

Amended 10/61
28/64.
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61/73

AUCTIONEERS ORDINANCE 1935-1955.*

An Ordinance to regulate Sales by Auction.

Short title.
Short title
amended:
N. 17, 1938,
s. 4.

1. This Ordinance may be cited as the *Auctioneers Ordinance* 1935-1955.*

Repeal.

2.—(1.) “The Auctioneers Act, 1862” of the State of South Australia (No. 9 of 1862), in its application to the Territory, is repealed.

(2.) Notwithstanding the repeal of the Act referred to in the last preceding sub-section, any auctioneer’s or clerk’s licence granted under that Act and in force at the commencement of this Ordinance shall remain in force for the period for which it was granted, and shall be of the same force and effect as if this Ordinance had been in force when it was granted and it had been granted under this Ordinance.

Definitions.
Amended by
N. 10, 1955,
s. 3.

3. In this Ordinance, unless the contrary intention appears—

“auctioneer” means a person who sells by auction or offers for sale by auction;

“auctioneer’s licence” means an auctioneer’s licence granted under this Ordinance;

“clerk’s licence” means a clerk’s licence granted under this Ordinance;

“licence” means a licence granted and in force under this Ordinance and includes both an auctioneer’s licence and a clerk’s licence;

“sale by auction” has a corresponding meaning to “sell by auction”;

* The *Auctioneers Ordinance* 1935-1955 comprises the *Auctioneers Ordinance* 1935 as amended. Particulars of the Principal Ordinance and of the amending Ordinance are set out in the following table:—

Ordinance.	Number and Year.	Date notified in Commonwealth Gazette.	Date of Commencement.
<i>Auctioneers Ordinance</i> 1935 ..	No. 20, 1935	14th November, 1935	14th November, 1935
		Date of Assent by Administrator.	
<i>Auctioneers Ordinance</i> 1955 ..	No. 10, 1955	8th June, 1955 ..	1st January, 1957

Note.—Sections 7 and 8 of the *Auctioneers Ordinance* 1955 read as follow:—

“7. An auctioneer’s licence issued under the Principal Ordinance and in force on the date when this Ordinance comes into operation shall continue in force for twelve months from the date when it was granted but in all other respects shall be subject to the provisions of the Principal Ordinance, as amended by this Ordinance, and shall be of the same effect as, and be treated as though it were, an auctioneer’s licence granted under the Principal Ordinance, as amended by this Ordinance.

“8. A clerk’s licence issued under the Principal Ordinance ceases to have effect from and including the date when this Ordinance comes into operation.”

“sell by auction” means sell any property by outcry, knocking down of hammer, candle, lot, parcel, instrument, machine, or any other mode of sale whereby the highest or the lowest bidder is the purchaser, or whereby the first person who claims the property submitted for sale at a certain price named by the person acting as auctioneer is the purchaser, or whereby there is a competition for the purchase of any property in any way commonly known and understood to be by way of auction.

3A.—(1.) The Administrator may, in relation to a particular matter or class of matters, or to a particular place, by writing under his hand, delegate to any person all or any of his powers and functions under this Ordinance (except this power of delegation, the power to refuse to grant a licence or the renewal of a licence, the power to cancel or suspend a licence and the power to make regulations) so that the delegated powers may be exercised by the delegate with respect to the matter or class of matters or to the place, specified in the instrument of delegation.

Delegation.
Inserted by
No. 10, 1955,
s. 4.

(2.) A delegation under this section is revocable at will and does not prevent the exercise of a power or the performance of a function by the Administrator.

4. Subject to this Ordinance, a person shall not—

- (a) carry on business as an auctioneer unless he holds an auctioneer's licence; or
- (b) sell or offer to sell by auction unless he holds—
 - (i) an auctioneer's licence; or
 - (ii) a clerk's licence,

Auctioneer
must hold
licence.
Substituted by
No. 10, 1955,
s. 5.

which is in force under this Ordinance.

Penalty: Two hundred pounds.

5.—(1.) A person who is of or over the age of twenty-one years may, in the prescribed form, apply to the Administrator for an auctioneer's licence.

Application for
auctioneer's
licence.
Substituted by
No. 10, 1955,
s. 5.

(2.) An application, as well as containing such other matters as may be prescribed, shall set forth the full christian names, the surname and the business address of the applicant.

(3.) An application for an auctioneer's licence shall be accompanied by the prescribed fee which, if the application is refused, shall be refunded to the applicant.

Renewal of
auctioneer's
licence.

Substituted by
No. 10, 1955,
s. 5.

6.—(1.) A person who holds an auctioneer's licence, may, at any time within fourteen days before the date upon which the licence will expire, apply in the prescribed form to the Administrator for a renewal of that licence.

