Secondhand Dealers and Pawnbrokers Act 2004

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Commencement see section 2

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The Parliament of New Zealand enacts as follows:

1 Title

This Act is the Secondhand Dealers and Pawnbrokers Act 2004.

Part 1
Preliminary provisions

2 Commencement

(1) This Act (except section 84 (Regulations)) comes into force on 1 April 2005.

(2) Section 84 comes into force on the day after the date on which this Act receives the Royal assent.

3 Purpose

The purpose of this Act is—

(a) to make it harder for criminals to dispose of stolen goods through secondhand dealers and pawnbrokers; and

(b) to make it easier for the police to recover stolen goods and solve property crimes; and

(c) to repeal and replace the Secondhand Dealers Act 1963 and the Pawnbrokers Act 1908.

4 Interpretation

In this Act, unless the context otherwise requires,—

article means an article of a type listed in Schedule 1 (as from time to time amended by regulations made under this Act)

authorised identification means a form of identification specified in Schedule 2 (as from time to time amended by regulations made under this Act)

buyback contract means a contract under which a seller sells goods to a buyer on condition that the seller can repurchase the goods at some future date, but at a price greater than the buyer paid for them

certificate means a certificate of approval issued under section 28

certified copy means a copy, certified by the Licensing Authority, of a licence

contact address means, in relation to a person, the person's postal address and also, if the person's residential address is different from the postal address, the person's residential address

dispose of, in relation to goods, includes—

(a) passing possession of the goods to another person, whether by sale or otherwise; and

(b) combining or dismantling the goods in such a way that they can no longer be recognised as the original goods

itinerant secondhand dealer means a secondhand dealer who does not have premises from which he or she regularly engages in secondhand dealing

licence means a secondhand dealer and pawnbroker licence issued under section 9 or section 10

licensed secondhand dealer and pawnbroker means the holder of a current licence; and—

(a) **licensed secondhand dealer** means a secondhand dealer who holds a current licence; and

(b) **licensed pawnbroker** means a pawnbroker who holds a current licence

Licensing Authority means the Licensing Authority of secondhand dealers and pawnbrokers appointed under section 70; and includes a Deputy Licensing Authority

pawnbroker means a person—

(a) who, in expectation of profit, gain, or reward, lends money on the security of goods of which the person takes possession, but not ownership; and

(b) who is not a secondhand dealer or the employee of a secondhand dealer and pawnbroker

person concerned in the management of the company means, in relation to a company,—

(a) a director of the company, as that term is defined in section 126 of the Companies Act 1993; and

(b) the chief executive of the company, or any person occupying the equivalent position

prescribed means prescribed by regulations made under this Act

promoter means a person who carries on a business of letting or otherwise providing space to stallholders for the purpose of running a market or fair at which any of the stalls are or may be used for the purpose of secondhand dealing

public auction means an auction that complies with the Auctioneers Act 1928, the Auctioneers Regulations 1958, and any relevant regulations made under this Act

responsible Minister means the Minister of the Crown who is responsible for the department that is authorised by the Prime Minister to provide administrative support to the Licensing Authority

scrap metal does not include copper in any form, but includes—

(a) old metal, broken metal, partly manufactured metal goods, defaced or old metal goods, and metal residues from manufacturing processes; and

(b) items that—

(i) are made entirely or substantially of metal; and

(ii) are no longer fit for the purpose for which they were designed or intended

secondhand dealer means a person—

(a) who buys (for the purpose of trade), sells, exchanges, or otherwise deals in secondhand articles or scrap metal; and

(b) who is not a pawnbroker or the employee of a secondhand dealer and pawnbroker

secondhand dealer and pawnbroker means any 1 or more of the following:

(a) a secondhand dealer:

(b) a pawnbroker:

(c) a person who, not being an employee of a secondhand dealer or a pawnbroker, acts as both a secondhand dealer and as a pawnbroker

specified offence means an offence under any of the following:

(a) sections 217 to 265 of the Crimes Act 1961 (which relate to crimes against rights of property):

(b) the Fair Trading Act 1986

transaction means the passing of possession of goods from a seller to a secondhand dealer, or from a seller or pledger to a pawnbroker

transaction date means the date on which a particular transaction takes place.

5 Act binds the Crown

This Act binds the Crown.

Part 2
Licences and certificates

Licences: who must be licensed

6 Secondhand dealers engaged in business to be licensed

(1) Every person who engages in business as a secondhand dealer must hold a licence.

(2) If 2 or more people engage in business as secondhand dealers in partnership, each partner must hold a licence.

(3) For the purposes of this Act, a person is presumed (in the absence of evidence to the contrary) to be engaged in business as a secondhand dealer if, in any 12-month period, the person—

(a) buys secondhand articles or scrap metal, for the purpose of trade, on 6 or more different days; or

(b) sells, exchanges, or otherwise deals in secondhand articles or scrap metal (being articles or scrap metal acquired for the purpose of trade)—

(i) on 6 or more different days; or

(ii) so as to receive revenue of $2,000 or more from the sale, exchange, or dealing.

(4) For the purposes of this Act, the following are not engaged in business as secondhand dealers when selling secondhand articles or scrap metal:

(a) an auctioneer who is licensed under the Auctioneers Act 1928 and is selling the secondhand articles or scrap metal at auction under that Act:

(b) a charitable or non-profit organisation that sells secondhand articles or scrap metal, but only if—

(i) no article, and none of the scrap metal, sold is acquired by the organisation by purchase or for valuable consideration; and

(ii) any proceeds of sale are used solely for the purposes of the organisation:

(c) an internet auction provider:

(d) an agent of the Crown:

(e) any other prescribed person.

(5) Acquiring secondhand articles as trade-ins when selling new goods does not of itself indicate that a person is engaged in business as a secondhand dealer.

(6) A person who carries on business as a secondhand dealer without holding a licence commits an offence and is liable on summary conviction to a fine not exceeding $20,000.

Compare: 1963 No 10 s 3

7 Pawnbrokers to be licensed

(1) Every person who acts as a pawnbroker must hold a licence.

(2) If 2 or more people act as pawnbrokers in partnership, each partner must hold a licence.

(3) A person who acts as a pawnbroker without holding a licence commits an offence and is liable on summary conviction to a fine not exceeding $20,000.

Compare: 1908 No 141 s 3

Licences: how to get licensed

8 Application for licence

(1) An applicant for a licence must be either an individual or a company.

(2) Every application must be—

(a) in a form approved by the Licensing Authority; and

(b) supported by a statutory declaration; and

(c) accompanied by the prescribed fee.

(3) An application by an individual must be accompanied by 2 photographs of the applicant, authenticated in the prescribed manner, and must include the following information:

(a) the applicant's full name, residential address, and date of birth:

(b) the name under which the applicant engages in business:

(c) the street address of the principal place of business used by the applicant for business purposes (unless the applicant is or proposes to be an itinerant secondhand dealer) and the street address of every other place of business used by the applicant:

(d) the postal address (if any) used by the applicant for business purposes:

(e) if the individual is in partnership, the full name and date of birth of every partner in the partnership:

(f) any other prescribed matters.

(4) An application by a company must include the following information:

(a) the applicant's name:

(b) the registered address of the company:

(c) the street address of the principal place of business used by the applicant for business purposes (unless the applicant is or proposes to be an itinerant secondhand dealer) and the street address of every other place of business used by the applicant:

(d) the full name and date of birth of every person involved in the management of the company:

(e) any other prescribed matters.

Compare: 1908 No 141 s 4; 1963 No 10 s 4

9 Issue of licence: individual applicant

(1) The Licensing Authority must issue a licence to an applicant who is an individual if—

(a) the applicant holds, or is eligible to hold, a certificate (see section 28(1)); and

(b) the application complies with the requirements of section 8(2).

(2) If an applicant does not hold a certificate, sections 24 to 27 apply as if the applicant were an applicant for a certificate.

(3) A licence issued to an individual must contain a photograph of the licence holder.

10 Issue of licence: company applicant

(1) The Licensing Authority must issue a licence to an applicant that is a company if—

(a) the company is not disqualified under subsection (3) from holding a licence; and

(b) either—

(i) every person concerned in the management of the company is eligible to hold a certificate in his or her own right (see section 28(1)); or

(ii) only one person is concerned in the management of the company and that person holds a certificate; and

(c) the application complies with the requirements of section 8(2).

(2) If more than one person is concerned in the management of an applicant that is a company, every person involved in the management must be checked under sections 24 to 27 to ascertain whether the person is currently eligible to hold a certificate, whether or not the person holds a certificate.

(3) A company is disqualified from holding a licence if it—

(a) has been convicted within the past 5 years of a specified offence; or

(b) has had a licence cancelled within the past 5 years.

