

## Draft

# Act on trade in second-hand goods and pawnbroking activities<sup>1</sup>

## Chapter 1 *Scope of the Act*

**Section 1.** *Paragraph 1.* This Act shall apply to any person established in Denmark who, for commercial purposes, operates the following activities:—

- 1) the trade in or purchase of second-hand goods which does not take place in the ordinary course of activities involving trade in new goods or of craft or industrial activities
- 2) the sale of second-hand goods through online auctions;
- 3) the lending of money against pledges or the negotiation of such loans (pawnbroking activities); or
- 4) the purchase of goods with a right of repurchase for the seller.

*Paragraph 2.* The Act shall not apply to:

- 1) trade in or purchase of motor vehicles subject to registration;
- 2) the granting and negotiation of loans against pledges on securities or motor vehicles subject to registration or for lending activities covered by the Financial Business Act; and
- 3) the sale of second-hand goods by charitable or non-profit associations, etc. and religious communities approved under the Assessment Act.

*Paragraph 3.* The Minister for Justice may decide that the rules in Chapter 3 shall apply, in whole or in part, to self-employment activities in connection with the trade in or purchase of second-hand goods other than those covered by the Act pursuant to paragraphs 1 and 2 and to the activities of auctioneers relating to the sale of second-hand goods.

*Paragraph 4.* The Minister for Justice may, with regard to the exercise of activities referred to in paragraph 1(3) and (4), lay down detailed rules on permissible contractual terms, etc., including with regard to the amount of

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<sup>1</sup> A draft of the Act has been notified in accordance with Directive (EU) 2015/1535 of the European Parliament and of the Council laying down a procedure for the provision of information in the field of technical regulations and of rules on Information Society services (codification).

interest on sums lent which may be demanded, irrespective of whether the company is established in Denmark.

## Chapter 2

### *Licences*

**Section 2.** *Paragraph 1.* Persons operating activities covered by the Act must have a licence.

*Paragraph 2.* Licences are issued by the police.

*Paragraph 3.* DKK 300 shall be paid for the issuance of licences pursuant to the Act.

*Paragraph 4.* The Minister for Justice shall lay down rules on proceedings when issuing licences pursuant to the Act.

**Section 3.** *Paragraph 1.* Licences may be granted to persons who:

- 1) have a business address in Denmark,
- 2) are not minors/incapacitated persons, without prejudice to Section 43(1) of the Guardianship Act, under guardianship pursuant to Section 5 of the Guardianship Act or under curatorship under Section 7 of the Guardianship Act; and
- 3) are not subject to restructuring proceedings or bankrupt.

*Paragraph 2.* Licences may be refused to a person who has been convicted of a criminal offence, if the offence gives rise to an imminent risk of misuse of the licence, cf. Section 78(2) of the Criminal Code, or there are other reasons to believe, on the basis of the information available on the personal circumstances of the person concerned, that the person will not properly operate the activities.

*Paragraph 3.* Licences may also be refused to those who have significant overdue debts to the public sector, meaning debts of the order of DKK 50 000 or more.

**Section 4.** *Paragraph 1.* Licences may be issued to public limited companies or private limited companies registered with the Danish Business Authority. The granting of licences shall be subject to the condition that the members of the company's management and board of directors meet the conditions laid down in Section 3(1)(2) and (3). Licences may also be granted, under the same conditions, to other companies, associations, foundations and the like established in Denmark. Licences may be granted to foreign companies, etc. of the type referred to in the first and third sentences if this is provided for in an international agreement or by provisions laid down by the Minister for Justice.

*Paragraph 2.* If there are new members in management or the board of directors, the company, etc., must notify it the police within 14 days. The police then decides whether the licence can be maintained.

*Paragraph 3.* Licences may be refused if there is information available to a member of the company's management or board of directors which may justify refusing licences under Section 3(2) and (3).

**Section 5.** *Paragraph 1.* A licence is terminated when the licence holder dies or if the licence holder ceases to fulfil one or more of the conditions laid down in Section 3(1) or Section 4(1), cf. Section 3(1). The same shall apply if notification under Section 4(2) is not made in a timely manner.

*Paragraph 2.* Notwithstanding paragraph 1, the estate of a deceased licence holder, a spouse in undivided estate, a licence holder subject to restructuring proceedings, the bankruptcy estate or a guardian of a licence holder who is under guardianship pursuant to Sections 5, 6 or 7 of the Guardianship Act may continue the operations without a licence with a view to liquidation, sale or the like of the company if the continuation of the operations is notified to the police within 4 weeks of the death, commencement of restructuring, decree of bankruptcy or implementation of the guardianship. This shall be possible for 1 year after the event giving rise to the termination of the licence. In exceptional cases, the police may extend the deadline.

*Paragraph 3.* The Minister of Justice may grant a derogation from the provision in paragraph 1.

**Section 6.** *Paragraph 1.* A licence may be revoked by the police if the licence holder is guilty of serious or repeated failure to comply with the obligations incumbent on the licence holder under this Act or the regulations fixed by the Act and there is reason to believe, on the basis of the facts established, that the person will not properly operate the activities in future. The same shall apply if the conditions laid down in Section 3(2) or Section 4(3), cf. Section 3(2), for refusing the licence in question are met.

*Paragraph 2.* A licence may also be revoked by the police if the licence holder has overdue debts to the public sector of DKK 100 000 or more.

