

METAL DEALER & ITINERANT METAL DEALER LICENSING UNDER THE CIVIC GOVERNMENT (SCOTLAND) ACT 1982

NOTES FOR GUIDANCE

The following notes are a brief outline of the requirements in relation to metal dealers' and itinerant metal 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. 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, (I) a metal dealer's licence, issued by The Highland Council as licensing authority is required for carrying on business as a metal dealer and (II) an itinerant metal dealer's licence issued by the licensing authority is required for carrying on business as an itinerant metal dealer.

2 DEFINITIONS

METAL DEALER means a person who carries on a business which consists wholly or partly of buying and selling for scrap old, broken, worn out, defaced or partly manufactured articles made wholly or partly of metal (whether the metal sold is in the form in which it is bought or otherwise), other than a business in the course of which metal is not bought except as materials for the manufacture of other articles and is not sold except as a by product of such manufacture or as surplus material bought but not required for such manufacture.

ITINERANT METAL DEALER means a person who carries on a business which consists wholly or partly of buying and selling for scrap waste materials and old,

broken, worn out, defaced or partly manufactured articles made wholly or partly of **metal** which he collects by means of visits from place to place and which he disposes of without causing them to be kept in a metal store or other premises (either by so keeping them him or herself, or by disposing of them or giving custody of them to a person who keeps a metal store).

With effect from 1 September 2016:

METAL DEALER will mean a person who “(a) carries on a business which consists wholly or substantially of buying or selling for scrap (i) metal articles that are old, broken, worn out or defaced, or (ii) partly manufactured articles that are made wholly or partly from metal, or (b) carries on business as a motor salvage operator (insofar as that does not fall within paragraph (a))”.

MOTOR SALVAGE OPERATOR will mean a person who “carries on a business which consists wholly or substantially of (a) recovering salvageable parts from motor vehicles for re-use or sale and selling or disposing of the rest of the vehicle for scrap, (b) buying significantly damaged motor vehicles and subsequently repairing and reselling them, or (c) buying or selling motor vehicles which are to be the subject (whether immediately or upon a subsequent resale) of any of the activities mentioned in paragraphs (a) and (b).

ITINERANT METAL DEALER will mean a person who “(a) carries on a business which consists wholly or substantially of buying or selling for scrap (i) metal articles that are old, broken or defaced, or (ii) partly manufactured articles that are made wholly or partly from metal, (b) collects articles of a kind described in paragraph (a)(i) and (ii) by means of visits from place to place, and (c) disposes of such articles without causing them to be kept in a metal store or other premises (including by disposing or giving custody of the articles to a person who keeps a metal store”.

METAL means any metal (including any precious metal) and any alloy of any metals, whether old or new and includes manufactured articles, whether old or new, made wholly or partly of metal, of any of the materials commonly known as hard metal or of cemented or sintered metallic carbides.

METAL STORE means a place where metal is received or kept in the course of a metal dealer's business.

PROCESSING in relation to metal, includes melting down and any process whereby the composition or form of the metal or of any article which is made of the metal is altered so as to make it substantially less identifiable than before the process, and "process" and "processed" shall be construed accordingly.

3 EXEMPTIONS

A licence is required for carrying on business as metal dealer unless exempted.

The Council is required to issue an **exemption warrant** to a metal dealer if there is produced to it a certificate by the auditor of the metal dealer's business stating that in a financial year ending in the period of 18 months immediately preceding the production of the certificate, the total amount received by the dealer as a principal in the ordinary course of his/her business in respect of metal sold or supplied by him/her, without any deduction being made (i.e. gross turnover), exceeded £1,000,000. In the case of a metal dealer's business exempt from audit requirements under section 477 of the Companies Act 2006

by virtue of its qualifying as a “small company” under section 382 of that Act, the Council will accept a certificate in the above terms from the accountant to that business. The accountant must also certify that that the business is exempt from audit requirements under the Companies Act 2006 and accordingly has no auditor. The exemption warrant remains in force for three years.

