



# Civic Government (Scotland) Act 1982

## 1982 CHAPTER 45

### PART II

#### LICENSING AND REGULATION—PARTICULAR ACTIVITIES

##### *Licensing and regulation of metal dealers*

#### **28 Metal dealers': licensing and regulation**

- (1) Subject to subsection (2) below, a licence, to be known as a " metal dealer's licence ", shall be required for carrying on business as a metal dealer.
- (2) A metal dealer's licence shall not be required by a person in relation to whom there is in force a warrant under section 29(1) or (4) of this Act (referred to in subsection (3) below and in sections 30 to 37 of this Act respectively as " an exemption warrant " and " a temporary exemption warrant ").
- (3) Sections 30 to 36 of this Act shall not apply to a person in relation to whom an exemption warrant or temporary exemption warrant is in force.
- (4) A metal dealer's licence shall, in addition to specifying the activity which he engages in, specify the premises in or from which the activity is to be carried on.

#### **29 Metal dealers' exemption warrants**

- (1) A licensing authority shall, on application by a metal dealer, issue an exemption warrant in relation to him if there is produced to them 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 to them of the certificate, the total amount received by the dealer as a principal in the ordinary course of his business in respect of metal sold or supplied by him, without any deduction being made, exceeded £100,000 or such other sum as may be substituted for that sum by order made by the Secretary of State.

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- (2) An order made for the purposes of subsection (1) above shall be made by statutory instrument subject to annulment in pursuance of a resolution of either House of Parliament.
- (3) An exemption warrant shall remain in force for 3 years from the date of its issue.
- (4) A licensing authority may, on application by a metal dealer, issue a temporary exemption warrant in relation to him if they are satisfied that he has not been carrying on business as a metal dealer.
- (5) A temporary exemption warrant in relation to a metal dealer shall remain in force from the date of its issue or such later date as the licensing authority may specify—
  - (a) for a period of 18 months ; or
  - (b) until (if earlier than the expiry of that period) the date of the grant to that dealer of an exemption warrant; or
  - (c) if a metal dealer's licence has been applied for by him within that period, until the date when it is granted or is deemed to have been granted or, if it is refused, until the expiry of the time within which he may lodge an appeal under paragraph 18 of Schedule 1 to this Act against that refusal or, where he has lodged such an appeal, until it has been abandoned or determined against him.
- (6) It shall be a condition of a temporary exemption warrant that the dealer to whom it relates shall acquire metal only from persons selling or otherwise disposing of it in the course of trade or business.
- (7) A licensing authority may revoke a temporary exemption warrant on the grounds that the metal dealer to whom it relates has contravened the condition specified in subsection (6) above.
- (8) An authorised officer of a licensing authority or a constable may require any person who the officer or constable has reasonable ground to believe is carrying on business as a metal dealer without having a metal dealer's licence to produce his exemption warrant or temporary exemption warrant within a reasonable time of being required to do so ; and any person who does not have a metal dealer's licence and who, having been so required to produce his exemption warrant or temporary exemption warrant within that time, fails, without reasonable excuse, to do so shall be guilty of an offence and liable, on summary conviction, to a fine not exceeding £25.
- (9) An officer of a licensing authority or a constable who is not in uniform shall not be entitled to exercise the powers which he may exercise under subsection (8) above until he has produced his authorisation or, as the case may be, identification to the person in respect of whom they are to be exercised.
- (10) In this section—
  - " auditor " means a person who is qualified under section 161 of the Companies Act 1948 for appointment as auditor of a company within the meaning of that Act; and
  - " financial year ", in relation to a metal dealer, means the financial year of his business or, if it has no financial year, the year beginning on 6th April.