(4) For the purpose of checking whether or not a company is disqualified from holding a licence, the Licensing Authority may seek information about the company's criminal convictions.

11 Refusal to issue licence

If the Licensing Authority declines an application, he or she must immediately notify the applicant in writing, and give reasons for the refusal.

12 Certified copies of licence

(1) When the Licensing Authority issues a licence, he or she must also issue as many certified copies of the licence as may be necessary to enable the licence holder to comply with section 36(2).

(2) A certified copy need not be in the same form as a licence.

13 Effect of licence

(1) A person who holds a licence is authorised to carry on business as a secondhand dealer or to act as a pawnbroker, or to do both.

(2) The obligations relating to all licence holders are set out in section 17 and subpart 1 of Part 3.

(3) The additional obligations relating specifically to licensed secondhand dealers are set out in subpart 2 of Part 3.

(4) The additional obligations relating specifically to licensed pawnbrokers are set out in subpart 3 of Part 3.

Compare: 1963 No 10 s 6

14 Individual licence holder regarded as holding certificate

(1) An individual who holds a licence is regarded as holding a certificate for the purposes of this Act.

(2) Without limiting the general application of subsection (1), it applies, for example, to section 19, section 20, and section 32.

15 Expiry and renewal of licences

(1) Unless cancelled earlier, a licence expires—

(a) in the case of a licence issued to a certificate holder, or to a company in which only one person is concerned in the management and that person holds a certificate, 5 years from the date on which the certificate was issued; and

(b) in any other case, 5 years from the date on which the licence was issued.

(2) A licence may be renewed.

(3) Despite subsection (1), if an application for renewal of a licence is made before the expiry of the licence, the licence continues in force until the application for renewal is determined.

(4) Sections 8 to 12 apply to an application for renewal of a licence as if the application were an application for a licence.

(5) A renewed licence is to be treated for all purposes as a new licence issued under section 9 or section 10, as applicable.

(6) A licence holder may, at any time, return his or her licence to the Licensing Authority, in which case the licence expires on

the date on which the licence (and all certified copies) are received by the Licensing Authority.

Compare: 1908 No 141 s 4(3); 1963 No 10 s 9

16 Cancellation of licences

(1) The Licensing Authority must cancel a licence,—

(a) in the case of a licence held by an individual, if the licence holder ceases to be eligible to hold a certificate; or

(b) in the case of a licence held by a company,—

(i) if any person concerned in the management of the company is not eligible, or ceases to be eligible, to hold a certificate; or

(ii) if the company is disqualified (under section 10(3)) from holding a licence; or

(c) in either case, if the Licensing Authority is satisfied that the licence was issued by fraud or mistake.

(2) The Licensing Authority must cancel a licence held by a company if the company is convicted of an offence (other than an offence punishable by no more than a fine not exceeding $2,000) under this Act, unless the Licensing Authority is satisfied that there are special reasons why the company's licence should not be cancelled.

(3) The Licensing Authority may not cancel a company's licence under subsection (1)(b)(i) if—

(a) the person concerned in the management of a company has joined the company since it obtained its licence; and

(b) within 2 weeks of the person joining, the company has applied to the Licensing Authority to check that the person is eligible to be issued with a certificate; and

(c) either—

(i) the Licensing Authority has not yet determined whether or not the person is eligible to hold a certificate; or

(ii) the Licensing Authority has advised the company, in writing, that the person is not eligible to hold a certificate, but less than 2 weeks has elapsed since the advice was sent.

(4) A cancellation must be in writing, with reasons, and state the date on which the cancellation takes effect.

(5) A licence holder commits an offence, and is liable on summary conviction to a fine not exceeding $2,000, if he or she fails without reasonable excuse to return a cancelled licence, and every certified copy of it, to the Licensing Authority immediately upon cancellation of the licence.

Compare: 1908 No 141 s 14; 1963 No 10 ss 17, 18

17 Updating licence information

(1) If any of the details that were included on the licence application change (for example, new places of business are added or a person concerned in the management of the company leaves), the licence holder must immediately advise the Licensing Authority of the change.

(2) On receiving advice under subsection (1), the Licensing Authority must, if those details are reflected on the licence that has been issued, issue an amended licence (and certified copies, if applicable). An amended licence is not a new or renewed licence.

(3) If an amended licence is issued, the licence holder must immediately return the old licence and any old certified copies of the licence to the Licensing Authority.

(4) A licensed secondhand dealer and pawnbroker commits an offence, and is liable on summary conviction to a fine not exceeding $2,000, if he or she fails without reasonable excuse to comply with subsection (1) or subsection (3).

Compare: 1908 No 141 s 8; 1963 No 10 s 7

18 Licences not transferable, except to temporary licence holder

(1) A licence is not transferable, except in the situation described in subsection (2).

(2) The Licensing Authority may transfer a licence to a temporary licence holder for a period of not more than 6 months if the temporary licence holder is—

(a) the personal representative of a deceased licence holder; or

(b) the assignee in bankruptcy of a licence holder; or

(c) the manager, as defined in section 2 of the Protection of Personal and Property Rights Act 1988, of a licence holder.

(3) A temporary licence holder has all the rights and responsibilities of a licence holder.

Compare: 1908 No 141 s 39; 1963 No 10 ss 10, 11

Certificates: who must hold them

19 Who must hold certificate

(1) Every person must hold a certificate if he or she,—

(a) with the authority of a licensed secondhand dealer, enters into a transaction on behalf of the secondhand dealer; or

(b) with the authority of a licensed pawnbroker, issues a pledge ticket on behalf of the pawnbroker.

(2) However, if both the person referred to in subsection (1) and the licence holder believe on reasonable grounds that the person is not disqualified from holding a certificate, then the person need not hold a certificate during the 2 months after he or she is first authorised by the licence holder to enter into transactions or to issue pledge tickets.

(3) Every person must hold a certificate if he or she manages, supervises, or controls any person who—

(a) enters into a transaction on behalf of a licensed secondhand dealer; or

(b) issues a pledge ticket on behalf of a licensed pawnbroker.

Compare: 1963 No 10 s 8

20 Offences relating to failure to hold certificate

(1) A person who does not hold a certificate, or who is not regarded (under section 14) as holding a certificate, commits an offence, and is liable on summary conviction to a fine not exceeding $10,000, if he or she, knowing that he or she does not hold, or is not regarded as holding, a certificate,—

(a) enters into a transaction on behalf of a licensed secondhand dealer, whether or not the person is in fact authorised by the secondhand dealer to do so; or

(b) issues a pledge ticket on behalf of a licensed pawnbroker, whether or not the person is in fact authorised by the pawnbroker to do so; or

(c) manages, supervises, or controls any person who enters into a transaction on behalf of a licensed secondhand

dealer or issues a pledge ticket on behalf of a licensed pawnbroker.

(2) It is a defence to a charge under subsection (1)(a) or (b) if the person charged proves that he or she was not, at the relevant time, required to hold a certificate, by virtue of section 19(2).

(3) A licence holder commits an offence, and is liable on summary conviction to a fine not exceeding $10,000, if, other than in the circumstances described in section 19(2),—

(a) he or she authorises a person to engage in transactions or issue pledge tickets on his or her behalf; and

(b) the person does not have a certificate; and

(c) the licence holder knows, or should know, that the person does not have a certificate.

Certificates: how to get them

21 Application for certificate

(1) An application for a certificate must—

(a) be made to the Licensing Authority on a form approved by the Licensing Authority; and

(b) be accompanied by 2 photographs of the applicant, authenticated in the prescribed manner; and

(c) be accompanied by a statutory declaration by the applicant as to the truth of the information supplied in the application; and

(d) be accompanied by the prescribed fee.

(2) The form approved by the Licensing Authority must, without limitation, require the following information to be supplied:

(a) the applicant's full name and date of birth:

(b) the applicant's contact address and prescribed contact details:

(c) any other prescribed information.

(3) On receipt of an application, the Licensing Authority may make whatever inquiries he or she considers necessary in order to determine whether or not the applicant is disqualified from holding a certificate.

22 Disqualification from holding certificate

A person is disqualified from holding a certificate if he or she—

(a) has been convicted of a specified offence within the past 5 years; or

(b) has been convicted within the past 5 years of an offence under this Act (other than an offence punishable by no more than a fine not exceeding $2,000); or

(c) is under the age of 18 years; or

(d) has been convicted of any offence under the Pawnbrokers Act 1908 or the Secondhand Dealers Act 1963 within the past 5 years; or

(e) has been subject, at any time within the past 5 years, to a sentence of imprisonment; or

(f) has had a certificate or licence cancelled, or had renewal of a certificate or licence refused, within the past 5 years; or

(g) holds a certificate that is suspended; or

(h) is, or was at the relevant time, a person concerned in the management of a company that has had a licence cancelled within the past 5 years.