*Paragraph 3.* A revocation under paragraphs 1 and 2 may take place for a period of 1 to 5 years or until further notice.

*Paragraph 4.* The decision shall contain information on the possibility to apply for judicial review under Section 7 and the deadline for doing so.

**Section 7.** *Paragraph 1.* A decision taken under Section 6(1) may be referred to the courts by the addressee of the decision. A request to this ef-

fect must be made to the police within 4 weeks of the decision being notified to the person concerned. The Prosecution Service refers the case to the court in accordance with the rules laid down in Chapter 80 of the Administration of Justice Act, without the involvement of jurors.

*Paragraph 2.* A request for referring the decision to the court pursuant to paragraph 1 shall have suspensory effect, but the court may order that the person concerned may not, in the course of proceedings, exercise activities under the licence. If the decision is upheld by a judgment, the latter may provide that an appeal does not have suspensory effect.

*Paragraph 3.* A decision taken under Section 6(2) may be referred to the courts by the addressee of the decision. A request to this effect must be made to the police within 4 weeks of the decision being notified to the person concerned. The Prosecution Service brings proceedings against the person concerned in the form of civil procedure.

*Paragraph 4.* A request for referring the decision to the court pursuant to paragraph 3 shall not have suspensory effect, but the court may order that the person concerned may, in the course of proceedings, have the possibility to exercise activities under the licence. In the event of an appeal against a judgment which does not uphold a revocation, the court which delivered the judgment or the court seised may order that activities under the licence may not be operated in the course of appeal proceedings.

**Section 8.** *Paragraph 1.* If a licence is terminated in accordance with Section 5, revoked pursuant to Section 6 or withdrawn in accordance with Section 79 of the Criminal Code, it shall be handed over to the police without delay.

*Paragraph 2.* If the licence holder ceases to operate activities covered by the Act, the licence shall be handed over to the police.

### Chapter 3 *Supervision etc.*

**Section 9.** *Paragraph 1.* Before commencing activities covered by the Act, the licence holder must notify the police of the location of accounting documents and any business premises. The licence holder shall also notify any subsequent changes thereto and any subsequent change to the business address.

*Paragraph 2.* Upon request, the licence holder must inform the police of the location of the company's stock of goods.

**Section 10.** The police shall at any time, without a court order and upon providing proper identification, have access to the licence holder's accounting documents, potential business premise and stock of goods in order to exercise the necessary supervision of the activities.

**Section 11.** *Paragraph 1.* If goods are offered to the licence holder for purchase or as mortgage in circumstances which may give rise to a suspicion of illicit provenance, the licence holder must immediately inform the police thereof and retain the goods until the arrival of the police. The same shall apply if, after the conclusion of the contract, the licence holder obtains information which may give rise to a suspicion of illicit provenance.

*Paragraph 2.* The Minister for Justice may lay down more detailed rules on the examination by the licence holder of goods offered for purchase or as mortgage.

#### Chapter 4 *Penalties*

**Section 12.** *Paragraph 1.* Infringements of Sections 2(1), 4(2), first sentence, 8, 9 and 11 shall be punishable by a fine.

*Paragraph 2.* Regulations issued pursuant to the Act may provide for fines for infringements of these provisions.

*Paragraph 3.* Companies, etc., (legal persons) may be held criminally liable in accordance with the regulations set out in Chapter 5 of the Penal Code.

#### Chapter 5 *Other provisions*

**Section 13.** *Paragraph 1.* The Minister for Justice may lay down more detailed rules on the exercise of activities pursuant to the Act.

*Paragraph 2.* The Minister for Justice may lay down rules on which authority within the police carries out police tasks under this Act.

#### Chapter 6 *Entry into force of Act*

**Section 14.** *Paragraph 1.* The Act shall enter into force on 1 January 2025.

*Paragraph 2.* The Act on trade in second-hand goods and pawnbroking activities, cf. Consolidation Act No 1042 of 4 September 2015, is hereby repealed.

Chapter 7  
*Territorial validity*

**Section 15.** The Act shall not apply to the Faroe Islands and Greenland, but may enter into force, in whole or in part, for Greenland by Royal Decree, subject to the changes required by Greenlandic circumstances.

*Comments on the draft Act*

*General comments*

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## **1. Introduction**

The purpose of the draft Act is, on the basis of the recommendations of an expert committee, to modernise the current Act on trade in second-hand goods and pawnbroking activities ('the Antique Shop Act'), which dates from 1966. It will help to ensure the control of the trade in second-hand goods and the resale of stolen, falsified or illegally exported goods.

The draft Act contains the following main elements:

- Extension and clarification of the scope of the Act on a number of points, including in relation to online trade, online auctions and private individuals.
- Exemption of certain trades and mortgages from the scope of the Act.
- Conditions for obtaining and maintaining licences in accordance with the Act, including for legal persons.
- An obligation to inform the police of the location of the company's accounting documents and any business premises.
- An examination obligation for the licence holder in relation to goods offered for purchase or as mortgage and an obligation to report to the police.
- Recourse to judicial review of decisions under the Act.
- Rules on the day-to-day operation of activities, such as requiring customers' identification.
- Rules on police supervision of activities covered by the Act.
- Rules on penalties for infringements of relevant parts of the Act.

## **2. Background of the draft Act**

On 2 May 2017, the Minister of Justice at the time established the Committee on the revision of the Auctioneer Act and the Act on trade in second-hand goods and pawnbroking activities.

