

# Street Traders Licensing – Guidance

## Orkney Islands Council

### Civic Government (Scotland) Act 1982

These notes are for guidance only and are not an authoritative statement of the procedures and provisions relating to applications for licences and licences issued under the Civic Government (Scotland) Act 1982. Any person who requires further information should consult the Head of Legal Services, as undernoted, or a solicitor.

### Licensing Requirement

1. In accordance with the Civic Government (Scotland) Act 1982 (the Act), a street trader's licence, issued by Orkney Islands Council (the Council) as licensing authority, is required for street trading by a person, whether on his/her own account or as an employee. Each person requires to be separately licensed.
2. Street trading means doing any of the following things in a public place:
  - hawking, selling or offering or exposing for sale any article,
  - offering to carry out or carrying out for money or money's worth any service,to any person in a 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. Public place means any place (whether a thoroughfare or not) to which the public have unrestricted access and includes:
  - the doorways or entrances of premises abutting on any such place; and
  - any common passage, close, court, stair, garden or yard pertinent to any tenement or group of separately owned houses.
4. A street trader's licence shall not be required for:
  - the sale of newspapers only;
  - the sale of milk by or on behalf of a person registered under regulations made under section 19 of the Food Safety Act 1990;
  - the sale of coal, coke or any solid fuel derived from coal or of which coal or coke is a constituent;
  - any activity in respect of which a certificate under the Pedlars Act 1871 has been granted;
  - any activity in respect of which a licence is required under the Act; or
  - organising or participating in a public benevolent collection (within the meaning of section 84 of the Charities and Trustee Investment (Scotland) Act 2005).

## Minimum Age and School Age

5. Please note there are rules regarding the employment of children in street trading contained in the 1982 Act and also the Children and Young Persons Act 1937, the Education (Scotland) Act 1980, the Children (Protection at Work) Regulations 1998 etc and the Orkney Islands Council Byelaws on the Employment of Children 2009.
6. These rules provide amongst others that:
  - 6.1. No person under 14 can engage in street trading.
  - 6.2. Children of 14 and over who are still of school age can engage in street trading if s/he is being employed by his/her parents in connection with their retail business and is under their direct supervision and has been granted a street traders licence and has an employment permit under the said Byelaws and is acting in conformity to that licence and permit.
  - 6.3. Please note however that the licence and permit are in addition to all other legislation regulating employment of children and on safety in the workplace which employers in particular should be aware of. Although care has been taken in the preparation of this guidance, it is not a definitive statement of the law and persons may be well advised to seek independent legal advice from a Solicitor or Citizen's Advice Bureau.
  - 6.4. A person over school age, even if they are still at school, can apply for a street trader's licence without requiring a permit under the said Byelaws.
7. A child means a person who is not, for the purposes of the Education (Scotland) Act 1980, over school age. Therefore:
  - 7.1. A child whose 16th birthday falls between 1 March and 30 September is over school age on 31 May of that school year.
  - 7.2. A child whose 16th birthday falls between 1 October and 28 February is over school age after the end of the Christmas term of that school year.

## Food Hygiene Certificate

8. If your business involves the sale of food and you operate from a vehicle, kiosk or moveable stall, you will require to obtain a Food Hygiene Certificate from the Council's Environmental Health service stating that the vehicle, kiosk or moveable stall complies with the requirements of Food Safety legislation. A separate fee is payable for this certificate.
9. It is your responsibility to contact the Environmental Health service. They can be contacted by phone on 01856 873535 or by email at [env-health@orkney.gov.uk](mailto:env-health@orkney.gov.uk).
10. Incomplete applications shall be returned to the applicant.

## **Duty of Care Notice (Controlled Waste Transfer Note)**

11. You will also have to provide a Duty of Care Notice (Controlled Waste Transfer Note) from your trade waste contractor detailing procedures for removal and disposal of trade waste from the vehicle or stall. This can be obtained from the Council's Waste Services unit. It is your responsibility to contact them. They can be contacted by phone on 01856 873535. Incomplete applications shall be returned to the applicant.

