) named in the Certificate, but note that safety considerations around the coast may mean that permitted operating areas may be less than the maximum suggested by the code.**

Vessels which do not go to sea and do not operate beyond categorised waters (as defined in Merchant Shipping Notice No. M.1504) may not require certification under the NDP Code.

Enquiries about the NDP Code should be made to:

**The Maritime & Coastguard Agency
Spring Place
105 Commercial Road
Southampton
SO15 1EG
Telephone: 01703 329100
Fax: 01703 329161**

The Council will waive the requirement for a Boat Hire Licence provided you exhibit your NDP Certification and evidence of public liability insurance as mentioned below.

- (b) any vessel having overnight sleeping accommodation and used for a continuous period of over 24 hours;
- (c) any vessel for the purpose of instruction or training in seamanship;
- (d) any vessel used exclusively for fishing in non-tidal waters;
- (e) any vessel:-
 - (i) on any inland waterway; or
 - (ii) at any harbourowned or managed by the British Waterways Board; or
- (f) any vessel with the consent of the harbour authority (within the meaning of the Harbours Act 1964) in any harbour owned or managed by them.

In addition where a vessel in respect of which a Boat Hire Licence is in force is used:-

- (i) within the territorial waters of the United Kingdom adjacent to Scotland; and
- (ii) within any inland water or waters specified in the Licence; but
- (iii) outwith the area of the licensing authority which granted or last renewed the Licence; and all persons carried in the vessel embark initially from places within the area of the authority,

it shall not be necessary to have in force in respect of that use of the vessel a Boat Hire Licence granted by any other licensing authority and the conditions subject to which the Licence is held shall continue to apply to such use.

5 CERTIFICATE OF FITNESS OF VESSEL

Before the Council can grant or renew an application for a Boat Hire Licence, it will require the Applicant to produce a Certificate of Fitness in respect of each vessel to which the application relates. This Certificate will require to be issued by a person appearing to the Council to be suitably qualified for the purpose of issuing such a Certificate, stating that the vessel is suitably designed, constructed, maintained and equipped and in a safe condition for the purpose for which, and the places of waters in which, it is to be used.

6 QUALIFICATIONS

All applicants are required to possess a Boatmaster's Licence issued by the Department of Transport or equivalent qualification. For example, the following will normally be accepted as an equivalent qualification:-

- (a) RYA Certificate of Competency or Service as Coastal Skipper;
- (b) RYA Advanced Power Boat Certificate;
- (c) RYA Day Skipper Certificate;
- (d) RYA Power Boat Level 2 Certificate.

7 INSURANCE

The Council requires Boat Hire Operators to hold Public Liability Insurance with a minimum indemnity of £2m. You will be required to produce evidence of this insurance in relation to every vessel for which the proposed Licence relates prior to the issue of a new Licence.

You will be required to maintain this insurance in force for the duration of the Licence and shall not reduce the amount or extent of the cover specified in the policy without the prior approval of the Council. The policy of insurance must ensure such persons as may be specified in the policy in respect of any liability which may be incurred by them in respect of the death of or bodily injury to any person caused by, or arising out of, the use of the vessel. It should be noted that any person who, being the holder of a Boat Hire Licence, uses or permits any other person to use the vessel to which the Licence relates, without the required insurance shall be guilty of an offence liable, on summary conviction, to a fine.

8 LICENCE CONDITIONS

The Licence will normally be issued subject to the attached Conditions. The Council may, on written application grant exemption from the requirements of any of the Conditions. Depending on the type of exemption sought, an application for exemption should be supported by a certificate issued by a person appearing to the Council to be suitably qualified for the purpose of issuing such a certificate, stating why the exemption claimed for should be allowed.

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 current fee for this 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 Licenceholder shall obtain a replacement from the Council on payment of the appropriate fee as detailed in the appendix to these notes. The Licenceholder shall produce his/her Licence within five days of being requested to do so by a Police Officer or an authorised Officer of the Council authority or the Fire Authority.

11 RETURN OF LICENCE

A Boat Hire Licensee shall deliver his/her Licence to the Council:-

- (a) upon ceasing to act or trade as a Boat Hirer;
- (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

A Boat Hire Licensee shall notify the Council as soon as is reasonably practicable with any **convictions or other material change** in circumstances affecting the Licenceholder 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 TO VESSELS

A Boat Hire Licensee shall not make or permit to be made any material change to any vessels without the prior consent of the Council 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 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.

The application form should be returned along with the following:-

- the appropriate fee (as detailed in the attached list of fees);
- Boatmaster's Licence or equivalent;
- insurance policy;
- certificate of fitness in respect of each vessel;
- photograph of each vessel.

All applications will be referred to the Police, TEC Services and Scottish Natural Heritage for comment.

Please note that if you have applied for and been refused an application for a Boat Hire Licence in one Area of The Highlands then, unless your circumstances have altered, you will be unlikely to be granted an application made in another Area of The Highlands.

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

15 ISSUE OF LICENCE

The Council will issue the Licence along with the standard conditions.

16 PRIOR REFUSAL

Please note that if you have applied for and been refused an application for a Boat Hire 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 in the same area (or, where the activity includes the use of a vehicle, for the same vehicle) 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 all 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.