(2.) An application for the renewal of an auctioneer's licence shall be accompanied by the prescribed fee which, if the application is refused, shall be refunded to the applicant.

Administrator
may grant
or refuse
auctioneer's
licence, &c.

Substituted by
No. 10, 1955,
s. 5.

7.—(1.) Subject to this section, the Administrator may grant or refuse to grant an auctioneer's licence or a renewal of an auctioneer's licence.

(2.) The Administrator shall not grant an auctioneer's licence or a renewal of an auctioneer's licence unless he is satisfied—

(a) that the applicant for the licence or renewal—

- (i) is of or over the age of twenty-one years;
- (ii) is a person of good character; and
- (iii) is a fit and proper person to hold an auctioneer's licence; and

(b) that the prescribed fee has been paid.

(3.) Where the Administrator refuses to grant an auctioneer's licence or a renewal of an auctioneer's licence, he shall serve notice by post, addressed to the applicant at his business address, notifying him that his application has been refused.

Appeal to
local court
where
Administrator
refuses or
fails to grant
auctioneer's
licence.

Substituted by
No. 10, 1955,
s. 5.

8.—(1.) Where the Administrator—

- (a) refuses to grant an auctioneer's licence or a renewal of an auctioneer's licence; or
- (b) for a period of twenty-eight days, from and including the date when the applicant applies for the grant or for the renewal of an auctioneer's licence, fails—

(i) to grant the licence or a renewal of the licence; or

(ii) to notify the applicant that his application has been refused,

the applicant may appeal to the local court of full jurisdiction situate nearest to the place where the applicant carries on business.

(2.) An appeal under this section shall be instituted within twenty-eight days from and including—

- (a) the date upon which the applicant receives notice that the Administrator has refused to grant him an auctioneer's licence or a renewal of an auctioneer's licence; or

(b) the expiration of the period of twenty-eight days during which the Administrator has failed—

- (i) to grant to the applicant an auctioneer's licence or a renewal of his licence; or
- (ii) to notify the applicant that his application has been refused.

8A. The local court of full jurisdiction situate nearest to the place of business of a person by whom an appeal is made under the last preceding section—

Jurisdiction and powers of local court on appeal.
Inserted by No. 10, 1955, s. 5.

- (a) has jurisdiction to hear and determine the appeal;
- (b) upon hearing the appeal—
 - (i) may affirm the Administrator's refusal to grant the licence; or
 - (ii) if it is satisfied that the appellant is a fit and proper person to hold an auctioneer's licence, may deliver to the appellant a certificate to that effect under the seal of the Court; and
- (c) may make such order as to costs as it thinks fit.

8B. Upon presentation of a certificate sealed by a court pursuant to the last preceding section and upon payment of the prescribed fee, the Administrator shall—

Administrator to grant licence on certificate by local court.
Inserted by No. 10, 1955, s. 5.

- (a) grant an auctioneer's licence; or
- (b) grant a renewal of an auctioneer's licence,

as the case may be, to the person named and described in that certificate.

8C.—(1.) Subject to this section, the fee for the grant or renewal of an auctioneer's licence shall be the sum of Ten pounds.

Fee for auctioneer's licence.
Inserted by No. 10, 1955, s. 5.

(2.) Where an auctioneer's licence is granted between the first day of January and the first day of June in any year, the fee shall be the sum of Five pounds.

8D. An auctioneer's licence, unless sooner cancelled or suspended, shall be and continue in force—

Period of auctioneer's licence.
Inserted by No. 10, 1955, s. 5.

- (a) until the thirtieth day of June next ensuing after the date upon which the licence is granted; or
- (b) where the licence is granted or renewed during the month of June in any year, until the thirtieth day of June in the following year.

Application for clerk's licence.
Inserted by No. 10, 1955, s. 5.

8E. A person who holds an auctioneer's licence may, in the prescribed form, apply to the Administrator for the grant of a clerk's licence to a person employed by the holder of the auctioneer's licence.

Administrator may grant or refuse clerk's licence.
Inserted by No. 10, 1955, s. 5.

8F.—(1.) Subject to this section, the Administrator may grant or refuse to grant a clerk's licence to a person employed by the holder of an auctioneer's licence.

(2.) The Administrator shall not grant a clerk's licence unless he is satisfied—

(a) that the person in respect of whom the application is made—

- (i)** is of or over the age of twenty-one years;
- (ii)** is a person of good character;
- (iii)** is a fit and proper person to conduct sales by auction; and
- (iv)** is employed by the holder of an auctioneer's licence; and

(b) that the prescribed fee has been paid.

Fee for clerk's licence.
Inserted by No. 10, 1955, s. 5.

8G.—(1.) Subject to this section, the fee for a clerk's licence shall be the sum of Five pounds.

(2.) Where a clerk's licence is granted between the first day of January and the first day of June in any year, the fee shall be the sum of Two pounds ten shillings.