23 Waiver of disqualification

(1) The Licensing Authority may waive disqualification under section 22 if—

(a) the disqualified person applies in writing to the Licensing Authority for a waiver; and

(b) any prescribed fee is paid; and

(c) the disqualification is on 1 or more of the grounds set out in section 22(b) to (h); and

(d) the Licensing Authority is satisfied, on the basis of the written material before him or her, that there are special reasons why the person should not be disqualified from holding a certificate.

(2) A person who wishes to seek a waiver of disqualification may do so only in connection with an application for a certificate or licence, or an application for renewal of a certificate or licence, or in connection with the cancellation or suspension of a certificate or the cancellation of a licence.

(3) A waiver expires on the expiry of any certificate or licence to which it relates.

(4) The Licensing Authority may, at any time, cancel a waiver, by notice in writing (with reasons) to the person concerned, if

satisfied on reasonable grounds that the waiver should no longer apply.

24 Checks on applicants

(1) Within 3 weeks of receiving an application for a certificate, the Licensing Authority must obtain a report on the applicant showing—

(a) whether the applicant has been convicted of a specified offence within the past 5 years; and

(b) whether the applicant has been convicted of an offence under this Act, the Pawnbrokers Act 1908, or the Secondhand Dealers Act 1963 within the past 5 years; and

(c) whether the applicant has been subject to a sentence of imprisonment at any time within the past 5 years.

(2) On receipt of an application for a certificate, the Licensing Authority must send a copy of the application to—

(a) the Commissioner of Police; and

(b) the person providing the report under subsection (1) (unless the person is the Commissioner of Police).

(3) When the Licensing Authority receives the report provided under subsection (1), he or she must send a copy of the report to—

(a) the applicant; and

(b) the Commissioner of Police, if he or she did not provide that report.

25 Police objection

(1) The Commissioner of Police may, regardless of the content of the report prepared under section 24(1), object to an applicant being granted a certificate on the grounds that the applicant is not a fit and proper person to hold a certificate.

(2) Any objection under subsection (1) (a **police objection**) must set out the reasons for it and be made—

(a) within 3 weeks of receiving a copy of the application, if the report under section 24(1) is provided by the Commissioner of Police; or

(b) within 3 weeks of receiving a copy of the report under section 24(1), if that report is not provided by the Commissioner of Police.

(3) The Commissioner of Police must send a copy of the police objection, if any, to the applicant at the same time that it is sent to the Licensing Authority.

26 What happens if police object to applicant

(1) An applicant who receives a copy of a police objection may—

(a) request a hearing in person before the Licensing Authority on whether to dismiss or uphold the objection, in which case the request must be—

(i) in writing and accompanied by the prescribed fee (if any); and

(ii) received by the Licensing Authority within 3 weeks of the date on which the notice of objection was sent; or

(b) make written submissions to the Licensing Authority, in which case the submissions must be received by the Licensing Authority within 3 weeks of the date on which the notice of objection was sent.

(2) If an applicant requests a hearing in person,—

(a) if the applicant is also disqualified from holding a certificate, the Licensing Authority may not hold a hearing on the police objection until after he or she has made a decision under section 23 on whether to waive the disqualification; and

(b) if the applicant is not disqualified from holding a certificate, the Licensing Authority must arrange a time and place for the hearing under section 27 and give the Commissioner of Police and the applicant at least 14 days' written notice of it.

(3) If an applicant sends written submissions to the Licensing Authority, or if the Licensing Authority has not heard from the applicant within 3 weeks of the date on which the notice of objection was sent, the Licensing Authority must, on the basis of the written material before him or her, determine whether to uphold or dismiss the police objection.

27 Hearing into police objection

(1) For the purpose of conducting a hearing into a police objection, sections 4 to 12 of the Commissions of Inquiry Act 1908 apply with any necessary modifications as if the Licensing

Authority were a Commission appointed under that Act and as if the hearing were an inquiry held under that Act.

(2) Without limiting subsection (1), at a hearing before the Licensing Authority,—

(a) the Commissioner of Police may be represented by any member of the police or by counsel; and

(b) the applicant may appear in person or be represented by counsel, or both.

(3) At the conclusion of the hearing, the Licensing Authority must determine whether to uphold or dismiss the police objection.

28 Eligibility for, and issue of, certificate

(1) A person is eligible to hold a certificate if—

(a) the person is not disqualified under section 22 from holding a certificate or, if disqualified, the disqualification has been waived under section 23; and

(b) either no police objection has been raised under section 25 in relation to the person, or, if an objection has been raised, the Licensing Authority has dismissed the objection under section 26(3) or section 27(3).

(2) The Licensing Authority must issue a certificate to an applicant if—

(a) the applicant is eligible to be issued with a certificate; and

(b) the application complies with the requirements in section 21(1).

(3) If the Licensing Authority refuses an application, he or she must notify the applicant in writing, and give reasons for the refusal.

Compare: 1908 No 141 s 4(2); 1963 No 10 s 5(1)

29 Complaints by police about certificate holders, licence holders, and persons concerned in management of company

(1) The Commissioner of Police may, at any time, make a complaint to the Licensing Authority about—

(a) a certificate holder; or

(b) a licence holder; or

(c) a person who is concerned in the management of a company that is a licence holder.

(2) The Licensing Authority must send a copy of any complaint received to the person concerned, and sections 26 and 27 apply as if the complaint were a police objection made under section 25.

(3) If the Licensing Authority upholds the complaint, he or she must,—

(a) in the case of a certificate holder, cancel the certificate:

(b) in the case of a licence holder, cancel the licence:

(c) in the case of a person concerned in the management of a company that is a licence holder,—

(i) advise the company that a police complaint against the person has been upheld and that the person is no longer eligible to hold a certificate; and

(ii) 2 weeks after that advice is sent, cancel the company's licence unless, within that time, the company advises the Licensing Authority that the person is no longer a person concerned in the management of the company.

Compare: 1908 No 141 s 14; 1963 No 10 s 17

30 Expiry and renewal of certificates

(1) Unless cancelled earlier, a certificate expires 5 years from its date of issue.

(2) A certificate may be renewed.

(3) Despite subsection (1), if an application for renewal of a certificate is made before the expiry of the certificate, the certificate continues in force until the application for renewal is determined.

(4) Sections 21 to 28 apply to an application for renewal of a certificate as if the application were an application for a certificate.

(5) A renewed certificate is to be treated for all purposes as a new certificate issued under section 28.

(6) A certificate holder may, at any time, return his or her certificate to the Licensing Authority, in which case the certificate expires on the date it is received by the Licensing Authority.

31 Cancellation and suspension of certificates

(1) The Licensing Authority may cancel or suspend a person's certificate if—

(a) the Licensing Authority upholds a police complaint made under section 29; or

(b) the Licensing Authority is satisfied that the person is disqualified from holding a certificate and—

(i) the person has not sought a waiver of disqualification under section 23; or

(ii) the Licensing Authority has refused an application by the person for a waiver of disqualification under section 23; or

(c) the Licensing Authority is satisfied that the certificate was obtained by fraud or mistake.

(2) A cancellation or suspension must be in writing, with reasons, and must state the date on which the cancellation or suspension takes effect.

(3) If the Licensing Authority suspends a certificate, the suspension must be for a fixed period of not more than 3 months, and at the end of that period the Licensing Authority must either lift the suspension or cancel the certificate.

(4) A certificate holder commits an offence, and is liable on summary conviction to a fine not exceeding $2,000, if he or she fails without reasonable excuse to return a cancelled certificate to the Licensing Authority immediately upon cancellation of the certificate.

Compare: 1908 No 141 s 14; 1963 No 10 ss 17, 18

Obligations of certificate holders

32 Obligation to show certificate

(1) At any time when a certificate holder is engaged in secondhand dealing or pawnbroking, he or she must, on request by a member of the police, show his or her certificate to that member.

(2) A certificate holder commits an offence, and is liable on summary conviction to a fine not exceeding $2,000, if he or she fails without reasonable excuse to comply with a request under subsection (1).

(3) Section 83 applies to a charge under subsection (2).

33 Updating certificate information

(1) If any of the details that were included on the certificate application change (for example, the certificate holder's contact address), the certificate holder must advise the Licensing Authority of the change.

(2) On receiving advice under subsection (1), the Licensing Authority must, if those details are reflected on the certificate that has been issued, issue an amended certificate. An amended certificate is not a new or renewed certificate.