### 30 Keeping of records

- (1) This section applies to metal acquired by or disposed of by the holder of a metal dealer's licence in the course of his business as a metal dealer.
- (2) A metal dealer shall keep the following records, containing the particulars required by this section—
  - (a) in relation to each place occupied by him for the purposes of his business as a metal dealer—
    - (i) records of all metal to which this section applies received at that place;
    - (ii) records of all such metal processed at or despatched or otherwise disposed of from that place;
  - (b) records of all metal to which this section applies received or processed at or despatched or otherwise disposed of from any place other than a place occupied by him for the purposes of his business as a metal dealer.and separate records shall be kept of the particulars with respect to metal received and metal despatched, processed or otherwise disposed of, respectively.
- (3) A metal dealer shall keep records for the purposes of this section either by—
  - (a) keeping, at each place occupied by him for the purposes of his business as a metal dealer, books with serially numbered pages recording all metal to which this section applies received or processed at or despatched or otherwise disposed of from that place ; or
  - (b) the use of a device for storing and processing information,but—
  - (i) where he keeps books under paragraph (a) above, he shall not have in use at any one place and at any one time more than one book for recording particulars with respect to metal received at that place and more than one book for recording particulars with respect to metal processed at, or despatched or otherwise disposed of from, that place ; and
  - (ii) where he uses a device for storing and processing information under paragraph (b) above, he shall, by means of that device or otherwise, keep particulars of all modifications made in the records kept by the device.
- (4) Records kept under subsection (3) above shall be retained by the dealer for a period of two years from the day on which the last entry was made in it.
- (5) The said particulars, in the case of metal received or acquired, are—
  - (a) the description and weight of the metal;
  - (b) the date and time of the receipt of the metal;
  - (c) if the metal is received or acquired from another person, the name and address of that person;
  - (d) the price, if any, payable in respect of the receipt or 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) where paragraph (d) above does not apply, the value of the metal at the time when the entry is to be made as estimated by the dealer;
  - (f) in the case of metal delivered at the place in question by means of a mechanically propelled vehicle bearing a registration mark (whether the vehicle belongs to the dealer or not), the registration mark borne by the vehicle.

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- (6) The said particulars, in the case of metal despatched, processed or otherwise disposed of are—
- (a) the description and weight of the metal immediately before its despatch, processing or other disposal;
  - (b) the date of despatch, processing or other disposal of the metal and, in the case of processing, the process applied;
  - (c) in the case of metal disposed of on sale or exchange, the name and address of the person to whom the metal is sold or with whom it is exchanged, and the consideration for which it is sold or exchanged;
  - (d) in the case of metal disposed of otherwise than on sale or exchange, its value immediately before its disposal as estimated by the dealer.
- (7) Particulars required under this section to be recorded in respect of metal received or otherwise acquired shall be so recorded immediately after the receipt or acquisition; and particulars so required to be recorded in respect of metal disposed of shall be so recorded immediately after the disposal.
- (8) Any person who fails to comply with any requirement imposed upon him by this section shall be guilty of an offence and liable, on summary conviction, to a fine not exceeding £200.

### **31 Retention of metal**

- (1) Subject to subsection (2) below and section 35 of this Act, no metal dealer shall dispose of or process any metal acquired by him in the course of business until the expiry of a period of 48 hours (excluding any time on Saturdays or Sundays) after its acquisition.
- (2) A licensing authority may, on granting a metal dealer's licence or at any time thereafter, on application by the dealer and after consultation with the chief constable, order that subsection (1) above shall not apply to such metal or classes of metal as may be specified in the order.
- (3) An order under subsection (2) above may—
- (a) be made subject to such conditions as the licensing authority think fit;
  - (b) relate to metal still to be acquired by the metal dealer to whom the order relates ;
  - (c) be varied or revoked by the licensing authority.
- (4) The holder of a metal dealer's licence may appeal to the sheriff against a decision of the licensing authority under this section and paragraphs 18(3) to (9) and (11) and (12) of Schedule 1 to this Act shall, with any necessary modifications, apply to an appeal under this subsection.
- (5) Any person who fails to comply with subsection (1) above shall be guilty of an offence and liable, on summary conviction, to a fine not exceeding £200.