Period of clerk's licence.
Inserted by No. 10, 1955, s. 5.

8H. A clerk's licence, unless sooner cancelled or suspended, shall be and continue in force—

- (a)** until the thirtieth day of June next ensuing after the day upon which the licence is granted or, where the certificate is granted during the month of June in any year, until the thirtieth day of June in the following year; or
- (b)** until the auctioneer's licence of the person, by whom the holder of the clerk's licence is employed, is cancelled or suspended,

whichever first occurs.

Administrator may cancel or suspend licences.
Inserted by No. 10, 1955, s. 5.

8J. The Administrator may cancel or suspend, for such period as he thinks fit, the licence of a person who—

- (a)** has been convicted of an offence against this Ordinance;
- (b)** in his opinion, is a person of bad character; or
- (c)** in his opinion, is not a fit and proper person to conduct sales by auction.

8k. Where a person who holds an auctioneer's licence ceases to carry on business as an auctioneer or dies, or where his auctioneer's licence has been cancelled, the Administrator may, on application by the person to whom the auctioneer's licence was granted or his personal representative and upon delivery of the licence, refund to that person or his personal representative an amount calculated at the rate of one-quarter of the fee for the auctioneer's licence for each complete period of three months of the balance of the term of the licence which was unexpired at the time when the person, to whom the licence was granted, ceased to carry on business or died.

Refund of portion of fee for auctioneer's licence in certain circumstances. Inserted by No. 10, 1955, s. 5.

9. A person adjudicated a bankrupt shall not, unless the adjudication is annulled, be entitled to receive a licence or renewal of a licence unless and until an order of discharge is issued.

Non-eligibility of bankrupts.

10. A person—

- (a) employed to sell by auction any of the lands of the Crown, or any estate or interest therein, or any goods, chattels or other property of the Crown; or
- (b) expressly authorized by any law to make any sale by auction,

Exemption of Government officers, &c.

shall, so far as the sales which he may, as mentioned in this section, be employed or authorized to make, be exempted from the operation of this Ordinance.

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Section 11 repealed by No. 10, 1955, s. 6.

12. The holder of a licence shall, within three days after the expiration of his licence, or, if his licence is cancelled or suspended, within three days after the date of the cancellation or suspension of his licence, deliver the licence to the Administrator.

Return of expired or cancelled or suspended licence.

Penalty: Twenty pounds.

13. Any auctioneer who knowingly misrepresents or causes or permits to be misrepresented the composition, structure, character or quality or the origin or manufacture of any property offered by him for sale by auction shall be guilty of an offence.

Misrepresentation as to quality, &c., of property.

Penalty: Fifty pounds.

Record to
be kept.

14.—(1.) Every auctioneer shall forthwith record, in a book to be kept for the purpose, full particulars of all property sold by him at auction, and, in respect of any property so sold, shall preserve the record for at least twelve months after the date of the sale.

(2.) The book shall be open to inspection at all reasonable times by the Superintendent of Police or any member of the police force thereto authorized in writing by the Superintendent of Police, and every auctioneer, upon being required so to do, shall produce, for inspection by the Superintendent of Police or other member of the police force, the book kept by him.

(3.) Any person who contravenes any provision of this section shall be guilty of an offence.

Penalty: Fifty pounds.

Bidding by
seller.

15. Where a sale by auction is not notified in the conditions of sale to be subject to a right to bid on behalf of the seller, the seller shall not himself bid or employ any person to bid at the sale and the auctioneer shall not knowingly take any bid from the seller or any such person.

Penalty: Fifty pounds.

Auction after
sunset or before
sunrise to be
prohibited.

16. An auctioneer shall not, after sunset or before sunrise on any day throughout the year, except in such cases as the Administrator specially approves, sell or offer for sale by auction any property.

Penalty: Fifty pounds.

Persons to
whom
Ordinance does
not apply.

17. Notwithstanding anything contained in this Ordinance—

- (a) any officer of any court having jurisdiction in the Territory may, without holding a licence, sell by auction any property taken by him in execution by virtue of any process issued from the court;
- (b) any person thereto authorized by the Administrator may, without holding a licence, sell by auction any leases of lands belonging to the Commonwealth or any property belonging to the Commonwealth or to intestate estates; and
- (c) any person who is authorized by any law for the time being in force to sell by auction without a licence may do so.

18. Where any Court imposes any penalty for any offence against this Ordinance it may, where the person convicted holds a licence, at the same time cancel or suspend for such period as it thinks fit the licence of the person convicted.

Power of courts to cancel or suspend licences.

19. The Administrator may make regulations, not inconsistent with this Ordinance, prescribing all matters which are required or permitted to be prescribed, or which are necessary or convenient to be prescribed for carrying out or giving effect to this Ordinance.

Regulations.