The Committee has been composed of a wide range of stakeholders from professional organisations, relevant authorities, the judiciary and the legal profession.

The Committee has been tasked with carrying out a comprehensive review of the Auctioneer Act and the Act on trade in second-hand goods, as well

as the administrative regulations issued on the basis thereof, and, where appropriate, to draw up proposals for a modernised legislation in this area.

The Committee has had to consider, among other things, the need to amend the existing rules in order to adapt them to social and technological developments, including with regard to the use of the Internet. In this context, the Committee has had to consider how best to take account of the interests involved, including the need for effective control of the trade in second-hand goods, the interests of economic operators and the interests of consumers.

On 17 March 2022, the Committee issued Report No 1580/2022 on the revision of the Auctioneer Act and the Act on trade in second-hand goods and pawnbroking activities ('Report No 1580/2022') containing the Committee's draft of a new and modernised Act on trade in second-hand goods and pawnbroking activities.

The draft Act corresponds, with a few amendments, to the Committee's draft Act.

### **3. Main points of the draft Act**

#### **3.1. Scope of the Antique Shop Act**

##### **3.1.1. Existing law**

The Antique Shop Act lays down rules on independent commercial activities in connection with the trade in or purchase of second-hand goods and the lending of money against pledges and, within its scope, replaces the provisions of the Commercial Act. Parts of the rules of the Act shall apply to the trade in or the purchase of certain specified second-hand goods, irrespective of whether the activities are otherwise covered by the Act. The Antique Shop Act, which dates from 1966, is essentially the same as the original Act of 1921, so that the introduction in 1966 of a new Act in this area essentially brought about an update and simplification of the Act in force at that time.

Chapter 1 (Section 1) of the Antique Shop Act defines the scope of the Act.

According to Section 1(1) of the Act, it applies to independent commercial activities through:

- 1) the trade in or purchase of second-hand goods which do not take place in the ordinary course of activities involving trade in new goods or of craft or industrial activities; and

- 2) the lending of money against pledges, including mortgages on lottery tickets and the negotiation of such loans (pawnbroking activities).

It follows from Section 1(2) of the Act that the Act does not, however, apply in a number of listed cases, cf. point 3.1.1.4 below.

Section 1(3) of the Act states that, to the extent that activities within the meaning of Section 1(1) or (2) are covered by the Act, these activities are not subject to the rules laid down in the Commercial Act.

Pursuant to Section 1(4) of the Act, the Minister for Justice may decide that the rules in Chapter 3 of the Act on supervision, etc. shall apply, in whole or in part, to independent commercial in connection with the trade in or purchase of second-hand goods other than those covered by the Act pursuant to paragraphs 1 and 2 of the Act and to the activities of auctioneers concerning auction sales of second-hand goods.

Chapter 3 of the Act provides, *inter alia*, a legal basis for the police to inspect companies' business premises, stocks of goods and business records (Section 13). In addition, Section 14 lays down an obligation for the licence holder to notify the police immediately and to retain goods if the licence holder is offered goods for purchase or as mortgage in circumstances which may give rise to a suspicion of illicit provenance.

The comments to the Antique Shop Act, cf. the Folketing Hansard 1964–65, Appendix A, column 1275 et seq. (hereinafter, the 1966 comments to the Antique Shop Act) state that the rationale behind the enabling provision is to allow the extension of its scope to cover other trade in certain types of second-hand goods, which, according to experience, are often the subject of thefts.

The enabling provision has been used by means of Order No 7 of 9 January 1969 on trade in second-hand goods and pawnbroking activities. It follows from Section 2(1) of the Order that the rules in Chapter 3 (on supervision, etc.) of the Act apply to independent commercial activities in connection with the trade in or purchase of second-hand

- 1) bicycles and bicycle parts;
- 2) parts of motor vehicles;
- 3) gold or silver articles, jewellery, watches/clocks, garments, musical instruments, tape recorders, radio or television sets and photography and cinematographic material;

irrespective of whether the activities are otherwise covered by the Act, cf. Section 1(1) and (2) of the Act. In addition, Chapters 2 and 3 (specific rules for trade in second-hand goods) of the Order apply to these activities, cf. points 3.7.1.1 and 3.7.1.2 below.

### 3.1.1.1. Pawnbroking activities

The term ‘pawnbroker’ is traditionally used to refer to an economic operator operating activities of lending money against pledges. Pledges are a pledging form in which the debtor is deprived of the opportunity to be in possession of the pledged good, typically by handing over it to the pledgee (the economic operator).

The 1966 comments to the Antique Shop Act state, *inter alia*, that the rationale behind the rules on pawnbroking activities was, *inter alia*, to prevent the lending and sale of stolen goods and to prevent the abuse and exploitation of customers.

Reference is also made to Report No 1580/2022, page 123 et seq.

### 3.1.1.2. Trade by private individuals on flea markets, etc.

As stated above, the Antique Shop Act applies to independent commercial activities, cf. Section 1(1) of the Act.

In particular, the expression ‘independent commercial activities’ has given rise to problems of definition, and led to divergent practices in police districts, compared to the definition of trade by private individuals on flea markets, etc., which in principle does not require a licence.