### **32 Itinerant metal dealers**

- (1) A licence, to be known as an "itinerant metal dealer's licence " shall be required for carrying on business as an itinerant metal dealer.
- (2) An itinerant metal dealer's licence shall have effect so as to permit the licence holder to carry on business as an itinerant metal dealer anywhere in Scotland.

### **33 Receipts and invoices: itinerant metal dealers**

- (1) An itinerant metal dealer shall obtain from each person who buys metal from him a receipt showing the weight and description of the metal, the name and address of the buyer and the price paid for the metal.
- (2) Any such receipt shall be kept by the dealer for a period of 6 months from its date of issue.
- (3) An itinerant metal dealer shall keep a record in respect of each sale to him of metal showing the weight and description of the metal, the name and address of the seller and the price paid for the metal.
- (4) Any such record shall be kept by the dealer for a period of 6 months from the date of the sale to which it relates.
- (5) Any person who fails to comply with any provision of this section shall be guilty of an offence and liable, on summary conviction, to a fine not exceeding £200.

### **34 Offences relating to metal dealing**

- (1) Any metal dealer or itinerant metal dealer who disposes of metal to a person apparently under the age of 16 or who acquires metal from such a person, whether that person is acting on his own behalf or on behalf of another person, shall be guilty of an offence and liable, on summary conviction, to a fine not exceeding £200.
- (2) In any proceedings for an offence under subsection (1) above, it shall be a defence to prove that the person to whom it is alleged the metal was disposed of or from whom it is alleged it was acquired was 16 years of age or over at the time.
- (3) Any metal dealer or itinerant metal dealer who knowingly or recklessly furnishes false particulars under section 30 of this Act or, as the case may be, false information on any record or receipt which he is required by section 33 of this Act to keep shall be guilty of an offence and liable, on summary conviction, to a fine not exceeding £500.
- (4) Any person who, when selling metal to or purchasing metal from a metal dealer or itinerant metal dealer, gives the dealer a false name or address shall be guilty of an offence and liable, on summary conviction, to a fine not exceeding £200.

### **35 Functions of the court in relation to metal dealers convicted of offences**

- (1) Where a metal dealer or itinerant metal dealer is convicted of an offence relating to his business as such, the court by which he is convicted may make any order which it is competent to make under section 7(6) of this Act and an extract of such conviction and sentence (if any) shall, within 6 days after the date of the conviction, be transmitted by the clerk of the court to the licensing authority which granted the licence.
- (2) Where a metal dealer is convicted—
  - (a) of an offence relating to his business as such ; or
  - (b) of any offence which in the opinion of the court is an offence involving dishonesty,the court may, in addition to any other order which it is competent to make, order that he shall not dispose of or process any metal acquired by him until the expiry of a period of 7 days after its acquisition.

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- (3) In making an order under subsection (2) above, the court shall specify a period not exceeding 2 years for which it is to remain in force, but the court may revoke such an order at any time on the application of the person to whom it relates.
- (4) Any person who fails to comply with an order made in relation to him under subsection (2) above shall be guilty of an offence and liable, on summary conviction, to a fine not exceeding £500 or to imprisonment for a period not exceeding 60 days or to both.
- (5) A licensing authority receiving, by virtue of subsection (1) above an extract of conviction and sentence (if any) of an itinerant metal dealer shall notify all other licensing authorities of the particulars of the conviction.

### **36 Appropriate licence required**

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 shall require the appropriate licence in respect of each activity.

### **37 Interpretation of sections 28 to 36**

- (1) In sections 28 to 36 of this Act—

"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 himself, or by disposing of them or giving custody of them 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 dealer" means a person carrying on business in terms of subsection (2) below but does not include an itinerant metal dealer within the meaning of this subsection ;

"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.

- (2) For the purposes of sections 28 to 36 of this Act a person carries on business as a metal dealer if he 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 was 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 materials bought but not required for such manufacture.