(3) If an amended certificate is issued, the certificate holder must immediately return the old certificate to the Licensing Authority.

(4) A certificate holder commits an offence, and is liable on summary conviction to a fine not exceeding $2,000, if he or she fails without reasonable excuse to comply with subsection (1) or subsection (3).

Compare: 1908 No 141 s 8; 1963 No 10 s 7

Appeals

34 Appeals against decision of Licensing Authority

(1) An applicant for a licence or a certificate may appeal to a District Court against a decision by the Licensing Authority relating to the applicant's application.

(2) The holder of a licence or certificate may appeal to a District Court against a decision by the Licensing Authority relating to the renewal, cancellation, or suspension of the holder's licence or certificate.

(3) To avoid doubt, there is no appeal under this section against a decision of the Licensing Authority relating to waiver of disqualification.

(4) An appeal under this section must be brought within 20 days of the date of the decision appealed against, or within any longer period that the District Court, on application made before or after the expiration of that period, allows.

35 Determination of appeal

(1) In determining an appeal, a District Court may confirm or reverse the decision of the Licensing Authority.

(2) The District Court's decision in the determination of an appeal is final.

(3) To avoid doubt, nothing in this section or section 34 affects the right of any person to apply, in accordance with law, for judicial review of a decision of the Licensing Authority.

Part 3
Obligations of licence holders, promoters, and internet auction providers

Subpart 1—Obligations of all licence holders

Licences and records

36 Obligation to show and to display licence

(1) At any time when a licence holder who is an individual is engaged in secondhand dealing or pawnbroking, he or she must, on request by a member of the police, show his or her licence to that member.

(2) Every licence holder must ensure that a certified copy of his or her licence is prominently displayed so as to be readily visible to the public at every place of business used by the licence holder for secondhand dealing or pawnbroking purposes.

(3) A licence holder commits an offence, and is liable on summary conviction to a fine not exceeding $2,000, if he or she fails without reasonable excuse to comply with subsection (1) or subsection (2).

(4) Section 83 applies to a charge under subsection (3).

Compare: 1908 No 141 s 11; 1963 No 10 s 16

37 Employee records

(1) Every licence holder must keep an employee record of every person who is employed by the licence holder in the secondhand dealing or pawnbroking business.

(2) The employee record must show—

(a) the full name, date of birth, contact address, and telephone number (if any) of every employee; and

(b) which employees (if any) hold a certificate, and the number of each certificate; and

(c) the date on which each employee commenced employment with the licence holder.

(3) The employee record must be kept—

(a) at the licence holder's principal place of business; or

(b) if the licence holder is an itinerant secondhand dealer, in the possession of that dealer; or

(c) if regulations provide that employee records may also be kept elsewhere, in accordance with the regulations.

(4) An employer must keep the records on the employee record that relate to each employee for at least 12 months from the date on which the relevant employee ceases employment with the employer.

(5) A licence holder commits an offence, and is liable on summary conviction to a fine not exceeding $10,000, if he or she fails, without reasonable excuse, to—

(a) keep an employee record; or

(b) record in it the information required by this section; or

(c) keep it at the place and for the period required by this section.

38 Police access to employee records

(1) A licence holder must, when required to do so by a member of the police,—

(a) show the member, without delay, his or her employee record and any information contained in it:

(b) make a copy of all or specified parts of it and give the copy to the member or, if that is impracticable, give the member the employee record or specified parts of it.

(2) If a licence holder gives a member of the police his or her employee record, the member must—

(a) give a receipt for the document; and

(b) return it within 2 hours.

(3) A licence holder commits an offence, and is liable on summary conviction to a fine not exceeding $10,000, if he or she fails without reasonable excuse to comply with subsection (1).

(4) Section 83 applies to a charge under subsection (3).

Compare: 1908 No 141 ss 11, 28, 29; 1963 No 10 s 16

Goods

39 Obligation to report and hold stolen goods

(1) A licence holder who has possession of, or who is offered for sale or pawn, any goods that he or she knows or suspects are stolen goods must—

(a) report the goods to a member of the police as soon as practicable; and

(b) if he or she has possession of the goods, hold them for 14 days from the date of the report to the member of the police.

(2) If a member of the police gives a licence holder a notice that specified goods are, or are alleged to be, stolen goods, the licence holder must—

(a) immediately notify a member of the police if any of the specified goods are offered to the licence holder for sale or pawn; and

(b) check whether he or she already has possession of any of the specified goods and, if so, must comply with subsection (1)(a) and (b).

(3) A licence holder commits an offence, and is liable on summary conviction to a fine not exceeding $10,000, if he or she fails, with respect to goods that the licence holder knows, suspects, or ought reasonably to know or suspect are stolen goods, to comply with subsection (1)(a) or (b) or subsection (2)(a) or (b).

(4) A licence holder may dispose of goods that he or she has reported to the police under this section after holding them for at least 14 days unless, before the expiry of the 14 days, the police issue a hold notice under section 40 with respect to the goods.

(5) Subsection (4) does not override section 60.

Compare: 1908 No 141 ss 34, 36

40 Police may issue hold notice

(1) A member of the police may issue a hold notice to a licence holder if the member has reasonable grounds to suspect that any goods held by the person are stolen goods.

(2) If a licence holder is issued with a hold notice, he or she must not dispose of the goods identified in the notice for 28 days

from the date of the notice except with the authority of a member of the police.

(3) A licence holder commits an offence, and is liable on summary conviction to a fine not exceeding $10,000, if he or she disposes of goods that are identified in a hold notice within 28 days of the issue of the notice without the authority of a member of the police.

(4) Subsection (2) does not override section 60.

41 Obligation to give police access to goods

(1) A licence holder must, when required to do so by a member of the police, show, or make available to, that member all or any of the goods held by the licence holder for the purpose of secondhand dealing or pawnbroking.

(2) A licence holder commits an offence, and is liable on summary conviction to a fine not exceeding $10,000, if he or she fails without reasonable excuse, on request by a member of the police, to show or make available to the member any goods as required by subsection (1).

(3) Section 83 applies to a charge under subsection (2).

Subpart 2—Obligations of licensed secondhand dealers

Records and verification of identity

42 Dealers record

(1) Every licensed secondhand dealer must keep a dealers record.

(2) The dealers record must show the following information with respect to every article acquired by a licensed secondhand dealer in the course of business as a secondhand dealer:

(a) the identity of the person from whom the article is acquired, which must include—

(i) the person's full name, contact address, and contact telephone number (if any):

(ii) the manner in which the person's identity was verified or, if the identity was not verified, the reason for that (as set out in section 43(3)):

(iii) the person's date of birth (unless the person's identity was not verified):

(iv) the person's signature (unless the person's identity was not verified):

(b) a description of the article and its serial number or other unique identifier (if any):
(c) the purchase price paid by the secondhand dealer:
(d) the number assigned by the licensed secondhand dealer to the article:
(e) the name and signature of the person who conducted the transaction on behalf of the licensed secondhand dealer:
(f) the date of the transaction:
(g) in the case only of an article with an apparent resale value of more than $40 or such other amount as may be prescribed, either—
(i) the date on which the article was sold; or
(ii) an account of how and when the article was otherwise disposed of:
(h) any other prescribed information.

(3) The dealers record must show the following information with respect to all scrap metal acquired by a licensed secondhand dealer in the course of business as a secondhand dealer:
(a) the identity of the person from whom the scrap metal is acquired, which must include the matters set out in subsection (2)(a):
(b) a description of the nature and quantity of the scrap metal:
(c) the name and signature of the person who conducted the transaction on behalf of the licensed secondhand dealer:
(d) the date of the transaction:
(e) any other prescribed information.

(4) The information required to be shown in the dealers record must be added to the record as soon as practicable after the information is available.

(5) A licensed secondhand dealer commits an offence, and is liable on summary conviction to a fine not exceeding $10,000, if he or she—
(a) fails without reasonable excuse to—
(i) keep a dealers record; or
(ii) record in it the information required by this section; or
(iii) add information to it as soon as practicable after the information is available; or

(b) makes a false entry in his or her dealers record.

Compare: 1963 No 10 ss 12, 12A

43 Verifying identity

(1) A licensed secondhand dealer must verify the identity of the person from whom an article is acquired, except in the circumstances set out in subsection (3).

(2) A person's identity may be verified for the purposes of subsection (1)—

(a) by sighting the person's authorised identification; or

(b) by personal knowledge, in which case if any details about the person that are recorded in the secondhand dealer's dealers record are incorrect, the secondhand dealer is regarded as having made a false entry, without reasonable excuse, in his or her dealers record; or

(c) by any other prescribed method.