The Ministry of Justice stated, through Circular No 11110 of 24 February 1997, upon receiving a number of enquiries and on the basis of a judgment of the Østre Landsret (Eastern High Court) (U 1996.457 Ø), that, in the Ministry’s view, the occasional sale of private individuals’ own second-hand goods on markets (flea markets, etc.) cannot be considered as ‘independent commercial activities’ and that the sale of the said items can therefore take place without a licence.

### 3.1.1.3. Online auctions

The Antique Shop Act makes no distinction according to whether the sale of second-hand goods takes place in a physical store or online.

In practice, however, there are no examples of cases concerning the applicability of the Antique Shop Act to online auction activities.

Reference is also be made to Report No 1580/2022, page 198 et seq.

### 3.1.1.4. Exemptions from the scope of the Act

It follows from Section 1(2) of the Antique Shop Act that the Act does not apply to:

- 1) trade in or purchase of motor vehicles subject to registration;
- 2) trade in books and postage stamps;
- 3) acquisitions, in a non-permanent place of business, of goods which are exclusively sold to commercial operators for resale or processing; and
- 4) the granting and negotiation of loans against pledges on securities or motor vehicles subject to registration or for lending activities exercised by banks, savings banks or the Royal Pawn.

As regards the exemption on *motor vehicles subject to registration*, it is clear from the 1966 comments to the Antique Shop Act that these are exempt because the registration system must be assumed to necessarily prevent the marketing of stolen vehicles.

As regards the exemption on *books and postage stamps*, it follows from the 1966 comments to the Antique Shop Act that, in accordance with applicable law, which refers to the original Act of 1921, it is proposed to exempt books and postage stamps.

Books (and postage stamps) were thus exempted, following a number of enquiries from the industry, on the ground that those economic operators were not included in the group of persons sought to be regulated.

As regards the exemption on *acquisitions, in a non-permanent place of business, of goods which are exclusively sold to commercial operators for resale or processing*, it follows from the comments that the reason for the exemption is that it must be assumed that the necessary control can be exercised in relation to the commercial operator who purchases the good(s) and who will typically be covered by the rules of the Antique Shop Act on licences, supervision, etc.

The reason for the exemption on *the granting and negotiation of loans against pledges on securities or motor vehicles subject to registration and the lending activities exercised by banks, savings banks or the Royal Pawn* is not stated in the comments, but the areas are currently subject to extensive regulation in, inter alia, the Capital Markets Act, the Act on the registration of vehicles, the Financial Business Act, etc.

Reference is also made to Report No 1580/2022, page 128 et seq.

### 3.1.2. Considerations of the Committee

The Committee notes that since the Antique Shop Act was introduced, the way in which the trade in second-hand goods takes place has changed significantly. In the past, the trade mainly took place locally through smaller (physical) antique shops, where potential buyers could meet, inspect exhibited goods and negotiate the price, etc. with the trader, and the conclusion of a contract on purchases or sales and mutual exchanges of services thus took place directly in the store. Today, (physical) antique shops naturally continue to exist, but trade takes place, to a large extent, online through various sales platforms, such as 'GulogGratis', 'DBA (Den Blå Avis)', online stores, social media, etc. Moreover, unlike in the past, both economic operators and private individuals market second-hand goods through such sales channels. In addition, second-hand goods are also widely marketed on flea markets and so-called 'shelf markets', where private individuals can rent sales shelves in second-hand shops.

The antique shop legislation does not take account of these technological and social developments. For example, a licence for trading in second-hand goods is subject to the condition that the trade takes place from a permanent place of business with separate business premises. Such a requirement is difficult to fulfil for (some) online traders

A representative of the Committee has raised the question of repealing the existing rules in this area. The reason for this is, in particular, that the many professional traders who comply with the Act's requirements are at a disadvantage in terms of competition, in particular because of the fact that the same goods are traded online to a large extent without the rules being complied with, and the specific requirements that professional traders must meet, including in relation to physical business premises with access from the street and the keeping of books of purchased and sold goods, are very burdensome in the light of the way in which such activities are carried out today.

In the light of this, the Committee has initially considered the need to maintain the antique shop legislation.

The 1966 comments to the Act state that the rationale behind the rules was, in particular, to prevent the sale of stolen goods (possession of stolen goods). In the Committee's view, the fact that the Antique Shop Act has not adapted to developments and thus, *inter alia*, does not take account of

online trade, which represents a large part of the trade in second-hand goods today, could militate in favour of the repeal of the Act. In addition, private individuals are not, in principle, covered by the Antique Shop Act, but are currently widely seen to as trading in second-hand goods on, for example, social media, flea markets, etc. In practice, there are also examples of private trades in second-hand goods to such an extent that the trade is of a professional or commercial nature, without those persons having obtained the necessary licence for that trade.

The repeal of the Act would mean, among other things, that antique shops will not henceforth require licences from the police to operate activities and that the police will not henceforth have supervisory powers. The repeal of the Act is therefore deemed likely to result in the placing on the market of stolen second-hand goods to a greater extent than is the case today. In this respect, it should be noted that, compared to the other Nordic countries and despite a significant decrease in recent years, the number of burglaries in Denmark is high and thus, in practice, stolen goods are marketed on a larger scale.

In the Committee's view, although the number of thefts has decreased in recent years, the need to prevent trade in stolen second-hand goods remains topical, and this considerably militates in favour of maintaining the Act.

Against this background, the Committee considers, after an overall assessment, that the current legislation should not be repealed, but should be reviewed so that the Act is updated and adjusted to take account of social and technological developments, including by extending the scope of the Act, cf. further below.