A **temporary exemption warrant** may be granted if the Council are satisfied that a person has not been carrying on business as a metal dealer. A temporary warrant lasts for a period of 18 months or, if earlier, until the date of the grant to that person of an exemption warrant or until the grant or refusal of a metal dealer's licence. If granted a temporary exemption warrant, the dealer to whom it relates can only acquire metal from persons selling or otherwise disposing of it in the course of trade or business.

With effect from 1 September 2016, the previous provisions of the Act allowing certain metal dealers to obtain an exemption warrant or a temporary exemption warrant (exempting the dealer from the requirement to hold a licence) no longer exists.

4 KEEPING OF RECORDS

Record-keeping requirements applicable to both metal dealers and itinerant metal dealers from 1 September 2016

Where a metal dealer or an itinerant metal dealer (“the dealer”), in the course of the dealer’s business acquires any metal (whether or not for value), or processes or disposes of any metal (by any means), in respect of any metal acquired, the dealer must record the following information-

- (a) the description and weight of the metal,
- (b) the date and time of the acquisition of the metal,
- (c) if the metal is acquired from another person-
 - (i) the name and address of the person,
 - (ii) the means by which the person’s name and address was verified,
- (d) the price, if any, payable in respect of the acquisition of the metal, if that price has been ascertained at the time when the entry in the record relating to that metal is to be made,
- (e) the method of payment of the price (if applicable)
- (f) where no price is payable for the metal, the value of the metal at the time when the entry is to be made as estimated by the dealer,
- (g) in the case of metal delivered to the dealer by means of a vehicle, the registration mark (within the meaning of section 23 of the Vehicle Excise and Registration Act 1994) borne by the vehicle.

Where the dealer has paid for the metal, the dealer must keep a copy of the cheque or the document evidencing the electronic transfer of funds.

In respect of any metal processed or disposed of, the dealer must record the following information-

- (a) the description and weight of the metal immediately before its processing or disposal,
- (b) in the case of metal which is processed, the process applied,

- (c) in the case of metal which is disposed of by sale or exchange-
 - (i) the consideration for which it is sold or exchanged,
 - (ii) the name and address of the person to whom the metal is sold or with whom it is exchanged, and
 - (iii) the means by which the person's name and address was verified
- (d) in the case of metal disposed of otherwise than by sale or exchange, its value immediately before its disposal as estimated by the dealer.

The dealer must-

- (a) keep separate records in relation metal acquired and metal processed or disposed of,
- (b) record the information immediately after the metal is acquired, processed or disposed of,
- (c) keep a copy of any document produced by a person to verify that person's name and address, and
- (d) retain information recorded or documents kept under this requirement for a period of not less than 3 years beginning with the date on which the information was recorded or document obtained.

The required information must be recorded by the dealer in books with serially numbered pages or by means of a device for storing and processing information.

Where a dealer records the required information in books, the dealer must use separate books for recording the required information about (a) metal acquired, and (b) metal processed or disposed of.

Where a dealer uses a device for storing and processing information, the dealer must, by means of the device or otherwise, keep details of all modifications made in the records kept by the device.

Where a dealer is required to keep a copy of a document, it is sufficient for the dealer (a) to keep an electronic copy of the document, and (b) in relation to a document verifying a person's name or address, keep only one copy of the document.

