



# Civic Government (Scotland) Act 1982

## 1982 CHAPTER 45

### PART II

#### LICENSING AND REGULATION—PARTICULAR ACTIVITIES

#### **9 Application of sections 10 to 27 and 38 to 44.**

- (1) Sections 10 to 27 (except section 20), any regulations made under the said section 20, and sections 38 to 43 [<sup>F1</sup>(except section 41A)] of this Act and any order made under section 44(1)(a) of this Act (which sections regulations and order are in this section called the “optional provisions”) shall have effect in the area of a licensing authority only if and insofar as the authority have so resolved in accordance with subsections (2) to (8) below.
- (2) A licensing authority may, in accordance with this section, resolve that, as from a day specified in the resolution (which must not be before the expiration of the period of nine months beginning with the day on which the resolution was made) any activity provision for the licensing and regulation of which is made by the optional provisions shall require to be licensed in accordance with the provisions of this Act relating to that activity and shall be regulated by those provisions.
- (3) Subject to subsections (4) and (5) below, a resolution under this section may be made—
  - (a) in relation to all or any of the activities referred to in subsection (2) above;
  - (b) in relation to the whole or any part of the area of the licensing authority;
  - (c) in relation to—
    - (i) all classes of an activity referred to in any of the optional provisions;
    - or
    - (ii) all such classes subject to exceptions; or
    - (iii) any particular such class or classes.
- (4) A licensing authority may not make a resolution under this section relating to any of the activities provision for the licensing and regulation of which is made in sections 10 to 23 of this Act (that is to say the operation of a vehicle as a taxi, the operation

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of a vehicle as a hire car, the driving of a taxi and the driving of a hire car) unless it relates to all these activities.

- (5) A resolution made under this section by the licensing authority relating to—
  - (a) the activity provision for the licensing and regulation of which is made in sections 24 to 27 of this Act (that is to say the carrying on of business as a second-hand dealer) shall specify the particular class or classes of that activity which shall thereby fall to be licensed and regulated;
  - (b) the activity provision for the licensing of which is made in section 41 of this Act (that is to say the use of premises as a place of public entertainment) shall specify the place or places, or class or classes thereof, which shall thereby fall to be licensed.
- (6) A licensing authority shall not make a resolution under this section unless they have—
  - (a) published in a newspaper or newspapers circulating in their area the terms of the proposed resolution together with a notice stating—
    - (i) that they intend to make the resolution; and
    - (ii) that representations about the resolution may be made in writing to the authority within 28 days of the first publication of the notice; and
  - (b) considered any representations so made.
- (7) A licensing authority, before proceeding to make a resolution under this section, may make such modifications to the proposed resolution as they think fit in the light of representations made to them about it provided such modifications do not extend its scope.
- (8) The licensing authority shall, as soon as they have made a resolution under subsection (2) above, publish in a newspaper or newspapers circulating in their area—
  - (a) the terms of the resolution so made; together with
  - (b) a notice stating—
    - (i) that with effect from the date specified as that on which the resolution comes into effect it will be an offence under section 7(1) of this Act to do without a licence whatever the resolution specifies as being an activity requiring to be licensed; and
    - (ii) that applications for licences in respect of the activity will be considered by the authority after the expiry of one month after the date of the making of the resolution.
- (9) A resolution under this section may be varied or rescinded by a subsequent resolution made in like manner except that, in relation to the time when it takes effect, a resolution under this subsection—
  - (a) varying a resolution under this section so as to reduce its scope; or
  - (b) rescinding a resolution under this section
 shall take effect on such date as may be specified in it being any date subsequent to the making of the resolution.
- (10) Anything which must or may be done under or by virtue of Part I or this Part of this Act may, at any time after the making by the licensing authority of the resolution, be done so far as may be necessary or expedient for the purpose of giving full effect to the resolution at or after the time it takes effect but no application for a licence in respect of an activity requiring to be licensed in consequence of the resolution shall be considered by the authority until the expiry of one month after the making of the resolution.

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#### Textual Amendments

F1 Words inserted by [Fire Safety and Safety of Places of Sport Act 1987 \(c. 27, SIF 81:2\)](#), [s. 44\(4\)](#)

#### Modifications etc. (not altering text)

C1 [S. 9](#) applied (until 1.4.1996) by [S.I. 1995/1878](#), [art. 3](#)

C2 [S. 9\(9\)](#) modified (until 1.4.1996) by [S.I. 1995/1878](#), [art. 3](#)

### *Licensing and regulation of taxis and private hire cars*

## 10 Taxi and private hire car licences.

- (1) A licence, to be known as a “taxi licence” or, as the case may be, a “private hire car licence”, shall be required for the operation of a vehicle as—
  - (a) a taxi; or
  - (b) a private hire car.
- (2) A licensing authority shall not grant or renew a taxi licence or private hire car licence unless they are satisfied that the vehicle to which the licence is to relate is suitable in type, size and design for use as a taxi or private hire car, as the case may be, and is safe for that use, and that there is in force in relation to the vehicle such a policy of insurance or such security as complies with Part VI of the <sup>M1</sup>Road Traffic Act 1972.
- [<sup>F2</sup>(3) Without prejudice to paragraph 5 of Schedule 1 to this Act, the grant of a taxi licence may be refused by a licensing authority for the purpose of limiting the number of taxis in respect of which licences are granted by them if, but only if, they are satisfied that there is no significant demand for the services of taxis in their area which is unmet.]
- (4) A vehicle shall, for the purposes of subsection (2) above, be treated by a licensing authority [<sup>F3</sup>—
  - (a)] as being suitable in type, size and design if it complies with regulations in that regard made by the Secretary of State under section 20(2) of this Act in respect of their area[<sup>F4</sup>; and
  - (b) as not being so suitable if it does not so comply.]
- (5) A taxi licence or private hire car licence shall extend to the operation of a vehicle substituted for the vehicle in respect of which the licence was granted or, as the case may be, last renewed if the licensing authority are as respects the substitute vehicle satisfied as to the matters specified in subsection (2) above, and where a taxi licence or private hire car licence extends under this subsection to a substitute vehicle, subsection (6) below shall not apply in respect of the vehicle replaced by the substitute vehicle.
- (6) Subject to subsection (5) above, the holder of a taxi or private hire car licence shall within 28 days of his selling or otherwise disposing of the vehicle to which the licence relates deliver to the licensing authority his licence and any licence plate or other thing which has been issued by the licensing authority for the purpose of indicating that the vehicle is a taxi or, as the case may be, private hire car, and if without reasonable excuse he fails to do so he shall be guilty of an offence and liable, on summary conviction, to a fine not exceeding [<sup>F5</sup>level 2 on the standard scale].