Reference is also made to Report No 1580/2022, page 129 et seq.

### 3.1.2.1. Online trade, trade by private individuals, etc.

Following the considerations on the repeal of the rules in this area, the Committee has considered more specifically how the current rules could be amended to take account of social and technological developments, including in relation to the current widespread trade in second-hand goods and the trade in second-hand goods carried out by persons without a licence.

As mentioned above, the Antique Shop Act currently fails to take account of the fact that a very significant part of the trade in second-hand goods takes place online.

The Committee considers that there is a risk of trade in stolen goods to at least the same extent as in any other trade in second-hand goods where the trade takes place from a physical store.

Therefore, in view of the fact that the purpose of the Act is, in particular, to prevent the possession of stolen goods, there is no reason to regulate on-line economic operators differently from economic operators trading in second-hand goods from a physical store.

Against this background, the Committee suggests that the Antique Shop Act should cover the online trade in second-hand goods. In the Committee's view, the Act should cover all online trade. This also applies to trade offered through mobile phone applications, etc.

The proposal ensures that persons who commercially trade in second-hand goods will be subject to the same set of rules, regardless of whether the trade takes place from a physical store or online.

As regards the Act's requirements for permanent places of business with separate business premises, cf. Section 4(1) of the Antique Shop Act, reference is made to points 3.4.1 and 3.4.2 below, which state that the Committee proposes to repeal the requirements of the Act in this regard. This makes it possible to trade in second-hand goods online without the economic operator having at the same time a physical store.

The need to prevent the possession of stolen goods also applies as regards the *sale by private individuals* of (stolen) second-hand goods and, in the Committee's view, militates in favour of extending the scope of the Act to a certain extent to private individuals. In the Committee's view, the interests of economic operators operating activities in the trade in second-hand goods, who must comply with a number of requirements as regards this business operation, may also, in the interests of competition, militate in favour of such an extension.

On the other hand, apart from the need for private individuals to be able to sell their own items, it does not seem appropriate in terms of resources, *inter alia*, that *any* trade in second-hand goods, whatever their extent, shall be covered by the Act. Thus, an amendment making the occasional sale by private individuals of their own second-hand (surplus) goods subject to a licence is to go well beyond the policing considerations addressed by the Act.

The Committee therefore proposes that the trade in or purchase of second-hand goods by private individuals should be covered by the Act if the person concerned acquires second-hand goods for commercial purposes with a view to resale, where the trade is not occasional. It is not in itself decisive whether profit is intended as a result of the trade, but whether, on the basis of an overall assessment of the circumstances of the person concerned, second-hand goods are acquired for commercial purposes with a view to resale, even though the trade is not formally described as commercial. For example, private individuals who purchase second-hand goods from their homes online in order to sell them at a higher price will, after an individual assessment, be covered by the Act.

The proposal implies that the organisation or participation of private individuals in a flea market where second-hand goods of their own or of close family members are sold does not in principle constitute trade for commercial purposes when the trade is only occasional. On the other hand, as a general rule, it would constitute trade for commercial purposes if a private individual acquires goods which are resold on flea markets, antique shops, online auctions or other sales platforms online, in which case he must comply with the requirements and obligations of the Act, including licence requirements, etc.

The Committee therefore considers that there is a need to clarify in the Act that any person who operates, for commercial purposes, the activities covered by the Act falls within the scope of the Act, even if such trade is not formally described as commercial. The proposal does not intend to change what is meant by ‘an economic operator’ in the consumer protection legislation, including, *inter alia*, the Marketing Practices Act. The comments to Section 2 of the Marketing Practices Act state that the term ‘economic operator’ is defined broadly and is to be understood as natural or legal persons exercising private and public economic activities which can be treated as such. It also appears that the assessment of whether a natural person may be regarded as exercising economic activities is based on an overall assessment of the circumstances of the person concerned. It is not requirement for the person to be solely an economic operator or have a permanent place of business. Nor is it decisive whether profit is intended to be made through the activities, but the activities must be of a certain size and duration.

The requirement that the activities must be of a certain size and duration means that a person that sells a few times, for example when cleaning up at home or at the home of a family member, second-hand goods by, for ex-

ample, hiring shelf space in a second-hand shop, purchasing or renting a stand on a flea market, or by selling online auctions or other sales platforms online, is exempted from the scope of the Act. Such sales must therefore be regarded as occasional sales. On the other hand, anyone who purchases second-hand goods on a long-term basis or several times a year and resells them on flea markets or via sales platforms online, etc. will be covered by the rules.

Finally, the Committee has considered whether the provision in Section 1(3) of the Antique Shop Act, according to which activities are not subject to the rules of the Commercial Act, to the extent that the activities are covered by the Antique Shop Act, should be maintained. In recent years, however, substantial amendments have been made to the Commercial Act, thereby reducing its scope, resulting in the reference in the Antique Shop Act now being without substance. Against this background, the Committee suggests deleting the provision.

Reference is also made to Report No 1580/2022, page 131 et seq.

### 3.1.2.2. Online auctions

In particular, the purpose of the Antique Shop Act is to prevent the resale of stolen goods (possession of stolen goods), including through effective police control of the trade in second-hand goods.

The Antique Shop Act currently applies only to a relatively limited group of persons.

