

CIVIC GOVERNMENT (SCOTLAND) ACT 1982

Licensing of Knife Dealers

Notes of Guidance for Applicants for a Knife Dealers Licence

The following notes are a brief outline of the requirements for a **Knife Dealers** Licence under the above Legislation. 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 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 eplanning@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

From 1st June 2010 all dealers in knives (as defined below) will require to hold a licence under the Civic Government (Scotland) Act 1982.

2 DEFINITIONS

A definition of the types of article which fall under this licensing scheme are detailed below.

- (a) knives (other than folding pocket knives whose blades do not exceed 3.5 inches (8.91 centimetres) in length or knives designed for domestic use);
- (b) Daggers (other than kirpans or skean dhus whose blades do not exceed 3.5 inches (8.91 centimetres) in length.
- (c) knife blades (other than those designed for domestic use);
- (d) swords;
- (e) any other article—
 - (i) which has a blade; or

(ii) which is sharply pointed,
and which is made or adapted for use for causing injury to the person.

The term 'designed for domestic use' (as detailed above) is not defined in the legislation, but until such time that further guidance is issued by the government or any case law has been established the term will be considered to include any knife or knife blade of a design that its intended use could reasonably be undertaken within a domestic environment, which would include the house itself and its immediate curtilage.

In the view of the Council this would extend to articles designed for use in the house; garden; or for use in DIY activities, but would exclude articles designed for use in leisure activities outwith the home, i.e. hunting; shooting; fishing; camping; sport (e.g. canoeing; sailing; diving).

If you have any queries as to whether a knife falls within the category of domestic use please contact your local Area Licensing Office.

3. TRANSITIONAL PROVISIONS

After 1st June 2010 it will be an offence to operate as a knife dealer without holding the required licence. Dealers will be able to make application for licence from 1st September 2009.

4. CONDITIONS

Licence holders will be required to comply with the mandatory conditions specified in the legislation. These are detailed below:

- The dealer must make detailed written records on the day of the transaction with a customer and retain such records for a period of 3 years from that date stating the following information–
 - (a) the identity of the customer and the means by which the customer's identity was verified;
 - (b) the steps taken to establish that the customer was at least eighteen years of age at the time of the transaction (including any proof of age or identity sought or the means by which the customer's age was verified or reasons why such verification was not sought because it was unnecessary); and
 - (c) a full description of the article sold, hired, offered or exposed for sale or hire, lent or given to the customer.

The dealer must ensure that any article listed on section 27A(2) (please see paragraph 2 'Definitions' above for list of articles) of the Civic Government (Scotland) Act 1982 or display of such articles is not visible from the street or any public entrance to the premises.

- The dealer must display a notice which must–
 - (a) be displayed at all times at the point of entry to the premises, the point of sale or counter and in a position which is readily visible to customers;
 - (b) be at least A4 size and which the lettering must be legible and no smaller than 5 mm in height; and
 - (c) contain the following wording:

- (i) it is an offence to sell to a person under the age of 18 any knife or knife blade (except if the person is aged 16 or over and the knife or blade is designed for domestic use);
- (ii) it is also an offence to sell to a person under the age of 18 any razor blade, axe, sword or other article which has a blade or which is sharply pointed and which is made or adapted for use for causing injury; and
- (iii) a customer may be asked to provide details of his/her age and identity (which may be recorded or copied and kept for inspection for up to 3 years).

Mandatory Additional Conditions for Swords

In addition to the conditions specified above, a licensing authority must attach to the licence the additional mandatory conditions as detailed below where the dealer is carrying on business as a dealer in swords.

1. The dealer must take all reasonable steps to establish from the customer and confirm the intended use of any sword.
2. The dealer must make detailed written records on the day of the transaction with a customer and retain such records for a period of 3 years from that date stating the enquiries made of the customer or other persons or bodies as to the intended use of any sword.

A full set of the conditions of licence are attached to these guidance notes.

5. COMPLETION OF APPLICATION FORM

Application forms are available from Council Offices, Service Points or from the Council's Website at www.highland.gov.uk

The licence may be applied for in the name of a firm or company (i.e. non-natural person) or in the name of an individual. Please therefore answer Question 1 or 2 on the form as appropriate. **ALL** other questions on the form should be answered.

When completing the form please ensure that you name all persons that will be carrying on the activity and, where the activity relates wholly or mainly to premises, the address of the premises to be used.

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/persons named in your application. 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 should be returned along with the following:-

- the application fee (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

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

6. APPLICATION FEES

Licences will normally be granted for a period of three years. The application fee for the grant or renewal of a licence for this activity 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

7. DISPLAY OF PUBLIC NOTICE

Upon submitting your application to the Council you are required to display a PUBLIC NOTICE on the premises for a continuous period of TWENTY ONE DAYS from the date of submission of your application. A Public Notice is attached to these notes.

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 Public 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. (Copy Certificate is enclosed).

8. CONSULTATION PROCESS

When your application is lodged and the appropriate fee has been paid, your application will be referred to the Police, Fire Service, Council's TEC Services (Trading Standards & Environmental Health) and the Planning and Building Standards Service for comment.

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, e.g. 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 licensing authority 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 licensing authority 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 is half of the full application fee.

- (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 licensing authority on payment of the appropriate fee as detailed in the attached list of fees. The Licence holder shall produce his/her Licence within five days of being requested to do so by a Police Constable or an authorised Officer of the licensing authority or the fire authority.

11. RETURN OF LICENCE

The Licence shall be delivered to the licensing authority:-

- (a) if the premises cease to be used for the activity licensed;
- (b) within seven days of receiving notice of the coming into effect of a decision of the licensing authority to suspend or vary the terms of the Licence, or the decision of a Court to revoke it.

12. NOTIFICATION OF 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 licensing authority 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. PRIOR REFUSAL

Please note that if you have applied for and been refused an application for a 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.

15 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.

16 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.

A full list of Highland Council Service Points can be viewed at:

www.highland.gov.uk/livinghere/servicepointnetwork/