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#### Textual Amendments

- F2** S. 10(3) substituted by [Transport Act 1985 \(c. 67, SIF 126\)](#), s. 139(2), **Sch. 7 para. 23(5)**
- F3** Words in s. 10(4) renumbered as s. 10(4)(a) (5.2.2003) by [Disability Discrimination Act 1995 \(c. 50\)](#), **ss. 39(2)(a), 70(3)** (with [ss. 59, 64, 65](#)); S.I. 2003/215, art. 2
- F4** S. 10(4)(b) and word added (5.2.2003) by [Disability Discrimination Act 1995 \(c. 50\)](#), **ss. 39(2)(b), 70(3)** (with [ss. 59, 64, 65](#)); S.I. 2003/215, art. 2
- F5** Words substituted by virtue of [Criminal Procedure \(Scotland\) Act 1975 \(c. 21, SIF 39:1\)](#), **s. 289G**

#### Marginal Citations

- M1** 1972 c. 20.

## 11 Inspection and testing of vehicles.

- (1) The holder of a taxi or private hire car licence shall present the taxi or private hire car for inspection and testing by or on behalf of the licensing authority within such period and at such place as they may by notice reasonably require.
- (2) An authorised officer of a licensing authority (as respects a taxi or private hire car licensed for the area of the authority) or a constable shall have power at any reasonable time to inspect and test, for the purpose of ascertaining its fitness, a licensed taxi or private hire car or, for the purpose of testing its fitness or accuracy, any taximeter and if he is not satisfied as to the safety of the taxi or private hire car for the carriage of passengers or as to the fitness or accuracy of the taximeter he may by notice in writing—
  - (a) require the holder of the taxi or private hire car licence to make the taxi, private hire car or taximeter, as the case may be, available for further inspection at such reasonable time and place as may be specified in the notice;
  - (b) suspend the licence until such time as an authorised officer of the licensing authority or a constable is so satisfied:

Provided that, if an authorised officer or constable is not so satisfied before the expiration of a period of 28 days from the date of the suspension of the licence, the said licence shall, by virtue of this subsection, be deemed to have been suspended by the licensing authority under paragraph 11 of Schedule 1 to this Act.

## 12 Fees for taxi and private hire car licences.

A licensing authority shall charge such fees in respect of taxi and private hire car licences and applications for such licences as may be resolved by them from time to time and shall seek to ensure that the total amount of such fees is sufficient to meet the expenses incurred by them in carrying out their functions under sections 10 to 23 (other than section 19) of this Act in relation to such licences.

## 13 Taxi and private hire car driving licences.

- (1) A licence, to be known as a “taxi driver’s licence” or, as the case may be, a “private hire car driver’s licence”, shall, subject to subsection (2) below, be required for driving or otherwise having charge of a taxi or private hire car.

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- (2) A private hire car driver's licence shall not be required by the holder of a taxi driver's licence for driving or otherwise having charge of a private hire car whilst in operation as such.
- (3) A licensing authority shall not grant a licence to any person under this section unless that person has held, during any continuous period of 12 months prior to the date of his application, a licence authorising him to drive a motor car issued under Part III of the <sup>M2</sup>Road Traffic Act 1972 or a licence which would at the time of his application entitle him to such a licence without taking a test, not being a provisional licence.
- (4) A licensing authority may, at any time, for the purposes of satisfying themselves that he is physically fit to drive a taxi or, as the case may be, private hire car, require an applicant for or holder of a taxi driver's licence or private hire car driver's licence to submit to medical examination, at their expense, by a medical practitioner nominated by them.
- (5) A licensing authority may require an applicant for a taxi driver's licence to take a test of his knowledge of the area to which the licence is to relate, of the layout of roads in that area and such other matters relating to the operation of a taxi as the authority consider desirable, and the authority may refuse to grant a licence to a person who does not satisfy them that he has adequate knowledge of any of these matters.
- (6) If a person holding a licence under this section ceases for any reason to be authorised by law to drive on a road . . . <sup>F6</sup> the vehicle to which the licence relates, the licence shall cease to have effect.

#### Textual Amendments

**F6** Words repealed by [Roads \(Scotland\) Act 1984 \(c. 54, SIF 108\)](#), s. 156(3), [Sch. 11](#)

#### Marginal Citations

**M2** 1972 c. 20.

## 14 Signs on vehicles other than taxis.

- (1) Subject to subsection (2) below, there shall not be displayed on or in a private hire car any word, sign, notice, mark, illumination or other feature which may suggest that the vehicle is available for hire as a taxi.
- (2) Subsection (1) above does not apply in relation to any licence plate or other thing issued by the licensing authority for the purpose of indicating that the vehicle to which it relates is a private hire car or in relation to any sign required by virtue of section 21 of the <sup>M3</sup>Vehicles (Excise) Act 1971.
- (3) Any person who—
  - (a) drives a vehicle in respect of which subsection (1) is contravened; or
  - (b) causes or knowingly permits that subsection to be contravened in respect of any vehicle,shall be guilty of an offence and liable, on summary conviction, to a fine not exceeding [<sup>F7</sup>level 3 on the standard scale].

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#### Textual Amendments

**F7** Words substituted by virtue of [Criminal Procedure \(Scotland\) Act 1975 \(c. 21, SIF 39:1\)](#), **s. 289G**

#### Marginal Citations

**M3** [1971 c. 10.](#)

### 15 Operation of taxis outside licensing areas.

- (1) A licensing authority, with the agreement of another licensing authority, may name destinations or classes of destinations in the area of the other authority and, with the agreement aforesaid, fix scales under section 17 of this Act for journeys from their area by taxis licensed by them to such destinations or classes thereof.
- (2) The conditions to which a taxi or taxi driver's licence are subject shall continue to apply while the taxi or its driver is engaged in such a journey.
- (3) Nothing in this section or in Part I of this Act enables a condition to be imposed in a taxi driver's licence requiring him to make any journey to a destination outside the area in respect of which he is licensed.

### 16 Journeys in England and Wales by vehicles and drivers licensed under this Act.

In section 75 of the <sup>M4</sup> Local Government (Miscellaneous Provisions) Act 1976 (saving for certain vehicles from requirements of Part II of that Act as to private hire vehicles), after subsection (2) there shall be inserted—

- “(2A) Where a vehicle is being used as a taxi or private hire car, paragraphs (a), (b) and (c) of section 46(1) of this Act shall not apply to the use or driving of the vehicle or the employment of a person to drive it if—
- (a) a licence issued under section 10 of the Civic Government (Scotland) Act 1982 for its use as a taxi or, as the case may be, private hire car is then in force, and
  - (b) the driver holds a licence issued under section 13 of that Act for the driving of taxis or, as the case may be, private hire cars.