## **Hours of Operation**

12. The Council normally grants street traders' licences with the following maximum trading hours:
  - Sunday to Thursday: 07:00 to 24:00.
  - Friday/Saturday and Saturday/Sunday: 07:00 to 01:30.Any application outwith the above maximum trading hours will be treated on its own merits and will require to be considered at a Meeting of the Council's Licensing Committee.

## **Trading Location**

13. **Location Plan (fixed location):**

If you are applying for a street trader's licence in respect of a fixed stance (a specific location) you are required to provide a plan of your proposed trading location. Your plan, which should be no larger than A3, must show the precise location of your proposed stance and must include:

  - the name of the street or nearest street
  - the town
  - the distance in metres from the nearest street or junction (please note that the proposed stance must be no closer than 100 metres to a shop selling the same goods as the trader).

## **Mobile Trading**

14. If you are applying for a mobile street trader licence (for example, an ice cream van doing rounds) you must state the area(s) in which you intend to trade. If you propose to trade within one or two areas, please also specify the street names in the areas.

## **Conditions**

15. The Council may attach reasonable conditions to the licence as it sees fit, with each application being dealt with on its own merits. The licence holder will be required to comply with the standard conditions which will form part of the licence when granted. These will usually accompany this document, but can be obtained from the Head of Legal Services, as undernoted, and are published at <http://www.orkney.gov.uk/Service-Directory/S/Street-Trading.htm>.

## **Employee's Licence**

16. Where the applicant for a licence is to be an employee of an existing street trader, this licence is only valid while the licence holder remains an employee of an existing licensed street trader.

## **Determination of and Duration of Licences**

17. A licence will normally be issued after the elapse of 42 days from receipt of an application. In certain circumstances, for example, where objections have been received, applications can take considerably longer to be determined. A licence shall remain in force, unless previously suspended or revoked, for a period of either one year from the date when it comes into force or three years, dependent upon the application submitted. The Council can also determine a shorter period in any case, dependent upon the circumstances. The licence is not transferable.

## **Licence to be Retained**

18. The licence must not be altered, erased or defaced in any way, must be kept clean and legible and must not be lent to or used by any other person. Should the licence be lost or become defaced or illegible the licence holder shall obtain a replacement from the Council on payment of the appropriate fee. The licence holder shall produce his/her licence within 5 days of being requested to do so by an officer of Police Scotland, the Scottish Fire and Rescue Service or the Council.

## **Return of Licence**

19. A licence holder shall deliver his/her licence and identification badge to the Council:
  - upon ceasing to act or trade as a street trader;
  - within 7 days of receiving notice of the coming into effect of a decision of the Council to suspend or vary the terms of the licence, or the decision of a Court to revoke it.

## **Notification of Convictions or Material Change of Circumstances**

20. The licence holder shall notify the Council of any conviction or material change within 14 days of the event. "Material change" means any change of circumstances affecting the licence holder (for example, change of his/her name or address) or the activity to which the licence relates, including any change to the vehicle, kiosk or moveable stall to which the licence relates or any particulars referred to in the application for grant or latest application for renewal of the licence. If in doubt, notify the Council of any changes.

## Notification of Material Alterations

21. The licence holder shall not make or permit to be made any material change to the vehicle, kiosk or moveable stall to which the licence relates without the prior written consent of the Council unless in accordance with a requirement imposed by or in pursuance of any enactment other than Parts 1 or 2 of the Act. If in doubt as to whether consent is required, contact the Council.