As we have seen, in view of the fact that the trade in second-hand goods is currently largely taking place online and carried out by persons without a licence, the Committee has proposed to extend the scope of the Act so that the Act also applies to trade in second-hand goods by private individuals for commercial purposes, cf. point 3.1.2 above. At the same time, as mentioned above, the Committee has proposed to repeal the requirements for permanent places of business laid down in the Antique Shop Act, cf. point 3.4.2 below. Taken together, the above proposals would, in the Committee's view, mean that the Act will henceforth apply to a much wider group of persons and thus ensure that persons who (for commercial purposes) trade in second-hand goods will be covered by the same set of rules, irrespective of whether the trade takes place from a physical store or online.

As far as the Committee is aware, the Antique Shop Act does not apply to online auction activities. This is despite the fact that online auctions share more common features with ordinary online trade (in second-hand goods)

than with traditional physical auctions. Thus, the online trade in second-hand goods, like online auction activities, take place without the physical presence of either the buyer or seller via, for example, a computer or mobile phone applications, etc., and thus without a personal meeting, and there is a general right of withdrawal in respect of those purchases. In addition, in the Committee's view, there is a significant interest in ensuring that there is no trade in second-hand goods takes place, whether from a physical store or online, to the same extent as any other trade in second-hand goods.

Against this background, the Committee considers that there is no basis for regulating economic operators operating online auction activities differently from economic operators trading in second-hand goods from a physical store or online. This must be the case irrespective of whether the economic operator operating online auction activities acts as an intermediary between the buyer and the seller, or whether he sells goods received as commission and auctioned for a fee charged to either the seller, the buyer or both (commission sales).

The Committee therefore proposes that the scope of the Antique Shop Act be extended to include online auctions. Such an extension of the scope of the Act would have the effect of imposing certain administrative and financial burdens on economic operators operating online auction sales in future, including requirements for licences from the police to operate activities, proof of trading activities, requiring customers' identification, disclosure of notification to the police if the economic operator is offered goods that may give rise to a suspicion of illicit provenance, etc. However, these are obligations to which other economic operators trading in second-hand goods from physical stores are currently subject and which should apply regardless of the selling platform or method. In the Committee's view, it may thus distort competition with regard to such economic operators if economic operators operating online auction sales are not subject to the same restrictions, notwithstanding the fact that the categories of goods offered are the same.

In order to ensure that the new provision on the scope of the Antique Shop Act is technologically neutral, the Committee proposes that the Act should apply to the 'sale of second-hand goods through online auctions'. Online auctions, in addition to those accessed via computer, will be auctions offered through mobile phone applications, etc. The provision would cover both online auctions, where the trade in second-hand goods is facilitated

between the seller and the buyer, and auctions where second-hand goods received as commission are sold.

The proposal provides, *inter alia*, that economic operators who organise online auctions must have licences from the police to operate the activities (Section 2 of the draft Act) and that the police supervises the activities. The proposal also implies that such operators are subject to a number of obligations, including, for example, the obligation to notify the police if goods offered to them may give rise to a suspicion of illicit provenance.

Reference is also made to Report No 1580/2022, page 194 et seq.

### 3.1.2.3. Online markets

Online markets — i.e. platforms that allow for the conclusion on the platform between a seller and a buyer of contracts concerning, for example, the trade in second-hand goods — are not covered by the scope of the Antique Shop Act.

In this context, the Committee has considered whether, in order to prevent trade in stolen goods, a provision should be introduced in the Antique Shop Act requiring providers of online markets, when purchasing and selling second-hand goods prior to the conclusion of the contract, to ascertain the identity of the seller and the buyer.

In view of the fact that the purpose of the Antique Shop Act is, in particular, to prevent the resale of stolen goods, the Committee considers it appropriate, on the one hand, to introduce regulations that would support the ability of the police to investigate and resolve cases where stolen goods have been sold through online markets. Moreover, it must be assumed that a person, provided that he is aware or suspects that a good has been stolen, would be less inclined to sell or purchase the good if he had to identify himself prior to the conclusion of the contract on online markets.

On the other hand, it would not be possible, in principle, to introduce national rules imposing on foreign online markets, such as Facebook, Amazon, eBay, etc., an obligation to ensure the identity of private buyers and sellers before concluding a contract on trade on the platform, cf. Section 4 of the E-Commerce Act, according to which service providers established in another Member State must comply only with the requirements and rules of the Member State in which they are established. In this context, it is considered inappropriate that national regulations would not be able to impose the same obligation on *all* online markets. In that regard, it should

be noted that the trade in second-hand goods is to a large extent marketed on foreign online markets, including, for example, Facebook.

Following an overall assessment, the Committee considers that there is currently no basis for introducing in the Act a provision obliging providers of online markets established in Denmark to ensure the identity of the buyer and the seller before concluding a contract on trade on the platform. However, the Committee believes that developments in this area should be closely monitored so that appropriate legislative initiatives are launched if there is a need for it at a later stage.

Reference is also made to Report No 1580/2022, page 134 et seq.

#### 3.1.2.4. Pawnbroking activities

The Committee has considered whether pawnbroking activities should continue to be covered by the Antique Shop Act.

As a preliminary point, the Committee notes that the rules on pawnbroking activities were based, in particular, on preventing the lending and sale of stolen goods and preventing the abuse and exploitation of customers.