In this subsection, “private hire car” and “taxi” have the same meaning as in sections 10 to 22 of the Civic Government (Scotland) Act 1982”

#### Modifications etc. (not altering text)

**C3** The text of ss. 16, 18(11), 51(7) and 52(6) is in the form in which it was originally enacted: it was not reproduced in Statutes in Force and does not reflect any amendments or repeals which may have been made prior to 1.2.1991.

#### Marginal Citations

**M4** [1976 c. 57.](#)

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## 17 Taxi fares.

- (1) The fares for the hire of taxis in any area and all other charges in connection with the hire of a taxi or with the arrangements for its hire shall be not greater than those fixed for that area under this section and section 18 of this Act.
- (2) It shall be the duty of the licensing authority to fix from time to time scales for the fares and other charges mentioned in subsection (1) above and to review these scales at intervals not exceeding 18 months from the date on which the scales came into effect (whether proceeding upon a review under this section or not).
- (3) Before fixing any scales or carrying out any review under this section the licensing authority shall—
  - (a) consult with persons or organisations appearing to them to be, or be representative of, the operators of taxis operating within their area; and
  - (b) give notice of their intention by advertisement in a newspaper circulating in their area stating—
    - (i) the general effect of the proposals and the date when they propose that their decision will take effect; and
    - (ii) that any person may lodge representations in writing with respect to the proposals within a period of one month after the date of the first publication of the notice; and
  - (c) consider any such representations duly lodged with them.
- (4) Where, under this section, the licensing authority fix any scale or carry out any review they shall forthwith give notice in writing of their decision (including, in the case of a review, a decision to do nothing) to such persons and organisations as they have consulted under subsection (3)(a) above and inform them of the general effect of section 18(1) of this Act.
- (5) Notice shall be given for the purposes of subsection (4) above by—
  - (a) its being sent by recorded delivery letter to the last known addresses of the persons and organisations referred to in subsection (4) above so as to arrive there, in the normal course of post, not later than five days after the decision referred to in subsection (4) above; or
  - (b) personal service of the notice upon those persons within that time.

## 18 Appeals in respect of taxi fares.

- (1) Any person who operates a taxi in an area for which scales have been fixed or in respect of which a review has been carried out under section 17 of this Act may, within 14 days after the decision upon the scales or, as the case may be, upon the review, appeal against these scales to the traffic [<sup>F8</sup>commissioner] for the Scottish Traffic Area as constituted for the purpose of the <sup>M5</sup>Public Passenger Vehicles Act 1981.
- (2) The traffic [<sup>F8</sup>commissioner] may hear an appeal under this section notwithstanding that it was not lodged with [<sup>F9</sup>him] within the time mentioned in subsection (1) above.
- (3) On an appeal to them under subsection (1) above, the traffic [<sup>F8</sup>commissioner] may—
  - (a) confirm or alter the scales; or
  - (b) may decline to proceed—
    - (i) at any stage in the appeal, on the grounds that [<sup>F10</sup>he considers] the case for the appellant is not representative of the view of a substantial

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proportion of the operators of taxis operating in the area of the licensing authority;

(ii) if less than two years have elapsed since <sup>F10</sup>he decided] an appeal against a decision of the same authority in respect of the same scale, and <sup>F10</sup>he considers] it inappropriate that <sup>F10</sup>he should consider] the matter again.

- (4) An appeal under this section shall have the effect of suspending the decision referred to in subsection (1) above until the date when the appeal is abandoned or, as the case may be, when notice is given to the appellant advising him of its disposal.
- (5) Where <sup>F11</sup>he alters] scales under subsection (3)(a) above, the traffic <sup>F8</sup>commissioner] may substitute a different date for the coming into effect of these scales.
- (6) The Secretary of State may <sup>F12</sup>by order made by statutory instrument] make rules as to procedure in relation to appeals under this section.
- (7) The decision of the traffic <sup>F8</sup>commissioner] on an appeal under this section shall be final.
- (8) The traffic <sup>F8</sup>commissioner] shall give notice of <sup>F13</sup>his] decision in writing to the appellant and to the licensing authority and notice shall be given to the appellant by—
  - (a) its being sent by recorded delivery letter to his last known address or, as the case may be, to them so as to arrive, in the normal course of post, not later than five days after <sup>F13</sup>his] decision; or
  - (b) personal service of the notice on the appellant within that time.
- (9) As soon as practicable after the expiration of the period of 14 days referred to in subsection (1) above or, where an appeal has been lodged, on the date when it is abandoned or when notice is given to the appellant of its disposal, the licensing authority shall, by advertisement in a newspaper circulating in their area, give public notice of the scales which have been determined under section 17 of this Act and this section and the date when they come into effect which shall be not earlier than seven days after the date of the advertisement.
- (10) A licensing authority shall pay the expenses incurred under this section by the traffic commissioners in relation to appeals under this section.

<sup>F14</sup>(11) . . . . .

<b>Textual Amendments</b>	
<b>F8</b>	Word substituted by <a href="#">Transport Act 1985 (c. 67, SIF 126)</a> , s. 3, <b>Sch. 2 Pt. II para. 5(a)</b>
<b>F9</b>	Word substituted by <a href="#">Transport Act 1985 (c. 67, SIF 126)</a> , s. 3, <b>Sch. 2 Pt. II para. 5(b)</b>
<b>F10</b>	Words substituted as provided by <a href="#">Transport Act 1985 (c. 67, SIF 126)</a> , s. 3, <b>Sch. 2 para. 5(c)</b>
<b>F11</b>	Words substituted by <a href="#">Transport Act 1985 (c. 67, SIF 126)</a> , s. 3, <b>Sch. 2 para. 5(d)</b>
<b>F12</b>	Words inserted by <a href="#">Transport Act 1985 (c. 67, SIF 126)</a> , s. 139(2), <b>Sch. 7 para. 23(2)</b>
<b>F13</b>	Word substituted by <a href="#">Transport Act 1985 (c. 67, SIF 126)</a> , s. 3, <b>Sch. 2 Pt. II para. 5(e)</b>
<b>F14</b>	<a href="#">S. 18(11)</a> repealed (1.10.1992) by <a href="#">Tribunals and Inquiries Act 1992 (c. 53)</a> , ss. 18(2), 19(2), <b>Sch. 4 PtI.</b>
<b>Marginal Citations</b>	
<b>M5</b>	<a href="#">1981 c. 14.</a>



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## 19 Taxi stances.