(3) A secondhand dealer need not obtain evidence of the identity of a person from whom goods are acquired in the following situations:

(a) where the goods are acquired at a public auction conducted by a licensed auctioneer:

(b) where the goods are acquired through an internet auction run by an internet auction provider that complies with any prescribed requirements:

(c) where the goods are acquired at a garage sale and the secondhand dealer keeps a record of the address at which the goods were sold:

(d) where the goods are acquired from a seller who is overseas:

(e) in any other prescribed situation.

44 Storage of dealers record

(1) Every dealers record must be kept—

(a) at the secondhand dealer's principal place of business; or

(b) in the case of an itinerant secondhand dealer, in the possession of that dealer; or

(c) if regulations provide that dealers records may also be kept elsewhere, in accordance with the regulations.

(2) The information in the dealers record relating to any article or scrap metal must be kept for not less than 3 years from the date of the transaction relating to that article or scrap metal.

(3) Every dealers record must be kept available for inspection (at any reasonable hour) on request by a member of the police.

(4) A licensed secondhand dealer commits an offence, and is liable on summary conviction to a fine not exceeding $10,000, if he or she fails without reasonable excuse to store his or her dealers record as required by this section.

Compare: 1963 No 10 ss 12, 12A

45 Police access to dealers record

(1) A licensed secondhand dealer must, when required to do so by a member of the police,—

(a) show the member his or her dealers record and any information contained in it; and

(b) make a copy of all or specified parts of it and give the copy to the member or, if that is impracticable, give the member the dealers record or specified parts of it.

(2) If a licensed secondhand dealer gives a member of the police his or her dealers record, or any part of it, the member must—

(a) give a receipt for the document; and

(b) return the document to the dealer within 2 hours.

(3) A licensed secondhand dealer commits an offence, and is liable on summary conviction to a fine not exceeding $10,000, if he or she fails without reasonable excuse to comply with subsection (1).

(4) Section 83 applies to a charge under subsection (3).

Secondhand dealing

46 Secondhand dealers not to enter into buyback contracts

No licensed secondhand dealer may enter into a buyback contract as a buyer while apparently acting in the course of business as a secondhand dealer.

47 Articles to be kept for 14 days

(1) Every article acquired by a licensed secondhand dealer in the course of his or her secondhand dealing business must be

retained by the secondhand dealer in an unaltered state for 14 days from the date of the transaction.

(2) Every article acquired by a licensed secondhand dealer in the course of his or her secondhand dealing business must be stored, for the first 14 days after the transaction, in a place at which it can be reasonably conveniently inspected by a member of the police if the member asks to inspect it.

(3) Despite subsection (1), articles need not be retained for 14 days if—

(a) the article was acquired by the licensed secondhand dealer from a licensed secondhand dealer and pawnbroker; or

(b) the article is returned to the person from whom the licensed secondhand dealer acquired it; or

(c) the article is being sold by the licensed secondhand dealer as agent for the owner, and the licensed secondhand dealer notes on his or her dealers record—

(i) the purchaser's full name, date of birth, contact address, and contact telephone number (if any); and

(ii) the manner in which the licensed secondhand dealer verified the purchaser's identity, which must be by one of the methods set out in section 43(2); and

(iii) the purchaser's signature.

Compare: 1963 No 10 ss 14, 15

48 Articles to be labelled

(1) A label in the prescribed form bearing the number assigned by a secondhand dealer to an article must be affixed to the article at all times until it is sold or otherwise disposed of.

(2) Subsection (1) does not apply to the extent that this Act or regulations prescribe otherwise.

49 Modification of rules where groups of articles acquired as single item

(1) This section applies where a secondhand dealer acquires a group of articles as a single item (such as a box of miscellaneous goods or a collection of articles).

(2) An article in a group must be separately identified and be treated as a single article for the purposes of this Act only if it has—

(a) an apparent resale value of more than $40 or such other amount as may be prescribed; or

(b) a serial number on it which may be used as a unique identifier.

(3) All remaining articles in the group must be treated as a single article for the purposes of this Act, and—

(a) the individual articles in the group need not be labelled under section 48; and

(b) the disposal of the group and the individual articles in it need not be recorded in the dealers record under section 42(2)(g).

(4) The fact that an article is offered for sale at a price of more than $40 (or other prescribed amount) is conclusive proof that the item has or had an apparent resale value of more than that amount.

50 Offences relating to secondhand dealing

(1) A licensed secondhand dealer commits an offence, and is liable on summary conviction to a fine not exceeding $10,000, if he or she enters into a buyback contract as a buyer while apparently acting in the course of business as a secondhand dealer.

(2) A licensed secondhand dealer commits an offence, and is liable on summary conviction to a fine not exceeding $10,000, if he or she fails, without reasonable excuse,—

(a) to comply with section 47(1) and (2) (which relate to retaining articles), other than in the circumstances set out in section 47(3); or

(b) to comply with section 48 (which relates to labelling articles).

Subpart 3—Obligations of licensed pawnbrokers

Records and verification of identity

51 Pawnbrokers record

(1) Every licensed pawnbroker must keep a pawnbrokers record.

(2) The pawnbrokers record must show the following information with respect to all goods pledged to the pawnbroker in the course of business as a pawnbroker:

(a) the identity of the pledger, which must include—

(i) the pledger's name, contact address, and contact telephone number (if any); and

(ii) the form of authorised identification used to verify the pledger's identity, date of birth, and fact that the pledger is aged 18 years or over; and

(iii) the signature of the pledger:

(b) a description of the pawned goods, including their serial numbers or other unique identifier (if any):

(c) the number assigned by the pawnbroker to each item:

(d) the name and signature of the person who conducted the transaction on behalf of the licensed pawnbroker:

(e) the redemption date:

(f) the amount of money advanced on the goods:

(g) the interest to be charged:

(h) the total redemption price payable at the redemption date, and whether any lesser amount is payable if the goods are redeemed before that date:

(i) either—

(i) the date on which the goods are redeemed, and the amount for which they are redeemed; or

(ii) the date on which, and the price for which, the goods are sold, and the amount (if any) returned to the pledger:

(j) any other prescribed information.

(3) The information required to be shown in the pawnbrokers record must be added to the record as soon as practicable after the information is available.

(4) A licensed pawnbroker commits an offence, and is liable on summary conviction to a fine not exceeding $10,000, if he or she—

(a) fails without reasonable excuse—

(i) to keep a pawnbrokers record; or

(ii) to record in it the information required by this section; or

(iii) to add information to it as soon as practicable after the information is available; or

(b) makes a false entry in his or her pawnbrokers record.

Compare: 1908 No 141 s 17

52 Verifying identity of pledgers

(1) A licensed pawnbroker must verify the identity of every pledger from whom he or she accepts a pledge.

(2) A pledger's identity may be verified for the purpose of subsection (1)—

(a) by sighting the person's authorised identification; or

(b) by personal knowledge, in which case if any details about the person that are recorded in the pawnbroker's pawnbrokers record are incorrect, the pawnbroker is regarded as having made a false entry without reasonable excuse in his or her pawnbrokers record; or

(c) by any other prescribed method.

53 Storage of pawnbrokers record

(1) Every pawnbrokers record must be kept—

(a) at the pawnbroker's principal place of business; or

(b) if regulations provide that pawnbrokers records may also be kept elsewhere, in accordance with the regulations.

(2) The information in the pawnbrokers record relating to any goods must be kept for not less than 3 years from the date of the transaction relating to those goods.

(3) Every pawnbrokers record must be available for inspection on request at any reasonable hour by a member of the police.

(4) A licensed pawnbroker commits an offence, and is liable on summary conviction to a fine not exceeding $10,000, if he or she fails, without reasonable excuse, to store his or her pawnbrokers record as required by this section.

Compare: 1908 No 141 s 17

54 Police access to pawnbrokers record

(1) A licensed pawnbroker must, when required to do so by a member of the police,—

(a) show the member his or her pawnbrokers record and any information contained in it; and

(b) make a copy of all or specified parts of it and give the copy to the member or, if that is impracticable, give the member the pawnbrokers record or specified parts of it.

(2) If a licensed pawnbroker gives a member of the police his or her pawnbrokers record, or any part of it, the member must—
(a) give a receipt for the document; and
(b) return the document to the pawnbroker within 2 hours.

(3) A licensed pawnbroker commits an offence, and is liable on summary conviction to a fine not exceeding $10,000, if he or she fails without reasonable excuse to comply with subsection (1).

(4) Section 83 applies to a charge under subsection (3).

Compare: 1908 No 141 ss 28, 29

Pawnbroking

55 Pawnbrokers not to enter into buyback contracts

No licensed pawnbroker may enter into a buyback contract as a buyer while apparently acting in the business of a pawnbroker.

