

MARKET OPERATORS LICENSING UNDER THE CIVIC GOVERNMENT (SCOTLAND) ACT 1982

NOTES FOR GUIDANCE

The following notes are a brief outline of the requirements for Market Operator's 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 Market Operator's Licence, issued by the Highland Council as licensing authority, is required for carrying on a private market. A Market Operator's Licence shall not be required for carrying on either of the following:-

- (a) Functions held by charitable, religious, youth, recreation, community, political or similar organisations;
- (b) Markets held only for the sale of livestock, fodder or grain.

2 DEFINITIONS

Private Market means a market, whether covered or not, carried on by any person other than a local or public authority at which goods are offered by more than one seller for sale by retail to the public.

3 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 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 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. (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.

4 CONDITIONS

In addition to any other conditions which may be included, a Market Operator's Licence shall include conditions as to:-

- (a) the regulation of days and hours of opening;
- (b) the provision of adequate toilet facilities;
- (c) the layout of the site or premises on which the market is to be held; and
- (d) maintenance of order and public safety.
- (e) The Standard Conditions attached to these Notes will form part of the Licence to be granted.

5 INSURANCE

The Council requires Market Operators to hold Public Liability Insurance with a minimum indemnity of £2m. You will be required to produce evidence of this insurance.

6 NATURE OF AND LAYOUT OF MARKET

You are asked on the application form (at question 7) to provide details of the market and should provide information as to:-

- a) the nature of the market i.e. whether the market is to be indoor or outdoor, covered or in the open or is to take the form of e.g. a car boot sale;
- b) the maximum number of stalls (a plan should also be submitted with the application showing the layout of the stalls);
- c) the type of goods likely to be sold eg. Farm Produce, Household Goods, Antiques etc.; and
- d) the number of and location of toilet facilities at or near the market. This should also be shown on the location or layout plan of the market. Guidance as to what is required in terms of provision of toilet facilities can be obtained from the Council's TEC Services, Environmental Health.

7 GENERAL

The licence is granted to the **operator** of the market, and not the individual stall holders and any requirements or conditions imposed are therefore the responsibility of the operator who will, in effect, have to ensure that the stall holders comply therewith. Stall holders will not, for the purposes of trading in the market, require to have a Street Trader's Licence.

7 (a) FIRE SERVICE – RISK ASSESSMENT PRO-FORMAS – STALL HOLDERS

When applying for a licence where the market is to be held outdoors, the applicant must ensure that any food concessions, traders or market stall holders attending the event complete the attached fire risk assessment pro-formas. Where food is to be sold by the trader the 'food Concessions' form should be completed. For all non food traders they must complete the 'Traders and Market Stalls' form.

It is the responsibility of the licence holder to retain the completed risk assessments and to be available for inspection by the Fire and Rescue Service at all times.

Please **do not** send the completed documents to either the Highland Council or the Fire and Rescue Service, they should be retained by the individual traders.

These pro-forma risk assessments are intended to assist Fire and Rescue Services to deliver a consistent, auditable approach to fire risk assessment and be used by small to medium units in order to fulfil their obligations under the Fire (Scotland) Act 2005.

8. 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. (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.

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 Council or the Fire Authority.

9 RETURN OF LICENCE

A Market Operator shall deliver his/her Licence to the Council:-

- (a) upon ceasing to act or trade as a Market Operator;
- (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.

10 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.**

11 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.**

12 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.

In order to apply for a licence, the application form must be returned along with the appropriate 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.

The following documentation must also be submitted before the licence can be issued:-

- the appropriate fee;
- permission of landowner;
- insurance policy;
- location plan and layout plan of the market.

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 3(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, Planning, Building Control, the Firemaster and Community Services for comment.

13 **PRIOR REFUSAL**

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

14 **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.

15 **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.