- (1) A licensing authority may, after consultation with persons or organisations appearing to them to be, or be representative of, the operators of taxis operating in their area, appoint stances for taxis for the whole or any part of a day in any road within their area or on any land owned by the authority, or, with the consent of the owner, on any land owned by him.
- (2) A licensing authority may—
  - (a) erect and illuminate signs;
  - (b) cause lines or marks to be made on roads;indicating the limits of taxi stances.
- (3) A licensing authority may from time to time, after consultation as mentioned in subsection (1) above, vary the number of taxis permitted to be at each stance and alter the position of such stances or revoke the appointment thereof.
- (4) Before appointing any stance for taxis or varying the number of taxis permitted to be at each stance, the licensing authority shall give notice to the chief constable of the area in which the stance is situated and shall also give public notice of the proposal by advertisement in at least one newspaper circulating in their area and shall take into consideration any objections or representations in respect of such proposal which may be made to them in writing within 28 days of the first publication of such notice.
- (5) Nothing in this section shall empower a licensing authority to appoint any taxi stance so as unreasonably to prevent access to any premises or, without the consent of the [<sup>F15</sup>roads authority], to appoint any taxi stance on any [<sup>F16</sup>road] or erect or illuminate any sign there or cause any line or mark to be made on any road . . . <sup>F17</sup>

### Textual Amendments

- F15** Words substituted by [Roads \(Scotland\) Act 1984 \(c. 54, SIF 108\)](#), s. 156(1), [Sch. 9 para. 87\(2\)\(a\)](#)
- F16** Word by [Roads \(Scotland\) Act 1984 \(c. 54, SIF 108\)](#), s. 156(1), [Sch. 9 para. 87\(2\)\(b\)](#)
- F17** Words repealed by [Roads \(Scotland\) Act 1984 \(c. 54, SIF 108\)](#), s. 156(1)(3), [Sch. 9 para. 87\(2\)\(c\)](#), Sch. 11

## 20 Regulations relating to taxis and private hire cars and their drivers.

- (1) Notwithstanding paragraph 5(2) of Schedule 1 to this Act, the Secretary of State may by regulations provide that licensing authorities shall, in relation to taxi, private hire car, taxi drivers' or private hire car drivers' licences, impose such conditions or classes of conditions as may be prescribed in the regulations and shall not impose such other conditions or classes of conditions as may be so prescribed [<sup>F18</sup>and may provide that such conditions shall be imposed or, as the case may be, shall not be imposed for different areas or classes of areas; and different conditions or classes of conditions may be prescribed in relation to different categories of taxi or private hire car.]
  - (2) The Secretary of State may by regulations <sup>F19</sup>... prescribe types, sizes and designs of vehicles for the purposes of section 10(4) of this Act and, in doing so, may prescribe different types, sizes or designs of vehicles in respect of different areas.
- <sup>F20</sup>(2A) Without prejudice to the generality of subsections (1) and (2) above, regulations under those subsections may make such provision as appears to the Secretary of State to be necessary or expedient in relation to the carrying in taxis of disabled persons (within

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the meaning of section 1(2) of the Disability Discrimination Act 1995) and such provision may in particular prescribe—

- (a) requirements as to the carriage of wheelchairs, guide dogs, hearing dogs and other categories of dog;
- (b) a date from which any such provision is to apply and the extent to which it is to apply; and
- (c) the circumstances in which an exemption from such provision may be granted in respect of any taxi or taxi driver,

and in this subsection—

“guide dog” means a dog which has been trained to guide a blind person;

“hearing dog” means a dog which has been trained to assist a deaf person;

and

“other categories of dog” means such other categories of dog as the Secretary of State may prescribe, trained to assist disabled persons who have disabilities of such kinds as he may prescribe.]

[<sup>F21</sup>(2AA) The Scottish Ministers may by regulations make such provision as appears to them to be necessary or expedient in relation to the carrying in private hire cars of disabled persons (within the meaning of section 1 (2) of the Disability Discrimination Act 1995 (c. 50)) and such provision may in particular prescribe—

- (a) requirements as to the carriage of guide dogs, hearing dogs and other categories of dogs;
- (b) a date from which any such provision is to apply and the extent to which it is to apply; and
- (c) the circumstances in which an exemption from such provision may be granted in respect of any private hire car or private hire car driver,

and in this subsection “guide dog”, “hearing dog” and “other categories of dog” have the same meaning as in subsection (2A) above.

(2AB) Regulations under subsection (2AA) above may provide for the creation of offences and for making offenders liable on summary conviction to a fine not exceeding level 3 on the standard scale.

(2AC) Regulations under subsection (2AA) above shall be made by statutory instrument subject to annulment in pursuance of a resolution of the Scottish Parliament.]

(3) Regulations under [<sup>F22</sup>subsection (1) or (2) above] shall be made by statutory instrument subject to annulment in pursuance of a resolution of either House of Parliament.

#### Textual Amendments

**F18** Words added by [Transport Act 1985 \(c. 67, SIF 126\)](#), s. 139(2), **Sch. 7 para. 23(3)**

**F19** Words in s. 20(2) repealed (1.4.2003) by [Local Government in Scotland Act 2003 \(asp 1\)](#), **ss. 49(a)**, 62(2); S.S.I. 2003/134, art. 2(1), sch.

**F20** S. 20(2A) inserted (5.2.2003) by [Disability Discrimination Act 1995 \(c. 50\)](#), **ss. 39(3)**, 70(3) (with ss. 59, 64, 65); S.I. 2003/215, art. 2

**F21** S. 20(2AA)-(2AC) inserted (31.3.2004) by [Private Hire Vehicles \(Carriage of Guide Dogs etc.\) Act 2002 \(c. 37\)](#), **ss. 2**, 6(2); S.S.I. 2004/57, art. 2

**F22** Words in s. 20(3) substituted (1.4.2003) by [Local Government in Scotland Act 2003 \(asp 1\)](#), **ss. 49(b)**, 62(2); S.S.I. 2003/134, art. 2(1), sch.

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**Modifications etc. (not altering text)**

- C4 S. 20: transfer of certain functions (1.7.1999) by S.I. 1999/1750, arts. 1, 2, Sch. 1 (with art. 7); S.I. 1998/3178, art. 3

**21 Offences.**

(1) If any person—

- (a) operates, or permits the operation of, a taxi within an area in respect of which its operation requires to be but is not licensed or the driver requires to be but is not licensed, or
- (b) picks up passengers in, or permits passengers to be picked up by, a private hire car within an area in respect of which its operation requires to be but is not licensed or the driver requires to be but is not licensed,

that person shall be guilty of an offence and liable, on summary conviction, to a fine not exceeding [<sup>F23</sup>level 4 on the standard scale].

(2) Subsection (1) above does not apply to the operation of a taxi or private hire car within an area in respect of which its operation or its driver is not licensed if the request for its hiring was received by its driver [<sup>F24</sup>(otherwise than in a public place from the person to be conveyed in it, or a person acting on his behalf, for a journey beginning there and then)] whilst—

- (a) in the area or in that part thereof in respect of which its operation and its driver are licensed;
- (b) engaged on hire on a journey which began in that area or part or will end there; or
- (c) returning to that area or part immediately following completion of a journey on hire.