## Application Form and Fees

22. Application forms are available online at <http://www.orkney.gov.uk/Service-Directory/S/Street-Trading.htm> or from:
  - Head of Legal Services, Council Offices, School Place, Kirkwall, KW15 1NY;
  - Email: [licensing@orkney.gov.uk](mailto:licensing@orkney.gov.uk);
  - Telephone: 01856 873535, extensions 2229 or 2232.
23. Applications must be lodged with the Head of Legal Services, Corporate Services, Orkney Islands Council at the address above no later than 6 weeks before the first day of the commencement of the activity.
24. Applicants who would like Council staff to check their applications must arrange an appointment in advance to ensure that staff will be available when they would like to come in.
25. Application forms must be completed legibly in block capital letters in black ink or typed. All questions must be answered.
26. Completed application forms must be returned to the address above along with:
  - the appropriate fee – refer to current fees published on our website at [http://www.orkney.gov.uk/Service-Directory/L/Licences\\_2.htm](http://www.orkney.gov.uk/Service-Directory/L/Licences_2.htm);
  - three passport photographs for identification badge;
  - a Duty of Care Notice (Controlled Waste Transfer Note) from your trade waste contractor detailing procedures for removal and disposal of trade waste from the vehicle or stall;
  - if applicable, a certificate of compliance with Food Safety legislation; and
  - location plan and permission of land owner if trading from a fixed stance.

## Previous Convictions

27. Applicants must declare any convictions, subject to the terms of the Rehabilitation of Offenders Act 1974. This legislation is available at [www.legislation.gov.uk](http://www.legislation.gov.uk). If applicants are in any doubt as to whether to declare convictions, they must obtain independent legal advice. If applicants wish to declare that they have no convictions, they must write “None” at the question on the form. They cannot leave the question blank. If applicants do not declare something which should have been declared, they may be prosecuted for failure to declare and this will affect the processing time and procedure for their application.

## **Incomplete Applications**

28. Incomplete applications shall be returned to the applicant.

## **Processing the Application**

29. Applications will be referred to Police Scotland and any other relevant body or Council service for comment.
30. Applications must be considered within 3 months of being lodged and the Council must reach a decision on it within 9 months.
31. If an application is granted, a licence and identification badge will be issued. The identification badge should be worn at all times when the licence holder is working as a street trader.
32. If, during the processing of an application, the Council receives any objection or representation, we will send a copy to the applicant. The application and the objection or representation will then be referred to a meeting of the Licensing Committee. The applicant will be invited to attend the meeting and given the opportunity to address the Committee.
33. If an application is refused, or granted conditionally, the applicant is entitled to ask the Council within 21 days to give reasons for such refusal, or the imposition of such conditions, and thereafter is entitled to appeal to the Sheriff against the decision on various grounds. Applicants should seek the advice of a solicitor if matters should get to that stage.

## **Prior Refusal**

34. If applicants have applied for and been refused a street trader's licence, unless their circumstances have altered, their applications will be unlikely to be granted.
35. If refused, applicants cannot apply for the same kind of licence in respect of the same activity or for the same vehicle, kiosk or moveable stall, within one year of that refusal unless there has been a material change in circumstances.

## Offences

36. The following are criminal offences liable, on summary conviction, to a fine:
- carrying on an activity for which a licence under the Civic Government (Scotland) Act 1982 is required without such a licence;
  - failing to comply with a condition of a licence;
  - making a false statement when filling in the application form;
  - failing to notify the Council of a material change in the circumstances of a licensee;
  - failing to obtain the consent of the Council before making any material change to the vehicle, kiosk or moveable stall to which the licence relates;
  - failing to surrender the licence (1) after it has been suspended or varied or (2) when the licensee has given up the activity to which it relates.
37. The above list is not exhaustive and reference should be made to the Civic Government (Scotland) Act 1982 for all offences under the Act.

## Data Protection

38. The information provided on application forms will be used by the Council to enable decisions to be made on applications. The Council is required to collect the information in terms of legislation. Applicants' information will be shared with a number of agencies which the Council is obliged to consult before making decisions on applications.
39. The Council is obliged to make available some information submitted on application forms. The Council publishes electronic public registers in the Related Downloads section of the following Council webpage:  
<http://www.orkney.gov.uk/Service-Directory/C/Civic-Government-Licences---Approved-Licence-Lists.htm>.
40. The Council has published a guide to your rights under Data Protection legislation and how you can exercise these. This information is available on the Council's website at <http://www.orkney.gov.uk/Council/D/Data-Protection-Policy.htm> or can be requested by contacting the Council directly.
41. Information about how the Council will process your personal information is available on the Council's website at <http://www.orkney.gov.uk/Online-Services/privacy.htm>.

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