



Kent County Council Act 2001

This guidance document has been produced to advise dealers of the main requirements of the Act, and provides answers to the questions most often asked.

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Why did Kent County Council promote this legislation?

Kent County Council promoted this local Act against a background of concerns relating to the easy disposal of stolen property and did so with the full co-operation and support of the Kent Police Authority. An identical Act, the Medway Council Act 2001, ensures that the same provisions apply throughout Kent. References to Kent throughout this document means the administrative areas of Kent County Council and Medway Council.

Together, the Acts seek to regulate the second hand trade and reduce the levels of acquisitive crime such as burglary, by making it harder for thieves to dispose of stolen goods and turn them into cash. Dealers in second hand goods will be required to register with the Councils and to keep records of their transactions. This will provide Kent County Constabulary and local authority Trading Standards Officers with comprehensive intelligence, which will allow stolen property to be traced through the supply chain.

In addition, some provisions relate to 'occasional sales', which include events such as boot fairs, markets and one day sales, requiring organisers of these events to provide the Councils with advance notification and to keep records of sellers attending.

Why is it local legislation and not national legislation?

A local authority cannot promote legislation that applies outside its area and since there are no proposals, for the government to produce national legislation, the two Councils decided to take the initiative and promote Private Acts. This situation is not unique and nine other local authorities have introduced private legislation regulating dealers in second hand goods. In fact the Kent County Council and Medway Council Acts are based on the North Yorkshire County Council Act 1991.

What are the main requirements relating to second hand dealers?

- The provisions only apply to persons dealing in second hand goods **in the course of a business**.
- Dealers will need to register both themselves and their business premises
- The registration is **free of charge**, will last for four years, and there are exemptions which include registered charities. (A single registration will cover both Councils)
- Registered dealers have to keep records detailing the name and address of the person from whom articles were acquired (subject to low value exemptions for certain goods - see page 3 of this guidance document); the date of the transaction; a description sufficient, where reasonably possible, to identify the articles; and if the article is a motor vehicle, the registered number and odometer reading. (In the case of plant and motor vehicles which do not have registered numbers, any serial number or vehicle identification number must be recorded).
- The name and address of the purchaser must also be recorded where the article (or set of articles) is sold for a price exceeding £100 and the articles are electrically or battery powered goods, vehicles and vehicle parts, plant, jewellery, watches, photographic equipment, sports equipment, equestrian equipment, building materials, boat and boating equipment, musical instruments and gardening equipment, or exceeding **£500 in the case of all other articles**.
- Dealers are required to conspicuously display a copy of their registration certificate when trading from any premises in Kent. Premises includes a vehicle or stall.

When will the legislation to come into effect?

The legislation comes into effect on 1st December 2001. Application forms are available, and will be forwarded on request, or alternatively can be printed out from our website at www.kent.gov.uk/tradingstandards. Registration can be made by post, on-line or by telephone using our contact centre on 01622 696405.

What is the definition of a dealer in second hand goods?

A dealer in second hand goods is defined as "a person who carries on a trade or business, the whole or part of which consists of transactions in second hand goods". Quite clearly the legislation is not intended to apply to private individuals selling their own property for profit or otherwise. "Trade or business" is not defined but the terminology is used extensively in other consumer protection legislation and this has resulted in a considerable amount of case law dealing with the interpretation.

Frequency of transactions, length of ownership of the items, and motivation for selling (have the goods been purchased to sell on at a profit) are all factors which must be taken into consideration when assessing the status of a seller.

What are the exemptions from registration?

The following are exempt: -

- a person registered as a charity under section 3 of the Charities Act 1993
- a person registered as a scrap metal dealer under the Scrap Metal Dealers Act 1964
- a person engaged in the business either of financing the acquisition of goods by means of hire purchase agreements, conditional sale agreements or credit sale agreements (as defined in section 189(1) of the Consumer Credit Act 1974) or for financing the use of goods by means of bailment agreements
- a person engaged in the business as a dealer in waste paper, cardboard, textiles, plastic in bulk or second hand clothes
- a pawnbroker
- a person engaged in the business of supplying new unused goods (other than motor vehicles) who accepts second hand goods as part of the consideration for those new unused goods
- a person engaged in a business which includes the occasional purchase (but not the sale, supply or offering to supply) of second hand goods in the county
- a person of a class which is by resolution of the Council excluded from the requirements
- the sale of animals
- the sale of second hand books

How do I determine if my premises need to be registered?