(3) Subsection (1)(b) above does not apply to the operation of a vehicle within an area in respect of which its operation or its driver is not licensed if there are in force—

- (i) in respect of the vehicle, a licence under section 37 of the <sup>M6</sup>Town Police Clauses Act 1847 (licensing of hackney carriages) or section 48 of the <sup>M7</sup>Local Government (Miscellaneous Provisions) Act 1976 (licensing of private hire vehicles); and
- (ii) in respect of its driver, a licence under section 46 of the said Act of 1847 (licensing of hackney carriage drivers) or, as the case may be, section 51 of the said Act of 1976 (licensing of drivers of private hire vehicles).

[<sup>F25</sup>(3A) Subsection (1)(b) above does not apply to the operation of a vehicle within an area in respect of which its operation or its driver is not licensed if there are in force—

- (a) in respect of the vehicle, a licence under section 7 of the Private Hire Vehicles (London) Act 1998; and
- (b) in respect of its driver, a licence under section 13 of that Act.]

(4) If any person, being the holder of a taxi licence or private hire car licence in respect of a vehicle, permits another person who does not have a current taxi driver's licence or private hire car driver's licence, as the case may be, to operate the vehicle as a taxi or, as the case may be, a private hire car he shall be guilty of an offence and liable, on summary conviction, to a fine not exceeding [<sup>F23</sup>level 4 on the standard scale].

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- (5) If any person demands fares or other charges in respect of the hire of a taxi or for the hire of a private hire car which is fitted with a taximeter in excess of the scales established under sections 17 and 18 of this Act, he shall be guilty of an offence and liable on summary conviction, to a fine not exceeding [<sup>F23</sup>level 4 on the standard scale].
- (6) If any person without good cause breaks the seal on a taximeter or operates or drives a taxi or private hire car knowing that the seal on its meter has been broken, he shall be guilty of an offence and liable, on summary conviction, to a fine not exceeding [<sup>F23</sup>level 4 on the standard scale] or to imprisonment for a period not exceeding 60 days or to both.
- (7) If any person, without reasonable excuse, causes or permits any vehicle other than a taxi to wait on any stance for taxis during any period for which that stance has been appointed by a licensing authority under section 19 of this Act, he shall be guilty of an offence and liable, on summary conviction, to a fine not exceeding [<sup>F23</sup>level 2 on the standard scale].
- (8) Notice of the effect of subsection (7) above shall be indicated by such traffic signs as may be prescribed as authorised for the purpose by the Secretary of State in pursuance of his powers under section 54 of the <sup>M8</sup>Road Traffic Regulation Act 1967.

#### Textual Amendments

- F23** Words substituted by virtue of [Criminal Procedure \(Scotland\) Act 1975 \(c. 21, SIF 39:1\)](#), **s. 289G**
- F24** Words inserted by [Transport Act 1985 \(c. 67, SIF 126\)](#), s. 139(2), **Sch. 7 para. 23(4)**
- F25** [S. 21\(3A\)](#) inserted (8.6.2004) by [Private Hire Vehicles \(London\) Act 1998 \(c. 34\)](#), s. 40(2), **Sch. 1 para. 3** (with s. 29); [S.I. 2004/241](#), art. 2(2)

#### Marginal Citations

- M6** 1847 c. 89.
- M7** 1976 c. 57.
- M8** 1967 c. 76.

## 22 Saving for certain vehicles etc.

Nothing in sections 10 to 21 (with the exception of subsection (7) of section 21) of this Act shall—

- (a) apply to a vehicle used for bringing passengers or goods within and taking them out of an area in respect of which the vehicle is not licensed as a taxi or a private hire car in pursuance of a contract for the hire of the vehicle made outside the area if the vehicle is not made available for hire within the area;
- (b) apply to a vehicle while it is being used in connection with a funeral or wedding;
- (c) apply to any vehicle while it is being used for carrying passengers under a contract for its exclusive hire for a period of not less than 24 hours.

## 23 Interpretation of sections 10 to 22.

- (1) In sections 10 to 22 of this Act—

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“taxi” means a hire car which is engaged, by arrangements made in a public place between the person to be conveyed in it (or a person acting on his behalf) and its driver for a journey beginning there and then; and

“private hire car” means a hire car other than a taxi within the meaning of this subsection.

- (2) In subsection (1) above, “hire car” means a motor vehicle with a driver (other than a vehicle being a public service vehicle within the meaning of section 1(1)(a) of the <sup>M9</sup>Public Passenger Vehicles Act 1981) which is, with a view to profit, available for hire by the public for personal conveyance.
- (3) Notwithstanding that a vehicle in respect of which there is a licence for its operation as a taxi is, on any occasion, engaged as a hire car otherwise than in the manner referred to in subsection (1) above, the enactments relating to its operation as a taxi, and to the driving of it as such (including any such enactments in this Act) shall nonetheless apply in relation to it; and that other manner of engagement on that occasion shall not of itself cause the operation or driving of the licensed taxi to be regarded for the purposes of this Act as the operation or driving of a private hire car within the meaning of subsection (1) above.

#### Marginal Citations

M9 1981 c. 14.

### *Licensing and regulation of second-hand dealers*

#### **24 Second-hand dealers’ licences.**

- (1) Subject to subsection (3) below, a licence, to be known as a “second-hand dealer’s licence”, shall be required for carrying on business as a second-hand dealer.
- (2) In this section and in sections 25 to 27 and 36 of this Act “second-hand dealer” means a person carrying on a business as a dealer in second-hand goods or articles of any description.
- (3) A second-hand dealer’s licence shall not be required for carrying on—
  - (a) the business of a pawnbroker (that is to say, a person who, under a regulated agreement under the <sup>M10</sup>Consumer Credit Act 1974, takes an article in pawn);
  - (b) a business as a wholesale dealer purchasing exclusively from second-hand dealers licensed under this Act;
  - (c) a business which is charitable for the purposes of the Income Tax Acts;
  - (d) a business as a dealer in second-hand goods or articles incidentally to another business not being that of a dealer in such goods or articles;
  - (e) a business either of financing the acquisition of goods by means of hire-purchase agreements, conditional sale agreements or credit sale agreements (as defined in section 189(1) of the <sup>M11</sup>Consumer Credit Act 1974) or of financing the use of goods by means of hiring agreements.
- (4) Without prejudice to paragraph 5 of Schedule 1 to this Act, a licensing authority may, after consultation with the chief constable, attach conditions to a second-hand dealer’s licence requiring the keeping of records in relation to the dealer’s stock-in-trade; and

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conditions so attached may, without prejudice to the authority’s power under this subsection, include provision as to—

- (a) the information to be included in these records;
  - (b) their form;
  - (c) the premises where they are to be kept; and
  - (d) the period for which they are to be kept.
- (5) A second-hand dealer acquiring a second-hand motor vehicle for the purpose of its re-sale in the course of his business shall keep a record of the mileage reading on the vehicle’s odometer when he acquired it.
- (6) Any person who contravenes subsection (5) above shall be guilty of an offence and liable, on summary conviction, to a fine not exceeding [F26level 3 on the standard scale].
- (7) It shall be a defence for a person charged with an offence under subsection (6) above to prove that he used all due diligence to prevent the commission of the offence.