56 Pawnbrokers to enter into contracts only at pawnbroking premises

A pawnbroker may enter into a pawnbroking contract only at pawnbroking business premises identified in the pawnbroker's licence.

57 Redemption price

(1) The redemption price of any pawned goods is—
(a) the amount of money advanced on the goods; plus
(b) the total interest payable by the pledger on redemption of the goods.

(2) A pawnbroker may charge only interest, and not any other fee or charge (however described), as part of the redemption price of pawned goods.

(3) A pawnbroker may advance only money, and not any other thing, on a pledge.

58 Redemption date

(1) The redemption date of any pawned goods is the last day on which the pawnbroker must hold the goods for redemption by the pledger.

(2) The redemption date is the later of—

(a) the date that is 3 months later than the date on which the pledge was entered into; or

(b) a date agreed to between the pawnbroker and the pledger.

59 Pledge tickets

(1) At the time when a pledger gives possession of pawned goods to a licensed pawnbroker, the pawnbroker must give the pledger a pledge ticket for the goods.

(2) If a form of pledge ticket is prescribed, the pledge ticket must be in that form; but in any case every pledge ticket must show—

(a) the name of the pledger; and

(b) the address at which the pawned goods may be redeemed; and

(c) the matters set out in section 51(2)(b) to (h); and

(d) a summary of the rights of pledgers and the obligations of pawnbrokers under the pledge, as provided in this Act.

(3) The pledger must produce the pledge ticket to the licensed pawnbroker if he or she wishes to redeem the pawned goods.

(4) A licensed pawnbroker is entitled, in the absence of proof to the contrary, to assume that the holder of a pledge ticket is in fact the pledger of the goods identified on the ticket.

(5) A licensed pawnbroker must issue a replacement pledge ticket if satisfied that the person seeking the replacement ticket is in fact the pledger, or agent of the pledger, of the pawned goods to which it relates.

Compare: 1908 No 141 ss 19, 21, 22

60 Pawned goods to be retained until redemption date

A licensed pawnbroker may not dispose of pawned goods on or before the redemption date, except by way of redemption of the goods by the pledger or as otherwise provided in this Act.

Compare: 1908 No 141 s 23

61 Pawned goods to be labelled

(1) A label in the prescribed form bearing the number assigned by a pawnbroker to pawned goods must be affixed to the goods at all times until the goods are redeemed or disposed of.

(2) Subsection (1) does not apply to the extent that regulations prescribe otherwise.

Compare: 1908 No 141 s 18

62 Right of pledger to redeem and inspect pawned goods

(1) A pledger may, at any time, redeem his or her pawned goods from a licensed pawnbroker on payment of the redemption price.

(2) A pledger may, at any reasonable time, inspect any of his or her goods that are held by a licensed pawnbroker.

(3) An inspection under subsection (2) may consist of—

(a) the pledger viewing, but not handling, the goods; or

(b) a demonstration by the pawnbroker of the operation of the goods.

63 Right of pawnbroker to sell unredeemed goods after redemption date and retain redemption price

(1) If a pledger does not redeem his or her pawned goods on or before the redemption date, the pawnbroker may sell the goods in order to recover the redemption price.

(2) Goods to be offered for sale by a pawnbroker must be offered for sale by way of—

(a) a public auction conducted by a person who is not—

(i) the pawnbroker; or

(ii) the pawnbroker's spouse or de facto partner (including same sex), parent, child, or sibling; or

(iii) an employee of the pawnbroker; or

(iv) in the case of a pawnbroker that is a company, a person concerned in the management of the company; or

(b) an internet auction conducted on a publicly accessible internet auction website that complies with any prescribed requirements.

(3) If the redemption price (or more) of pawned goods is bid for those goods, the goods must be sold at the auction.

(4) If, having been offered for sale at public auction or internet auction, the goods remain unsold, the pawnbroker may sell the goods in any other way that is reasonable, having regard to the need to obtain a realistic price for the goods. The fact that the goods are subsequently sold for a price less than the redemption price does not necessarily show that the subsequent method of sale was unreasonable.

(5) When a pawnbroker sells pawned goods, he or she may retain from the sale price the redemption price of the goods.

Compare: 1908 No 141 ss 24, 25

64 What happens if sale price is greater than redemption price

(1) In this section, **excess** means the amount (if any) by which the price that a pawnbroker sells pawned goods for exceeds the redemption price of those goods.

(2) A pledger is entitled to 90% of any excess received by the pawnbroker on the sale of the pledger's goods, provided that the excess is claimed within 6 months of the date of the sale.

(3) The pawnbroker may retain the remaining 10% of the excess.

(4) If an excess is $10 or more, the pawnbroker must, as soon as practicable after the sale, write to the pledger at his or her last known address advising him or her of—

(a) the amount of excess to which he or she is entitled; and

(b) the date by which it must be claimed.

(5) If the pledger does not claim his or her portion of the excess within 6 months of the date of the sale, the pawnbroker may keep that portion also.

Compare: 1908 No 141 s 26

65 Miscellaneous rules about pawnbroking

(1) A licensed pawnbroker may not accept a pledge from a person who is under the age of 18 years.

(2) Every pawnbroking contract is subject to this Act and every other enactment.

(3) A pawnbroker may not purchase goods that are the subject of a pawnbroking contract with that pawnbroker, except as provided in section 66.

Compare: 1908 No 141 s 33

66 Sale of goods by pledger to pawnbroker

(1) If, after entering into a pawnbroking contract, a pledger wishes to sell any of the goods that are the subject of the contract, the pawnbroker who accepted the pledge may buy the goods if—

(a) the purchase price of the goods is more than the redemption price of those goods; and

(b) the difference between the redemption price and the purchase price is paid in cash to the seller at the time of the sale; and

(c) the pawnbroker records the sale and the purchase price in his or her pawnbrokers record.

(2) When goods are purchased under this section,—

(a) the pawnbroking contract is treated, so far as it relates to those goods, as having been cancelled immediately before the sale; and

(b) sections 60, 63, 64, and 67(1)(c), (f), and (g) do not apply in respect of the goods.

67 Offences relating to pawnbroking

(1) A licensed pawnbroker commits an offence, and is liable on summary conviction to a fine not exceeding $10,000, if he or she, without reasonable excuse,—

(a) enters into a buyback contract as a buyer while apparently acting in the course of business as a pawnbroker:

(b) enters into a pawnbroking contract at any place other than pawnbroking business premises identified in his or her licence:

(c) sells or otherwise disposes of any pawned goods on or before the redemption date of the goods:

(d) fails to issue a pledge ticket, or issues a pledge ticket that does not comply with section 59:

(e) fails to allow a pledger to redeem or inspect goods pawned by the pledger:

(f) sells pawned goods without first offering them for sale at public auction or internet auction:

(g) fails, when a pledger claims an excess (as defined in section 64(1)) within 6 months of the disposal of pledged goods, to return to the pledger at least 90% of the excess:

(h) accepts a pledge from a pledger aged under 18 years:

(i) fails to comply with any of the conditions set out in section 66(1) when purchasing goods that are subject to a pawnbroking contract.

(2) A licensed pawnbroker commits an offence, and is liable on summary conviction to a fine not exceeding $2,000, if he or she fails, without reasonable excuse, to comply with any other obligation under any of sections 55 to 65.

Compare: 1908 No 141 s 24

Subpart 4—Obligations of promoters and internet auction providers

Records

68 Promoters record

(1) Every promoter must keep a promoters record.

(2) The promoters record must show, with respect to every market or fair at which the promoter provides space to stallholders,—

(a) the date or dates on, or the period during, which the market or fair operates; and

(b) the location of the market or fair; and

(c) in relation to every stallholder who proposes to sell secondhand articles or scrap metal at the market or fair,—

(i) the stallholder's full name, date of birth, contact address, and contact telephone number (if any); and

(ii) if the stallholder holds a licence or a certificate, the number of that licence or certificate; and

(iii) if the stallholder does not hold a licence or a certificate, a record of how the promoter verified the identity of the stallholder, which must be one of the methods set out in subsection (3); and

(iv) the signature of the stallholder; and

(v) any other prescribed information.

(3) A promoter may verify the identity of a stallholder by—

(a) sighting the person's authorised identification; or

(b) personal knowledge, in which case if any details about the person that are recorded in the promoter's promoters record are incorrect, the promoter is regarded as

having made a false entry, without reasonable excuse, in his or her promoters record; or

(c) any other prescribed method.

(4) The information in a promoters record about a particular market or fair and the stallholders at it must be kept by the promoter for at least 12 months from the date of the market or fair.

