

ABERDEEN CITY COUNCIL

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COMMITTEE	Licensing Committee
DATE	01 September 2015
DIRECTOR	Angela Scott (Interim)
TITLE OF REPORT	Second Hand Dealer's Licence –Variation of Conditions
REPORT NUMBER	CG/15/98
CHECKLIST COMPLETED	Yes

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1. PURPOSE OF REPORT  
To propose changes to the conditions attached to Second - Hand Dealers' licences.
2. RECOMMENDATION(S)  
  
That the Committee-  
(a) adopts in principle, the proposed amendments to the conditions;  
and  
(b) instructs officers to undertake the statutory variation procedures and report back to Committee once complete.
3. FINANCIAL IMPLICATIONS  
None
4. OTHER IMPLICATIONS  
It is necessary to amend condition 4 to ensure that it complies with the terms of the Civic Government (Scotland) Act 1982.
5. BACKGROUND/MAIN ISSUES  
**i) Removal of requirement for a warrant**  
Condition 4 of the standard conditions attached to second-hand dealer licences currently states that a warrant is required before the Chief Constable or any constable acting under him can (i) inspect a second hand dealer's records and (ii) seize any goods or articles that have been stolen, embezzled or fraudulently obtained. This is inconsistent with the terms of the Civic Government (Scotland) Act 1982.  
  
Section 5 of the Civic Government (Scotland) Act 1982 states –  
Rights of Entry and Inspection  
(1) Without prejudice to any other provision of this Act, an authorised officer of the licensing authority, an authorised civilian employee or a constable may, for the purposes specified in subsection (2) below, at any reasonable time—

- (a) enter and inspect any premises, vehicle or vessel used or to be used for an activity in relation to which a licence is in force or has been applied for under this Act;
- (b) require production of and inspect any equipment, plant, apparatus or stock-in-trade which is or is to be kept or used in connection with any such activity;
- (c) **require production of and inspect any records or other documents required by or under this Part or [Part II](#) of this Act to be kept by the holder of the licence and take copies of or extracts from any such record or document.**

From the above it is clear that section 5(1)(c) allows a constable to inspect records at any reasonable time without production of a warrant.

Furthermore section 60 of the Act gives powers to a constable to enter and search premises occupied by a second-hand dealer and seize anything which appears to have been stolen –

**60.— Powers of search and seizure.**

(1) Subject to subsection (2) and (3) below, if a constable has reasonable grounds to suspect that a person is in possession of any stolen property, **the constable may without warrant—**

- (a) search that person or anything in his possession, and detain him for as long as is necessary for the purpose of that search;
- (b) enter and search any vehicle or vessel in which the constable suspects that that thing may be found, and for that purpose require the person in control of the vehicle or vessel to stop it and keep it stopped;
- (c) enter and search any premises occupied by a **second-hand dealer** or a metal dealer for the purposes of his business;
- (d) seize and detain anything found in the course of any such search which appears to the constable to have been stolen or to be evidence of the commission of the crime of theft and may, in doing so, use reasonable force.

In this subsection “*second-hand dealer*” and “*metal dealer*” have the meanings respectively assigned to them by [sections 24\(2\)](#) and [37\(1\)](#) of this Act.

Removing the words “on production of a warrant granted by a court of law” from condition 4 will ensure that the condition now complies with the provisions of the Act.

**ii) Keeping of records**

We are increasingly receiving requests from second-hand dealers to vary the terms of their licence to allow them to store records electronically. All such requests have to be considered by the Licensing Committee. Changing the standard conditions to allow the keeping of electronic records would potentially reduce the volume of business that comes before the Committee. The standard conditions attached to second hand dealer’s licences impose on the licence holder a duty to keep records “in books”. It is proposed to amend conditions 2 and 4 to include reference to electronic records. This change is in accordance with the prevailing methods of storing such records.

### **iii) Disposal of articles**

Subject to certain exemptions, section 25 of the Civic Government (Scotland) Act 1982 prohibits a second hand dealer from disposing 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. The current condition makes no reference to the fact that goods cannot be disposed of on Saturdays and Sundays therefore it is proposed to amend Condition 3 of the standard conditions to include reference to “excluding any time on Saturdays or Sundays” so that the condition meets the terms of the legislation.

The proposed changes to the conditions are attached as Appendix 1 to this report. The changes have been highlighted to assist Members.

6. **IMPACT**  
Corporate - None  
Public - None  
Equality - The recommendations will have a neutral effect on the protected characteristics and an Equality and Human Rights Assessment is therefore not required.
7. **MANAGEMENT OF RISK**  
Implementing the proposed changes to the conditions will reduce the risk of any legal challenge to the imposition of the conditions on the ground that they are unreasonable and go beyond the terms of the Act.
8. **BACKGROUND PAPERS**  
Civic Government (Scotland) Act 1982.
9. **REPORT AUTHOR DETAILS**  
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