#### Textual Amendments

**F26** Words substituted by virtue of [Criminal Procedure \(Scotland\) Act 1975 \(c. 21, SIF 39:1\), s. 289G](#)

#### Marginal Citations

**M10** 1974 c. 39.

**M11** 1974 c. 39.

## 25 Disposal of stock-in-trade.

- (1) Subject to subsections (2) and (3) below and section 27 of this Act, a second-hand dealer shall not dispose of any item of his stock-in-trade until the expiry of 48 hours (excluding any time on Saturdays or Sundays) after he acquired it.
- (2) Subsection (1) above shall not apply to any article acquired by the dealer in a public roup and disposed of by him without being brought to his place of business.
- (3) A licensing authority may, on granting a second-hand 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 the disposal by the dealer of any item, or any specified item or class of items, of his stock-in-trade or any specified part of it.
- (4) An order under subsection (3) above may—
  - (a) be made subject to such conditions as the authority think fit;
  - (b) relate to stock-in-trade or items thereof still to be acquired by the dealer to whom the order relates; or
  - (c) be varied or revoked at any time by the licensing authority.
- (5) In subsection (3) above, “specified” means specified in an order under that subsection.
- (6) A holder of a second-hand dealer’s licence may appeal to the sheriff against a decision of the licensing authority under this section and paragraph 24(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.



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- (7) Any person who contravenes subsection (1) above shall be guilty of an offence and liable, on summary conviction, to a fine not exceeding [F27]level 3 on the standard scale].

#### Textual Amendments

**F27** Words substituted by virtue of [Criminal Procedure \(Scotland\) Act 1975 \(c. 21, SIF 39:1\)](#), s. 289G

### 26 Sellers of second-hand goods: offences etc.

- (1) Any person who, when selling anything to a second-hand 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 [F28]level 3 on the standard scale].
- (2) If anything is offered to a second-hand dealer in the course of his business and he has reason to believe that it has been stolen or otherwise unlawfully obtained he may, subject to subsection (3) below, detain the person offering it and a constable may arrest that person and take possession of it.
- (3) Nothing in subsection (2) above authorises a second-hand dealer to detain a person longer than is reasonably necessary for obtaining the attendance of a constable.
- (4) No civil liability shall arise as a result only of the detention in good faith of a person under subsection (2) above.

#### Textual Amendments

**F28** Words substituted by virtue of [Criminal Procedure \(Scotland\) Act 1975 \(c. 21, SIF 39:1\)](#), s. 289G

### 27 Functions of the court in relation to second-hand dealers convicted of offences.

- (1) Where a second-hand dealer is convicted of an offence relating to second-hand dealing, 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 second-hand dealer is convicted—
- (a) of an offence relating to second-hand dealing; or
  - (b) of an 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 any second-hand goods acquired by him until the expiry of a period of 7 days after their acquisition.
- (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,

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to a fine not exceeding [<sup>F29</sup>level 4 on the standard scale] or to imprisonment for a period not exceeding 60 days or to both.

#### **Textual Amendments**

**F29** Words substituted by virtue of [Criminal Procedure \(Scotland\) Act 1975 \(c. 21, SIF 39:1\)](#), s. **289G**

### *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.
- (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



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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 [<sup>F30</sup>level 1 on the standard scale].
- (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 <sup>M12</sup>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.

#### Textual Amendments

**F30** Words substituted by virtue of [Criminal Procedure \(Scotland\) Act 1975 \(c. 21, SIF 39:1\)](#), s. 289G

#### Marginal Citations

**M12** 1948 c. 38.

### 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;

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- (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.
- (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;

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- (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 [<sup>F31</sup>level 3 on the standard scale].

#### Textual Amendments

**F31** Words substituted by virtue of [Criminal Procedure \(Scotland\) Act 1975 \(c. 21, SIF 39:1\)](#), s. 289G

### 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 [<sup>F32</sup>level 3 on the standard scale].

#### Textual Amendments

**F32** Words substituted by virtue of [Criminal Procedure \(Scotland\) Act 1975 \(c. 21, SIF 39:1\)](#), s. 289G

### 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.

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- (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 [<sup>F33</sup>level 3 on the standard scale].

#### Textual Amendments

**F33** Words substituted by virtue of [Criminal Procedure \(Scotland\) Act 1975 \(c. 21, SIF 39:1\)](#), **s. 289G**

### 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 [<sup>F34</sup>level 3 on the standard scale].
- (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 [<sup>F34</sup>level 4 on the standard scale].
- (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 [<sup>F34</sup>level 3 on the standard scale].

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#### Textual Amendments

**F34** Words substituted by virtue of [Criminal Procedure \(Scotland\) Act 1975 \(c. 21, SIF 39:1\)](#), **s. 289G**

### 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.
- (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 [<sup>F35</sup>level 4 on the standard scale] 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.

#### Textual Amendments

**F35** Words substituted by virtue of [Criminal Procedure \(Scotland\) Act 1975 \(c. 21, SIF 39:1\)](#), **s. 289G**

### 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

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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.

#### *Miscellaneous licences*

### **38 Boat hire licences.**

- (1) Subject to the provisions of this section, a licence under this Act, to be known as a “boat hire licence”, shall be required for the use of a vessel, in the course of a trade or business carried on in or from any place within the area of a licensing authority, 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) A boat hire licence may relate to one or more vessels or classes of vessel and shall specify—
- (a) the vessels or the classes of vessels to which it relates; and
  - (b) the maximum number of vessels or of each class of vessel which may be used under the licence.
- (3) A boat hire licence shall extend to the use of any vessel added to or substituted for a vessel to which the licence relates if—
- (a) the additional or substitute vessel is of identical type to a vessel of a class to which the licence relates; and
  - (b) the maximum number referred to in subsection (2)(b) above is not exceeded.
- (4) A boat hire licence shall not be required in respect of the use—