The Councils consider business premises to be those premises where second hand goods are bought and sold. If a dealer buys and sells goods from his home then those premises are to be regarded as business premises. However, we do not consider business premises to be those premises, including private addresses, used by dealers to complete their paperwork, restore goods, or to store their goods.

Will my address be shown on my registration certificate?

Registration certificates will not include the private address of the registered dealer.

What form of records must I keep?

The Councils are prepared to accept any form of record, including computer records, which incorporate the specified information. Existing VAT records, or any other record system which contains the information, or which can be adapted to include the information, would be acceptable.

What is meant by “a description sufficient, where reasonably possible, to identify an article”?

This issue was considered at length by the Select Committee in the House of Commons who concluded that a description should include, where appropriate: -

- (i) the number of articles
- (ii) the type of material from which each article is made
- (iii) the colour of each article
- (iv) the artist's name, brand name or manufacturer's identify if revealed by any symbol or mark on each article
- (v) the serial number of each article
- (vi) any distinguishing mark on or feature of each article
- (vii) any stock number or other information which he uses to distinguish each article from other articles whilst in his possession

Will I have to record every single item I purchase?

The following table details the categories of goods and circumstances when **purchase** records are required: -

Categories of goods which must always be recorded
Electrically or battery powered goods OR any medium on which sound images or other data may be stored or recorded and which is intended for use with any such goods
Categories of goods which must be recorded if, in the reasonable opinion of the dealer at the time of the transaction, are to be sold or offered for sale for more than £10
Vehicle parts Jewellery Watches Photographic equipment Sports equipment Equestrian equipment Boating equipment Musical equipment Tools Bicycles Optical equipment Firearms Gardening equipment
Categories of goods which must be recorded if, in the reasonable opinion of the dealer at the time of the transaction, are to be sold or offered for sale for more than £50
All goods not previously mentioned

We have also included an amendment to allow dealers to record the Council's registered dealer certificate number in lieu of a name and address when purchasing goods from another dealer.

Records are required to be kept for two years.

Do registered dealers have to keep records when buying and selling outside of Kent?

Dealers who have registered premises in the county, or who live and carry out transactions in the county, will have to keep records of all relevant transactions carried out, even where those transactions take place outside of the county.

What is the situation regarding house clearances?

Items, which are to be disposed of as waste, do not need to be recorded. Otherwise records will be required in the circumstances detailed in the table on page 3.

What if I live in Kent but carry out my business primarily in premises occupied by me and situated outside of the county?

You will need to register if you carry out business transactions in Kent, but you will only need to record those relevant transactions which take place within the county.

What if I live outside Kent, have no business premises in the county, but sometimes visit Kent to sell goods?

You will need to register if you carry out business transactions in Kent, but you will only need to record those relevant transactions which take place within the county.

Surely a thief selling stolen property is going to provide a false name and address?

If a dealer is prepared to handle stolen goods he will be faced with the problem presented by the requirement to keep records. It has been said that thieves will provide false names and addresses and this is likely to happen in some cases, but a dealer who has a multitude of false entries, or who has purchased property without entering any details, will raise suspicion and become worthy of further investigation. Although it is not a specific requirement of the legislation, it is recommended that dealers ask for proof of identity in order to protect their own interests. Requesting identification will help to show due diligence.

Surely the introduction of this legislation will mean that thieves will probably sell their stolen goods outside the county making recovery of stolen property and the apprehension of offenders more difficult?

It would be naïve to say that the proposed legislation will not lead to some stolen property being sold outside the county but the police believe, from the intelligence currently available, that many thieves are encouraged by the availability of local outlets for the disposal of stolen property. Targeting rogue dealers who facilitate the local disposal of stolen property might mean that some thieves will travel further afield, but we believe that the removal of these local outlets will act as a major deterrent to many others.

If a customer does not wish to provide their name and address, are there any other acceptable forms of identification?