(5) A promoter must, when required to do so by a member of the police,—

(a) make, and give to the member of the police, a copy of all or any specified part of the promoter's promoters record; or

(b) if that is impracticable, give the promoters record or specified part of it to the member of the police, in which case the member must—

(i) give a receipt for the document; and

(ii) return the document within 2 hours.

(6) A promoter commits an offence, and is liable on summary conviction to a fine not exceeding $10,000, if he or she, without reasonable excuse,—

(a) fails to comply with the requirements of this section relating to the promoters record; or

(b) makes a false entry in his or her promoters record; or

(c) fails to give his or her promoters record, or a specified part of it, to a member of the police when required to do so.

(7) Section 83 applies to a charge under subsection (6)(c).

69 Internet auction providers record

(1) Every internet auction provider must keep an internet auction providers record.

(2) The internet auction providers record must show the following information:

(a) the full name, date of birth, contact telephone number, and email address of every person offering secondhand articles or scrap metal for sale on the internet auction provider's website; and

(b) any other prescribed information.

(3) The information in an internet auction providers record about a particular sale or attempted sale must be kept by the internet

auction provider for at least 12 months from the date bids closed for that sale or attempted sale.

(4) An internet auction provider must, when required to do so by a member of the police,—

(a) show the member his or her internet auction providers record and any information contained in it; or

(b) make a copy of all or specific parts of it and give the copy to the member or, if that is impracticable, give his or her internet auction providers record or a specific part of it to the member, in which case the member must—

(i) give a receipt for the document; or

(ii) return the document to the internet auction provider within 2 hours.

(5) An internet auction provider commits an offence, and is liable on summary conviction to a fine not exceeding $10,000, if he or she, without reasonable excuse,—

(a) fails to comply with the requirements of this section relating to his or her internet auction providers record; or

(b) makes a false entry in his or her internet auction providers record; or

(c) fails to provide access by a member of the police to his or her internet auction providers record in accordance with subsection (4) when required to do so.

(6) Section 83 applies to a charge under subsection (5)(c).

Part 4
Licensing Authority of secondhand dealers and pawnbrokers, and miscellaneous provisions

Licensing Authority and Deputy Licensing Authority

70 Appointment of Licensing Authority

(1) The Minister of Justice must, with the concurrence of the responsible Minister, appoint a Licensing Authority.

(2) The Licensing Authority—

(a) must be appointed for a fixed term of 3 years or less; and

(b) may be reappointed any number of times; and

(c) remains in office, despite the expiry of his or her term of office, until a successor is appointed.

(3) The Licensing Authority may resign from office by notice in writing to the Minister of Justice.

(4) The Minister of Justice may, at any time, remove the Licensing Authority for inability to perform the functions of office, bankruptcy, neglect of duty, or misconduct, and the person removed from office is not entitled to compensation.

71 Deputy Licensing Authorities

(1) The Minister of Justice may, by notice in the *Gazette*, appoint up to 2 Deputy Licensing Authorities if the Minister is satisfied that—

(a) the Licensing Authority is unable, because of absence (whether by reason of leave, ill-health, or any other reason), to exercise his or her functions of office; or

(b) the amount of work to be done by the Licensing Authority is more than can reasonably be done by 1 person at that time.

(2) A Deputy Licensing Authority's term of office expires on the date specified in the appointment notice in the *Gazette* or, if no such date is specified, on the date specified by the Minister of Justice in a subsequent notice in the *Gazette*.

(3) A Deputy Licensing Authority has and may exercise the powers (including the powers listed in section 76(1)), duties, and functions of the Licensing Authority, subject to the control of the Licensing Authority.

(4) The fact that a Deputy Licensing Authority exercises the powers, duties, and functions of the Licensing Authority is conclusive evidence of his or her authority to do so.

(5) No appointment of a Deputy Licensing Authority, and no act done by him or her when acting as a Deputy Licensing Authority, may be called into question in any proceedings on the ground that the occasion for the appointment had not arisen or had ceased.

72 Remuneration, and status under certain Acts

(1) The Licensing Authority and any Deputy Licensing Authority must be paid fees and expenses in accordance with the framework determined by the Government from time to time for the classification and remuneration of statutory and other bodies,

as if the Licensing Authority were the chairperson of a statutory body and any Deputy Licensing Authority were a member of that body.

(2) For the purposes of the State Sector Act 1988 and the Government Superannuation Fund Act 1956, a Licensing Authority or Deputy Licensing Authority is not, by reason merely of that appointment, employed in the service of the Crown.

73 Immunity

Neither the Licensing Authority nor any Deputy Licensing Authority is personally liable for any act done or omission made while acting in good faith while performing or intending to perform his or her functions under this Act.

74 Functions of Licensing Authority

The functions of the Licensing Authority are—

(a) to carry out the functions of the Licensing Authority under Part 2 relating to licences and certificates; and

(b) to establish and maintain the public registers described in section 78; and

(c) to perform all other functions required by this Act.

75 Administrative support for Licensing Authority

The responsible Minister must ensure that the department that is authorised by the Prime Minister to provide administrative support to the Licensing Authority provides that support in a manner that enables the Licensing Authority to exercise his or her powers, duties, and functions efficiently and effectively.

76 Delegations

(1) The Licensing Authority may, in writing, delegate to any person any function, duty, or power under this Act, except the following:

(a) the power to conduct hearings into police objections and police complaints:

(b) the power to waive a disqualification from holding a certificate:

(c) the power to cancel a licence, and the power to cancel or suspend a certificate:

(d) the power, under section 18, to transfer a licence to a temporary licence holder:

(e) the power of delegation under this section.

(2) Subject to any general or special directions given or conditions attached to a delegation, the person to whom the function, duty, or power is delegated must perform and may exercise those functions, duties, and powers in the same manner and with the same effect as if they had been conferred on that person directly by this section and not by delegation.

(3) A person purporting to act under a delegation is, in the absence of proof to the contrary, presumed to be acting in accordance with the terms of the delegation.

(4) A delegation may be made to a specified person or to persons of a specified class, or may be made to the holder or holders for the time being of a specified office or specified classes of offices.

(5) A delegation is revocable in writing at will, and a delegation does not prevent the exercise of any function, duty, or power by the Licensing Authority.

(6) A delegation continues in force according to its tenor until revoked, even if the Licensing Authority who made it has ceased to hold office.

77 Annual report

(1) Within 3 months after the end of every financial year, the Licensing Authority must prepare and send to the Minister of Justice a report on the activities of the Licensing Authority during the previous financial year that contains the prescribed matters.

(2) The Minister of Justice must present a copy of the report to the House of Representatives within 20 sitting days after the date on which the Minister receives it.

(3) If the date of commencement of this Act is within 3 months before the end of a financial year, the first report of the Licensing Authority must be for the first full financial year of operation and include information relating to the previous year's operation.

Registers

78 Public registers of licence holders and of certificate holders

(1) The Licensing Authority must establish, and must maintain with up-to-date information, the following 2 registers as public registers:

(a) a licence holders register:

(b) a certificate holders register.

(2) The Licensing Authority must determine the form of the registers, and may amend the form from time to time as he or she considers necessary, providing that the content of the registers is as set out in sections 79 and 80.

Compare: 1908 No 141 s 5

79 Content of licence holders register

The licence holders register must contain the following information in relation to each licensed secondhand dealer and pawnbroker:

(a) the full name of the licence holder:

(b) the licence holder's principal place of business:

(c) the number of the licence:

(d) the date of issue of the licence:

(e) in the case of a licence holder who is an individual, whether the person is in partnership and, if so, the name of every partner:

(f) in the case of a licence holder that is a company, the name of every person concerned in the management of the company:

(g) the street address of every place of business used by the licence holder:

(h) the licence holder's email address, but only if the licence holder supplies that information and agrees to the Licensing Authority including it in the register.

80 Content of certificate holders register

(1) The certificate holders register must contain the following information in relation to each certificate holder:

(a) the full name of the certificate holder:

(b) the number of the certificate:

(c) the date of issue of the certificate.

(2) The register must also show whether a certificate is suspended.

81 Public access to public registers

The Licensing Authority must take all reasonable steps to ensure—

(a) that the information contained in the public registers is available to members of the public to view at all reasonable times; and

(b) that members of the public may copy or purchase all, or any part of, the information contained in the public registers at no more than a reasonable cost.

82 Police access to other information held by Licensing Authority

If a member of the police seeks any of the following information from the Licensing Authority, the Licensing Authority must supply it to the member as soon as practicable:

(a) any information contained in an application for a licence or a certificate:

(b) any information relating to changes to information provided by licence holders or certificate holders:

(c) information relating to the cancellation of any licence or to the cancellation or suspension of any certificate.