The means by which a person's name and address may be verified is for the metal dealer or itinerant metal dealer to refer to-

- (a) one of the following documents if it bears the person's name, photograph and residential address:
 - a valid United Kingdom passport
 - a valid passport issued by a European Economic Area state
 - a valid Great Britain or Northern Ireland photo-card driving licence, or
 - a valid biometric immigration document

or

- (b) one of the above documents if it bears the person's full name, photograph and date of birth, and, in addition, one of the following documents if it bears the person's full name and residential address and provided the date on which it was issued is not more than three months before the date the metal is acquired by the dealer or nor more than three months before the date the metal is disposed of by sale or exchange by the dealer:

- a bank or building society statement
- a credit or debit card statement
- a council tax bill or statement where the person's address is in England, Wales or Scotland
- a rate bill or statement where the person's address is in Northern Ireland, or
- a utility bill, but not a mobile telephone bill

Record-keeping requirements applicable from 1 September 2016 to metal dealers only

A metal dealer must keep separate records of the required information in relation to (a) each place of business operated by the dealer, and (b) any metal acquired, processed or disposed of otherwise than at such a place of business.

Where a metal dealer records the required information in books, the dealer must not, at any time at a place of business, use more than (a) one book for recording the required information about the metal acquired, and (b) one book for recording the required information about metal processed or disposed of.

4A ACCEPTABLE FORMS OF PAYMENT FROM 1 SEPTEMBER 2016

From 1 September 2016, a metal dealer or an itinerant metal dealer may pay for metal only by non-transferable cheque or by electronic transfer of funds to a bank which has its head office or a branch in the UK or to building society account in the name of the payee. The building society must be incorporated under the Building Societies Act 1986.

5 RETENTION OF METAL

With effect from 1 September 2016, the 48-hour retention requirement no longer applies.

6 ITINERANT METAL DEALER'S LICENCE

See section 4 above for details of additional requirements applicable to itinerant metal dealers from 1 September 2016.

7 CONDITIONS

The licence holder will be expected to comply with the standard conditions attached to these notes and which will form part of the licence being granted.

8 DURATION OF LICENCE

A metal dealer's licence shall remain in force, unless previously suspended or revoked, for a period of three years from the date from when it comes into force or such shorter period as the licensing authority thinks fit. The licence is not transferrable.

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 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.

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. 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

A metal dealer shall deliver his/her licence to the licensing authority:-

- (a) upon ceasing to act or trade as a metal dealer;
- (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

A metal dealer shall notify the licensing authority as soon as is reasonably practicable with any material change in circumstances affecting the licence holder 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.

13 NOTIFICATION OF MATERIAL ALTERATIONS

A metal dealer shall not make or permit to be made any material changes to the premises used in connection with the licence without the prior 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.

14 APPLICATION FORM AND FEES

Application forms are available from Council Offices, Service Points and on the Council's website at

http://www.highland.gov.uk/info/1125/licences_permits_and_permissions/300/trade_and_industry_licences/6

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 soon as your application is submitted you should post a Notice of Application on the premises in the style available at

http://www.highland.gov.uk/downloads/file/11442/notice_of_application

NB Where the application has been made by or on behalf of a company or partnership (ie. 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 available at

http://www.highland.gov.uk/downloads/file/11441/certificate_of_compliance

and send it to the office you submitted the application form to.

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

Please note that if you have applied for and been refused an application for a metal dealer's 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.

15 HEARINGS

Occasionally, and always if there is an objection to the granting of a licence, a hearing of the Highland Licensing Committee 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 all convictions in the application form;
- (g) Making a false statement when filling in the application form.

It is also an offence for a metal dealers and itinerant metal dealer to either-

- (i) dispose of metal to a person apparently under the age of 16 or to acquire metal from such a person, or
- (ii) knowingly or recklessly furnish false particulars under section 30 of the Act or false information on any record or receipt which he is required under the Act to keep.

With effect from 1 September 2016, any failure by a metal dealer or an itinerant metal dealer to comply with the new record-keeping requirements outlined at section 4 above, or to comply with the requirements in relation to acceptable forms of payment outlined in section 4A above will be an offence.

In addition, the penalties where a metal dealer or an itinerant metal dealer is convicted of operating without having the appropriate licence or of failing to comply with his licence conditions will be changed to a fine not exceeding £20,000 or imprisonment for a term not exceeding six months or both.

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