If the person purchasing the goods (or selling the goods to you) is another registered dealer, it will be sufficient to record his Council registration number instead of his name and address.

The Council originally proposed alternative forms of identification such as a driving licence number, passport number, or national insurance number, but the amendments were not accepted by the Select Committee and will therefore not apply.

It should however, be recognised that for many goods including most antiques, the requirement to record purchasers details will only apply to those goods sold for more than £500. This is already a record keeping requirement for those dealers who are registered for VAT and who are operating on the Margin Scheme.

I have heard that dealers will have to advise customers that it is a criminal offence to give a false name and address, is this correct?

The legislation does create a criminal offence if a person selling goods which the dealer is required to record (or a purchaser when the item is above the relevant amount) gives to the dealer a false name and address. However, the original requirement for the dealer to issue a warning to that effect is no longer applicable.

Will I have to register with both the Kent County Council and Medway Council?

No - only a single registration will be required.

What if I fail to register or to keep the required records?

It is a criminal offence subject to a maximum fine of £1,000.

Do I have to keep the records with me when trading at venues in Kent?

Yes - a registered person must produce his records to a police constable or authorised officer on demand, and unless he has a reasonable excuse for not producing the records, he will be liable to prosecution. Kent based dealers without business premises, or those trading away from their registered business premises, will not be required to immediately produce computerised records, but will be expected to make the records available for examination within a period of seven days.

If I buy or sell goods at an auction, how can I record the details of the vendor or purchaser?

It will be sufficient when buying or selling at an auction to record the name and address of the auctioneer.

What is the situation regarding auctioneers?

Auctioneers are caught within the definition of a 'dealer in second hand goods' and will therefore need to register and keep records.

What are the requirements relating to occasional sales?

- there is a requirement for both the owner/ occupier of the premises on which the sale is to take place, and also for the person operating the sale to give 21 days written notification to the Council.
- written notification must include the proposed date and time of commencement, expected duration and location of the sale; the nature of the goods to be sold (requirements apply to both new and second hand goods); an estimate of the number of persons expected to attend; the name and address of the holder or promoter of the sale, and the contact details of a person appointed to deal with complaints about the sales. A suggested form which details all the information and which can be used to notify the Council is available to print from our website, alternatively a hard copy will be sent on request.
- operators of the sale must display their name and contact details at the sale and must include the information on promotional material.
- operators of occasional sales are required to keep a register of all sellers and their vehicle registration numbers
- the requirements also apply to "squat trading".

What is the definition of an occasional sale?

"Occasional sale" means an event at which goods are exposed for supply or offered to the public by one or more sellers or suppliers in the course of a trade or business, but does not include: -

- a market established by statute
- an event held wholly or mainly for the sale by auction of farm livestock or farm machinery, equipment or plant, or the contents of one or more buildings or other items associated with the buildings
- an auction conducted by a registered dealer on registered premises (i.e. by an auctioneer on his premises)

- an event held wholly or mainly for the sale of books
- an event promoted or conducted by a charity registered under section 3 of the Charities Act 1993
- an established regular market or trade fair which consists of, and only of, persons selling in the course of a trade or business and comprising of not less than five stalls
- an event excluded by resolution of the Council

It follows that occasional sales will include events such as 'one day sales', boot fairs, computer fairs, antique fairs and other trade fairs.

Dealers from outside the county might be deterred from attending trade events in Kent because of the local requirements.

We do not believe that this will be the case. Registration is free of charge, and dealers from outside Kent will only need to keep records of those relevant transactions which take place in the county. Initially, officers will attend larger events and will be able to offer immediate registration, enabling unregistered dealers to continue to trade at the event.

Why should regular markets be exempt from the occasional sales requirements?

There is an exemption from the occasional sales provisions for regular private markets which consist entirely of traders. The reasons for this are quite simple. If the market is in the same location and is a regular event (weekly or even monthly) then there is no reason for any advance notification. The records of sellers attending occasional sales are required to provide intelligence of regular sellers who are likely to be dealers as opposed to private individuals. If the market is one which consists entirely of dealers then those selling second hand goods should already be registered, and a visual inspection by an officer to see if the registration certificates are displayed will confirm this. In order to qualify as a regular event it must be held on the same day each week; on the same day each month; in the same weekend each month; or on the same day in every first, second, third or fourth week in every month. The event must also have taken place in at least 7 out of the 10 weeks or, as the case may be, months preceding the date of the event in question.