In the Committee's view, the question whether pawnbroking activities should continue to be regulated by the Antique Shop Act depends, *inter alia*, on the extent and expected uptake of pawnbroking activities in Denmark, as well as on the rules otherwise applicable to such activities, and whether these rules adequately address the relevant protection concerns.

Currently, funding for urgent liquidity needs rarely takes place by pledging with a pawnbroking company. By contrast, such borrowings are typically carried out by financial institutions or with finance companies.

The fact that there are very few pawnbroking companies in Denmark and that the rules therefore only affect a very narrow group of persons could militate in favour of their repeal.

It cannot be ruled out that in future several companies will offer loans with pledges on second-hand goods and such similar loans, especially if the rules on pawnbroking companies, including the rules on the maximum interest that a pawnbroking company may charge, are repealed. In the Committee's view, this militates in favour of maintaining the rules.

In particular, the provisions of the Credit Agreement Act, at least in the case of traditional pawnbroking activities, address consumer protection concerns by requiring a credit assessment and a number of obligations to

provide information on the loan taken up. However, unlike the Antique Shop Act, the Credit Agreement Act does not contain rules on, for example, the licence, supervision, etc. of pawnbrokers, and the concept of ‘sale with a right of repurchase’ is not, in principle, covered by the rules of the Credit Agreement Act. Nor is the interest in preventing the lending and sale of stolen goods addressed by the rules of the Credit Agreement Act. In the Committee’s view, these factors also militate in favour of maintaining the pawnbroker regulatory framework.

In addition, the rules of the Antique Shop Act are deemed to contribute to minimising the risk of marketing through mortgages on stolen goods.

In view of the above, the Committee suggests that the Act should continue to apply to pawnbroking activities, along with the concept of ‘sale with a right of repurchase’, with the proviso that the rules should be modernised.

Reference is also made to Report No 1580/2022, page 137 et seq.

### 3.1.2.5. Second-hand goods

The Antique Shop Act currently only covers the trade in or purchase of *second-hand goods*. With the widespread marketing of stolen *new* goods, the Committee has considered whether the scope of the Act should be extended to include such goods.

However, the Committee considers that an extension of the scope of the Act to include new goods, which would mean, *inter alia*, that virtually all business operators, including grocery store operators, would have to have a licence, be supervised, etc., would be excessive. In fact, it would be a re-introduction, in an extended form, of the rules of the Commercial Act whose scope has been considerably reduced in recent years. The provision on the possession of stolen goods in Section 290(1) of the Criminal Code, supplemented by the general rules of property law on indication, etc., must be sufficient in the case of new goods.

The Committee therefore proposes that, as has been the case hitherto, the Antique Shop Act should only regulate the trade in or the purchase of second-hand goods. ‘Second-hand goods’ mean movable tangible property which has largely retained the functionality of the good in question as new, so that it can be reused as such or after repair. Thus, a good is normally used once it has been put into service. However, a good which has not been put into use may be covered by the term ‘second-hand goods’ if, for example, it was owned by a private individual who has purchased it for final consumption.

The Act also covers, as hitherto, the purchase for commercial purposes of second-hand goods which are not resold but processed in an artisanal or industrial manner. On the other hand, a trading company which markets new goods may, without a licence, trade in second-hand goods, such as second-hand goods taken in exchange for upon the sale of new goods, if that is customary in the sector concerned, provided that the volume of that trade does not go beyond what is customary in the sector concerned, having regard to its marketing of new goods. Similarly, craft or industrial companies may, as hitherto, trade in or purchase second-hand goods without a licence, to the extent that it is customary in the sector concerned to do so in the course of the type of activities concerned.

Reference is also made to Report No 1580/2022, page 138 et seq.

### 3.1.2.6. Exemptions from the scope of the Act

The Committee has considered whether the existing exemptions from the scope of the Act remain relevant today.

With regard to the exemption for motor vehicles subject to registration, the Committee considers that the current registration system, in which motor vehicles (subject to registration) are entered in a public vehicle register, is well suited to preventing and resolving cases relating to the marketing of stolen vehicles. It is therefore proposed that the exemption be maintained.

On the other hand, there is no specific justification for maintaining the exemption on books and postage stamps, which is why it is proposed to be repealed. In that regard, it should be noted that both rare books and rare postage stamps may be expensive and that the goods in question are easily marketable.

In the past, the concern that stolen goods were not marketed by means of acquisitions which do not take place in a permanent place of business, etc. was dealt with under the so-called 'pedlar letter' scheme. Pedlar letters have now been abolished and there is therefore no reason to exclude these acquisitions from the scope of the Act. It is therefore proposed that the exemption be deleted.

With regard to the exemption concerning the granting and negotiation of loans, etc., the Committee notes that the area is currently already subject to extensive regulation in, inter alia, the Capital Markets Act, the Financial Business Act, etc. Against this background, it is proposed that the exemption be maintained.

The Committee considers that the sale of second-hand goods by approved charitable or non-profit associations etc. and by religious communities, provided that the goods are received free of charge, should be explicitly exempted from the scope of the Act. In order to be covered by the provision, such associations and the like as well as religious communities should be approved pursuant to Sections 8A and 12(2) and (3) of the Assessment Act and Order No 1656 of 19 December 2018 on approvals, etc. under Sections 8A(2) and 12(3) of the Assessment Act.

The exemption will then apply to the sale of second-hand goods in second-hand stores or the like operated by, for example, The Danish Cancer Society, Red Cross, etc.