Defences to certain charges

83 Charges involving failure to show or make copy of document, or show or make available any thing

(1) It is a defence to a charge under this Act involving a failure, following a request by a member of the police, to show, make a copy of, and give a document, or a failure to show or make available any other thing, to that member if—

(a) the member was not in uniform and did not, at the time of making the request, produce evidence that he or she was a member of the police; or

(b) the request was made at a time or in a manner that was unreasonable in the circumstances.

(2) This section does not limit any other defences that may be available.

Regulations

84 Regulations

The Governor-General may, by Order in Council, make regulations for all or any of the following purposes:

(a) amending Schedule 1 by removing items that are articles for the purpose of this Act:

(b) amending Schedule 2 by—

(i) adding or removing forms of identification that are authorised forms for the purposes of this Act; or

(ii) replacing the list of authorised identification in order to consolidate, reorganise, or correct it:

(c) authorising ways of verifying identity, or providing for exemptions from the requirement to verify identity, that are additional to those provided for in sections 43, 52, and 68(3):

(d) prescribing the procedure for, and making other provisions relating to, the conduct of public auctions for the purposes of this Act:

(e) prescribing a class or classes of secondhand dealers who are not engaged in business as secondhand dealers for the purposes of this Act:

(f) prescribing fees for the purposes of this Act:

(g) prescribing the size or form of photographs that are required to accompany applications, and prescribing the manner in which they are to be authenticated:

(h) prescribing alternative places in which, or arrangements under which, employee records, dealers records, pawnbrokers records, promoters records, and internet auction providers records may be kept:

(i) prescribing, with respect to dealers records, pawnbrokers records, promoters records, and internet auction providers records (or any of those records), any or all of the following:

(i) the form in which the records must be kept:

(ii) the classes of person to which, or circumstances in which, the requirements of this Act or regulations made under this paragraph do not apply:

(iii) additional information that must be recorded in any record:

(j) prescribing matters that must be noted on a dealers record where articles are not retained for 14 days:

(k) prescribing the form of labels to be affixed to articles and pawned goods; and the regulations may provide—

(i) for different labels for different kinds of articles or goods; and

(ii) for the manner in which any prescribed label must or may be affixed:

(l) adjusting the amount referred to in section 49(2)(a):

(m) prescribing the circumstances in which labels need not be affixed to articles, scrap metal, or pawned goods of a specified type or types, or prescribing articles, scrap metal, and pawned goods to which labels need never be affixed:

(n) prescribing the form of pledge ticket:

(o) prescribing the requirements that must be satisfied by an internet auction website if—

(i) under section 43(3)(b), the requirement to verify the identity of sellers is not to apply when goods are purchased through that internet auction website; and

(ii) pawnbrokers are to be permitted under section 63(2)(b) to dispose of goods through that internet auction website:

(p) prescribing the matters to be included in the annual report of the Licensing Authority:

(q) providing for any other matters contemplated by this Act, necessary for its administration, or necessary for giving it full effect.

Transitional provisions

85 Existing licence deemed to be transitional licence

(1) On the date on which this section comes into force, every person who, immediately before that date, held a licence issued under the Secondhand Dealers Act 1963, the Pawnbrokers Act 1908, or the Auctioneers Act 1928 is deemed to hold a licence issued under this Act, and such a licence is referred to in this section as a **transitional licence**.

(2) A transitional licence expires on the earlier of the following:

(a) the date on which the licence holder is granted a licence under Part 2; or

(b) the date that is 1 year later than the date on which this section comes into force.

(3) Despite anything in this Act, none of the following are obliged to hold a certificate:

(a) an individual who holds a transitional licence:

(b) a person who engages in transactions on behalf of a secondhand dealer who holds a transitional licence:

(c) a person who issues a pledge ticket on behalf of a pawnbroker who holds a transitional licence.

(4) Section 15(1) to (5) (which relates to the expiry and renewal of licences) does not apply to a transitional licence.

(5) If a person who holds a transitional licence applies under section 8 for a licence, the person must be treated as a person who does not hold a licence issued under Part 2.

86 Applications not complete by commencement date

(1) As soon as practicable after this section comes into force, every application for a licence under the Secondhand Dealers Act 1963 or under the Pawnbrokers Act 1908 that was made but not determined before that date must—

(a) be forwarded to the Licensing Authority; and

(b) be treated as if it were an application under this Act for a secondhand dealer and pawnbroker licence.

(2) If the information contained in an application referred to in subsection (1) is insufficient for the purposes of this Act, the Licensing Authority—

(a) may require the applicant to provide additional information, and decline to process the application until that information is supplied; but

(b) may not require the applicant to pay any additional fee in respect of the application.

Repeals and consequential amendments

87 Repeal of Secondhand Dealers Act 1963 and Pawnbrokers Act 1908

The Secondhand Dealers Act 1963 and the Pawnbrokers Act 1908 are repealed.

88 Repeal of regulations

The following regulations are repealed:

(a) Secondhand Dealers Regulations 1963 (SR 1963/223):

(b) Secondhand Dealers Order 1964 (SR 1964/216).

89 Consequential amendments

The enactments specified in Schedule 3 are amended as set out in that schedule.

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Schedule 1
Articles for purposes of this Act

The following are articles for the purposes of this Act:

(a) bicycles and bicycle spare parts and accessories:
(b) boats, boat engines, and boat accessories:
(c) cameras and photography equipment:
(d) coins, medals, medallions, and military decorations (but not including coins used as legal tender in New Zealand):
(e) compact discs (laser read):
(f) computer hardware, software, and other computer-related items:
(g) copper in any form:
(h) farm bikes and quad bikes:
(i) fishing equipment and diving equipment (including wetsuits):
(j) electric or electronic consumer goods (including whiteware):
(k) games machines and associated games equipment:
(l) items made of, or substantially made of, gold, silver, platinum, brass, bronze, or any combination of these metals:
(m) jackets and coats:
(n) jewellery:
(o) leather clothing (but not including footwear):
(p) motor mowers:
(q) motor vehicle (including motor cycle) accessories and parts:
(r) musical instruments other than pianos, and accessories of musical instruments:
(s) optical instruments such as binoculars, microscopes, and telescopes:
(t) ornamental china and crystal:
(u) portable power tools:
(v) sporting equipment:
(w) sunglasses:
(x) tool sets:
(y) watches and clocks.

Schedule 2
Forms of authorised identification

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The forms of identification that are authorised identification for the purposes of this Act are—

(a) a current passport:

(b) a current New Zealand driver licence or a current overseas driver licence that contains a photograph:

(c) any current document containing a photograph that is issued for purposes of identification by the New Zealand Government:

(d) any document referred to in paragraph (a), paragraph (b), or paragraph (c) that has expired, but only if it expired less than 2 years before the date on which it is being used as identification:

(e) an 18+ card issued by the Hospitality Association of New Zealand:

(f) a current document issued by a New Zealand secondary or composite school to a student that—

  (i) is issued for the purpose of identifying the student; and

  (ii) contains a photograph of the student.

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Schedule 3
Enactments repealed or amended

Part 1
Acts amended

Antiquities Act 1975 (1975 No 41)
Repeal the definition of **secondhand dealer** in section 2 and substitute:

> "**secondhand dealer** means a secondhand dealer who is licensed under the Secondhand Dealers and Pawnbrokers Act 2004".

Omit from section 15(5)(b) the expression "Secondhand Dealers Act 1963" and substitute the expression "Secondhand Dealers and Pawnbrokers Act 2004".

Auctioneers Act 1928 (1928 No 29)
Repeal section 4(b).

Motor Vehicle Sales Act 2003 (2003 No 12)
Omit from section 9(1)(f) the words "the holder of a secondhand dealer's licence granted under the Secondhand Dealers Act 1963" and substitute the words "a licensed secondhand dealer under the Secondhand Dealers and Pawnbrokers Act 2004".

Privacy Act 1993 (1993 No 28)
Add to Part I of the Second Schedule:

"Secondhand Dealers and Pawnbrokers Act 2004 Section 78".

Part 2
Regulations amended

District Courts Rules 1992 (SR 1992/109)
Omit rule 452(1)(a)(xxi).
Omit from rule 452(1)(a)(xxv) the expression "Secondhand Dealers Act 1963" and substitute the expression "Secondhand Dealers and Pawnbrokers Act 2004".

Legislative history

5 June 2003	Introduction (Bill 52–1)
24 June 2003	First reading and referral to Law and Order Committee
20 April 2004	Reported from Law and Order Committee (Bill 52–2)
29 June 2004	Second reading, committee of the whole House, third reading
6 July 2004	Royal assent

This Act is administered in the Ministry of Justice.