It should also be noted that boot fairs operated by registered charities are exempt from the requirements relating to occasional sales, but those second hand dealers attending such events will still need to be registered and to display their registration certificates.

What is "squat trading"?

Squat trading is the terminology used to describe those traders who illegally enter vacant 'high street' premises and conduct auction type sales of substandard goods. The sales, which usually take place around the Christmas period, only last for a limited period after which the traders disappear without trace. The same provisions relating to occasional sales will apply to squat trading.

What records are required to be kept by organisers of occasional sales?

Organisers will have to keep a record of the following: -

- the name and address of each seller and supplier
- whether the seller is selling new goods, second hand goods, or both
- the registration of the vehicle being used by the seller to transport goods to the sale, or alternatively if the seller is a registered dealer the number appearing on his certificate of registration

The Councils are prepared to assist organisers of occasional sales by providing, without charge, pre-printed forms which can be handed out to sellers for completion, reducing the administrative burden on the event organiser. Records are to be kept for two years.

Who will be responsible for enforcement?

Enforcement will be achieved using a partnership approach supporting the principles behind the Crime and Disorder Act 1998.

Trading standards will carry the burden of the administration, and council officials will try to ensure that all dealers are registered and keep appropriate records.

Computer software has been developed which will identify 'regular advertisers' of second hand goods using the classified sections of local newspapers and similar publications. Many of these regular advertisers will undoubtedly be traders who are advertising in the guise of private individuals and this being the case they will be required to register if operating in Kent.

The police will use their intelligence systems to identify and target those dealers suspected of handling stolen property, and will carry out the detailed inspection and analysis of property and records.

What powers will authorised council officers and police officers have?

Authorised officers of the council and police officers will have the power of entry to inspect and to take copies of records on registered premises, but will require a Magistrate's Warrant to enter registered premises which are also used as a private dwelling house. Neither a police officer or an authorised officer of the council will have the right to enter unregistered premises even if there is reasonable cause to believe they are being used for dealing in second hand goods, unless a Magistrate's Warrant has first been issued giving them the power to enter. The right to enter premises with or without a warrant only applies to premises in the county. There is no right of entry, with or without a magistrate's warrant, to any premises used solely as a private dwelling house.

Both the dealer in second hand goods and the premises used by a business for buying and selling second hand goods are required to be registered. If a premises is only the private address of a dealer who does not have a fixed trade premises, and is supplied simply as a contact address for that person, there is no requirement to register the premises and no right of entry by authorised officers or the police. If dealers buy and sell goods from their homes then the premises will become a business premises requiring registration.

It should be noted that Trading Standards Officers have the statutory power to enter business premises under other consumer protection laws such as the Trade Descriptions Act.

Will the records I am required to keep mean that I will have to register under the Data Protection Act?

Personal data held in manual records in date sequence would fall outside the requirement to register with the Office of the Data Protection Commissioner. Such records would not form part of a 'relevant filing system' for the purposes of the Data Protection Act 1998 unless the records are structured, either by reference to individuals or by reference to criteria relating to individuals, in such a way that specific information relating to a particular individual is readily accessible. (e.g. in alphabetical order).

If records are computerised, or are 'structured' manual records, registration with the Office of the Data Protection Commissioner is required.

Even if a dealer is not required to register, the general principles of unauthorised disclosure of information under the Data Protection Act still apply. If, for example, a dealer wanted to provide names and addresses to a mail order company he would need the consent of the individuals concerned before releasing the information.

Will the legislation apply to transactions carried out over the Internet?

The provisions make no specific mention of e-commerce but there is no reason why the general principles laid down in the requirements could not be applied to transactions carried out on-line. If the dealer operates from premises in Kent then it is likely that the transactions will take place in Kent and therefore the dealer would need to register with the Council and keep records. Since the Councils are prepared to accept computerised records we would not anticipate any difficulties in compliance.