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- (a) of any vessel in respect of which there is in force a passenger certificate, load line certificate or load line exemption certificate under the [<sup>F36</sup>Merchant Shipping Act 1995];
  - (b) for a continuous period of over 24 hours, of any vessel having overnight sleeping accommodation;
  - (c) of any vessel for the purpose of instruction or training in seamanship;
  - (d) of any vessel exclusively for fishing in non-tidal waters;
  - (e) of any vessel—
    - (i) on any inland waterway; or
    - (ii) at any harbour owned or managed by the British Waterways Board; or
  - (f) of any vessel with the consent of the harbour authority (within the meaning of the <sup>M13</sup>Harbours Act 1964) in any harbour owned or managed by them.
- (5) Before granting an application to grant or renew a boat hire licence a licensing authority may require the applicant to produce a certificate in respect of each vessel to which the application relates issued by a person appearing to the authority 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 place or waters in which, it is to be used.
- (6) Without prejudice to paragraphs 5(3), 11 and 12 of Schedule 1 to this Act a licensing authority shall—
- (a) refuse an application to grant or renew a boat hire licence;
  - (b) suspend a boat hire licence in accordance with the said paragraph 12,
- to the extent that it relates to any vessel which is in their opinion not in a safe condition for the purpose for which, and the place or waters in which, it is to be or, as the case may be, is being used.
- (7) Without prejudice to paragraph 5 of Schedule 1 to this Act, a licensing authority, on granting an application for the grant or renewal of a boat hire licence, shall attach conditions—
- (a) fixing the maximum number of persons which may be carried in the vessel;
  - (b) specifying inland waters in their area, the inland waters adjacent to inland waters in their area and the tidal waters within which each vessel or class of vessel to which the application relates may be used.
- (8) The holder of a boat hire licence shall effect and maintain in force in relation to every vessel to which the licence relates a policy of insurance to the satisfaction of the licensing authority and complying with subsection (9) below, and shall not reduce the amount or extent of the cover specified in the policy without the prior approval of the authority.
- (9) A policy of insurance complies with this subsection if it insures such person, persons, or classes of persons as may be specified in the policy in respect of any liability which may be incurred by him or them in respect of the death of or bodily injury to any person caused by, or arising out of, the use of the vessel.
- (10) Any person who, being the holder of a boat hire licence, uses or causes or permits any other person to use a vessel to which the licence relates without having in force in relation to that vessel a policy of insurance in accordance with subsection (8) above

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shall be guilty of an offence and liable, on summary conviction, to a fine not exceeding [<sup>F37</sup>level 4 on the standard scale].

(11) Where—

- (a) 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 waters or waters specified in the licence under subsection (7)(b) above; but
  - (iii) outwith the area of the licensing authority which granted or last renewed the licence; and
- (b) 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.

#### Textual Amendments

**F36** Words in s. 38(4)(a) substituted (1.1.1996) by 1995 c. 21, ss. 314(2), 316(2), **Sch. 13 para. 67** (with s. 312(1))

**F37** Words substituted by virtue of **Criminal Procedure (Scotland) Act 1975 (c. 21, SIF 39:1), s. 289G**

#### Marginal Citations

**M13** 1964 c. 40.

### 39 Street traders' licences.

- (1) Subject to subsection (3) below, a licence, to be known as a “street trader’s licence”, shall be required for street trading by a person, whether on his own account or as an employee.
- (2) In this section “street trading” means doing any of the following things in a public place—
  - (a) hawking, selling or offering or exposing for sale any article;
  - (b) offering to carry out or carrying out for money or money’s worth any service, to any person in the public place and includes doing any of these things there in or from a vehicle or in or from a kiosk or moveable stall not entered in the valuation roll except where it is done in conjunction with or as part of a retail business being carried on in premises abutting the public place.
- (3) A street trader’s licence shall not be required for—
  - (a) the sale of newspapers only;
  - (b) the sale of milk by or on behalf of a person registered under [<sup>F38</sup>regulations made under section 19 of the Food Safety Act 1990];
  - (c) the sale of coal, coke or any solid fuel derived from coal or of which coal or coke is a constituent;
  - (d) any activity in respect of which a certificate under the <sup>M14</sup>Pedlars Act 1871 has been granted;



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- (e) any activity in respect of which a licence is required under this Act apart from this section; or
  - (f) organising or participating in a public charitable collection within the meaning of subsection (16) of section 119 of this Act in accordance with permission granted under that section.
- (4) Where an application for a street trader’s licence is made in respect of an activity which—
- (a) consists of or includes food business within the meaning of [F39]sections 1(3) of the Food Safety Act 1990]; and
  - (b) involves the use of a vehicle, kiosk or moveable stall,
- the licensing authority shall, without prejudice to paragraph 5(3) of Schedule 1 to this Act, refuse the application unless there is produced to them a certificate by the [F40]food authority (for the purposes of section 5 of the Food Safety Act 1990) stating that the vehicle, kiosk or moveable stall complies with the requirements of any relevant regulations made under [F41]section 16 of the Food Safety Act 1990].

#### Textual Amendments

- F38** Words substituted by [Food Safety Act 1990 \(c. 16, SIF 53:1, 2\), ss. 54, 59\(10\), Sch. 3 para. 25\(a\)](#)
- F39** Words substituted by [Food Safety Act 1990 \(c. 16, SIF 53:1, 2\), ss. 54, 59\(10\), Sch. 3 para. 25\(b\)\(i\)](#)
- F40** Words substituted by [Food Safety Act 1990 \(c. 16, SIF 53:1, 2\), ss. 54, 59\(10\), Sch. 3 para. 25\(b\)\(ii\)](#)
- F41** Words substituted by [Food Safety Act 1990 \(c. 16, SIF 53:1, 2\), ss. 54, 59\(10\), Sch. 3 para. 25\(b\)\(iii\)](#)

#### Marginal Citations

- M14** [1871 c. 96.](#)

## 40 Market operators’ licences.

- (1) Subject to subsection (2) below, a licence, to be known as a “market operator’s licence”, shall be required for carrying on a private market.
- (2) A market operator’s licence shall not be required for carrying ; on either of the following—
  - (a) functions held by charitable, religious, youth, recreational, community, political or similar organisations;
  - (b) markets held only for the sale of livestock, fodder or grain.
- (3) In addition to any other condition which may be included, a licence in respect of a private market 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;
  - (d) the maintenance of order and public safety.
- (4) In this section, “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.

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#### 41 Public entertainment licences.

- (1) A licence, to be known as a “public entertainment licence”, shall be required for the use of premises as a place of public entertainment.
- (2) In this section, “place of public entertainment” means any place where, on payment of money or money’s worth, members of the public are admitted or may use any facilities for the purposes of entertainment or recreation but does not include—
  - (a) an athletic or sports ground while being used as such;
  - [<sup>F42</sup>(aa) premises in respect of which a licence is required under section 41A of this Act while such premises are being used for the purposes mentioned in that section;]
  - (b) an educational establishment while being used as such;
  - (c) premises belonging to or occupied by any religious body while being used wholly or mainly for purposes connected with that body;
  - (d) premises licensed under the <sup>M15</sup>Theatres Act 1968, [<sup>F43</sup>section 1 of the Cinemas Act 1985] or Part II of the <sup>M16</sup>Gaming Act 1968;
  - (e) premises in respect of which there is a permit under section 16 of the <sup>M17</sup>Lotteries and Amusements Act 1976 while being used in pursuance of the permit;
  - (f) licensed premises within the meaning of the <sup>M18</sup>Licensing (Scotland) Act 1976 in which public entertainment is being provided during the permitted hours within the meaning of that Act; or
  - (g) premises in which machines for entertainment or amusement are being provided incidentally to the main purpose or use of the premises where that main purpose or use is not as a place of public entertainment.
- (3) Without prejudice to paragraph 5 of Schedule 1 to this Act, a licensing authority may attach conditions to a public entertainment licence—
  - (a) restricting the use of the premises to a specified kind or specified kinds of entertainment or recreation;
  - (b) limiting the number of persons to be admitted to the premises;
  - (c) fixing the days and times when the premises may be open for the purposes of the entertainment or recreation.
- (4) In this section, “educational establishment” has the meaning given by paragraphs (i) and (ii) of the definition of that expression in section 135(1) of the <sup>M19</sup>Education (Scotland) Act 1980 but includes a university and a theological college.

#### Textual Amendments

**F42** S. 41(2)(aa) inserted by [Fire Safety and Safety of Places of Sport Act 1987 \(c. 27, SIF 81:2\)](#), s. 44(5)

**F43** Words substituted by [Cinemas Act 1985 \(c. 13, SIF 45A\)](#), s. 24(1), [Sch. 2 para. 17](#)

#### Marginal Citations

**M15** 1968 c. 54.

**M16** 1968 c. 65.

**M17** 1976 c. 32.

**M18** 1976 c. 66.

**M19** 1980 c. 44.

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#### **[<sup>F44</sup>41A Indoor sports entertainment licences.**

- (1) Subject to subsection (2) below, a licence to be known as an “indoor sports entertainment licence” shall be required for the use of premises as a place of public sports entertainment.
- (2) Subsection (1) above shall not apply to any occasion on which the entertainment of the public by the sport is not the principal purpose for which the premises are used but this provision does not apply in relation to a sports complex.
- (3) Without prejudice to paragraph 5 of Schedule 1 to this Act, a licensing authority may attach conditions to an indoor sports entertainment licence—
  - (a) restricting the use of the premises to a specified kind or specified kinds of public sports entertainment;
  - (b) limiting the number of persons to be admitted to the premises;
  - (c) fixing the days and times when the premises may be open for the purposes of public sports entertainment.
- (4) In this section—
  - “premises” means any permanent or temporary building and any tent or inflatable structure and includes a part of a building where the building is a sports complex but does not include a part of any other building;
  - “public sports entertainment” means any sporting event to which the public are invited as spectators;
  - “sporting event” means any contest, exhibition or display of any sport;
  - “sports complex” means a building—
    - (a) which provides accommodation and facilities for both those engaging in sport and spectators; and
    - (b) the parts of which are so arranged that one or more sports can be engaged in simultaneously in different parts of the building; and

“sport” includes any game in which physical skill is the predominant factor and any form of physical recreation which is also engaged in for purposes of competition or display, except dancing (in any form).]

#### **Textual Amendments**

**F44** S. 41A inserted by [Fire Safety and Safety of Places of Sport Act 1987 \(c. 27, SIF 81:2\)](#), s. 44(1)

#### **42 Late hours catering licences.**

- (1) A licence, to be known as a “late hours catering licence”, shall be required for the use of premises between the hours of eleven o’clock in the evening and five o’clock the following morning for the sale to or consumption by the public of meals or refreshment.
- (2) The reference in subsection (1) above to the sale of meals or refreshment is a reference to the sale of meals or refreshment for consumption on as well as off the premises in which they are sold.
- (3) Without prejudice to paragraph 5 of Schedule 1 to this Act, a licensing authority may attach conditions to a late hours catering licence fixing the days and hours during which the premises may be open for business, and different days and hours may be

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fixed for the sale of meals or refreshments for consumption on the premises from those fixed for the sale of meals or refreshments for consumption off the premises.

- (4) A late hours catering licence shall not be required in respect of—
- (a) the use as such of licensed premises within the meaning of the <sup>M20</sup>Licensing (Scotland) Act 1976; or
  - (b) premises being used in accordance with a public entertainment licence.
- (5) A licensing authority may, on application made to them, exempt the use of premises requiring a late hours catering licence from the requirement to have such a licence—
- (a) in respect of any particular occasion; or
  - (b) during a specified period not exceeding 2 months in any period of 12 months.
- (6) The licensing authority may attach conditions to an exemption granted under subsection (5) above, and the provisions of Part I of this Act relating to the attaching of conditions to licences and subsection (3) above shall apply to the attaching of conditions to exemptions under this subsection.

#### Marginal Citations

M20 1976 c. 66.

#### 43 Window cleaners' licences.

A licence, to be known as a “window cleaner’s licence” shall be required for carrying on the trade of, or being employed as, a window cleaner.

#### 44 Additional activities.

- (1) The Secretary of State may, by order made by statutory instrument, designate any activity other than one of those specified in this Part of this Act—
- (a) as an activity for which, subject to a resolution of the licensing authority in relation to it under section 9 of this Act, a licence shall be required and which, subject to such a resolution, shall be regulated in accordance with the provisions specified in the order; or
  - (b) as an activity for which a licence shall be required and which shall be regulated in accordance with the provisions specified in the order.
- (2) An order made under this section may provide—
- (a) that Part I of this Act, with such modifications if any as may be specified in the order, shall have effect for the purposes of the licensing of the activity designated by the order;
  - (b) for the regulation of the activity designated by the order;
  - (c) for the repeal or modification of any enactment which provides (whether consistently or not) for the same matter as the order;
  - (d) without prejudice to any provision of Part I of this Act which has effect, with or without modification, by virtue of paragraph (a) above, for the creation of offences and for making offenders liable, on summary conviction, to imprisonment for a period not exceeding 60 days or such lesser maximum period as may be specified in the order or to a fine not exceeding [<sup>F45</sup>level 3

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on the standard scale] or such lesser maximum fine as may be so specified or to both such fine and such imprisonment.

(3) No order shall be made under this section unless a draft of it has been laid before and approved by a resolution of each House of Parliament.

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#### **Subordinate Legislation Made**

**P1** S. 44: s. 44 power exercised by [S.I. 1991/1253](#). For previous exercise of power see Index to Government Orders.

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#### **Textual Amendments**

**F45** Words substituted by virtue of [Criminal Procedure \(Scotland\) Act 1975 \(c. 21, SIF 39:1\)](#), [s. 289G](#)

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#### **Modifications etc. (not altering text)**

**C5** S. 44(1) extended by [Salmon Act 1986 \(c. 62, SIF 52:2\)](#), [ss. 20\(1\), 43\(1\)](#)

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