The Committee believes that it would be appropriate to exclude such associations, etc. and religious communities, in view of their charitable or otherwise non-profit purposes, and the fact that their inclusion in the scope of the Act, including licence requirements, would impose financial and administrative burdens on such associations etc. and religious communities. Given that the exemption covers goods received free of charge and will therefore typically involve the sale of donated goods of low value, the Committee considers that such an exemption from the scope of the Act would be justified in relation to the main purpose of the Act, which is to ensure the control of trade in second-hand goods and to prevent the resale of stolen, falsified or illegally exported goods.

Concerning the Royal Pawn referred to in Sections 1(1) and 17 of the Act and Section 23 of the Order, the Committee notes that it was abolished around 1970. References to the Royal Pawn should therefore be deleted from the Act.

### 3.1.2.7. Empowerment to the Minister for Justice and administrative regulations

As stated above, the Minister for Justice now has the possibility by order to decide that commercial activities in trade in second-hand goods which are not covered by the scope of the Antique Shop Act are to be covered by the rules of the Act on supervision, etc.

In the Committee's view, the enabling provision should be maintained, as there may still be a need to regulate economic activities which are not covered by the Act. This applies, for example, to cases where, in a particular industry, several cases of theft or the possession of stolen goods are recorded on a large scale. In that regard, it should be noted that the area in

which goods are typically subject to theft changes over time. The Committee therefore proposes that the enabling provision be maintained.

The Committee therefore proposes that the current list in Section 2(1) of Order No 7 of 9 January 1969 on trade in second-hand goods and pawnbroking activities be modernised and made technologically neutral, so that, for example, electronic devices and their accessories are also covered by Chapter 3 of the Act on supervision, etc. In the Committee's view, the provision in Section 2(1) should also cover all other second-hand goods and batches of second-hand goods which are of a certain value and are easy to sell and which are therefore popular possessed stolen goods. On this background, a catch-all provision is proposed to be inserted in the Order, according to which the rules in Chapter 3 of the Act on supervision, etc. apply to commercial activities in connection with the trade in or purchase of other second-hand goods or batches of second-hand goods at a purchase or sales price exceeding DKK 5 000. The provision thus covers, *inter alia*, second-hand goods taken in exchange for upon the sale of new goods.

The Minister for Justice also has, in addition to the empowerment to make certain economic activities subject to the rules of the Act on supervision, etc., the possibility by order to decide that the activities of auctioneers concerning auction sales of second-hand goods are to be subject to the rules of the Act on supervision, etc.

The Committee has considered the need for further regulation of the activities of auctioneers, including whether any regulation of the area should be effected by law or order.

In this context, the Committee notes that an auctioneer is responsible for the practical auction procedure and that the auctioneer only facilitates the sale of second-hand goods by auction. However, in auctions, as in any other trade in second-hand goods, there is a risk that stolen goods may be marketed.

In the Committee's view, this highest risk is in the case of online auction sales. Online auction companies carry out sales online under auction-like terms and there is no legal requirement for the participation of an appointed auctioneer for such sales. Such online auction activities are proposed by the Committee to be covered by the Antique Shop Act in the future, cf. point 3.1.2.2 above.

As regards sales in traditional physical auctions, the Auctioneer Act requires an auctioneer appointed by the Minister of Justice to be present at

the auction and to ensure that the legislation is complied with. In that regard, the auctioneer is required to ensure that there are no circumstances indicating illicit provenance for what is sold through auctions (Section 8(1), first indent, of the Auctioneer Act).

Against this background, in the Committee's view, there is no reason at this stage to propose further regulation of the activities of auctioneers. However, it cannot be ruled out that there may be a need for auctioneers to be covered by the rules of the Antique Shop Act on supervision, etc. in the future. Against this background, the Committee proposes to maintain the enabling provision in relation to the activities of auctioneers.

### 3.1.3. Considerations of the Ministry of Justice and the proposed scheme

The Ministry of Justice agrees with the Committee's considerations and proposals, and the draft Act is drafted accordingly with legislative technical adaptations.

However, in relation to the Committee's proposal, it is clarified in the wording that the Act only intends to regulate operators established in Denmark, except in the case of contractual terms, etc. in connection with the exercise of pawnbroking activities, cf. point 10 on the relationship with EU law.

Reference is made to Section 1 of the Draft Act and the comments thereon.

## 3.2. Licence requirements

### 3.2.1. Existing law

Under Section 2(1) of the Antique Shop Act, a licence must be granted to the operator of the activities covered by the Act. The licence, which is granted either for trade in second-hand goods or for pawnbroking activities, is issued by the police. The licence grants the right to operate activities within and from the police district covered by the licence, cf. Section 2(2). Pursuant to Order No 1096 of 21 August 2018, licence cases are handled by the Police Director of the Central and Western Jutland Police. Pursuant to paragraph 3 of the provision, DKK 80 is paid for the issuance of a licence for trading in second-hand goods or a licence for pawnbroking activities.

In 1966, the fee pursuant to Section 2(3) was set at DKK 80 for the issuance of both a licence for pawnbroking activities and a licence for trading in second-hand goods.

Reference is also made to Report No 1580/2022, page 142 et seq.

### 3.2.2. Considerations of the Committee

In order to ensure effective supervision of commercial trade in second-hand goods, as well as pawnbroking activities and sales with a right of repurchase, the Committee considers that the licence requirements laid down by the Antique Shop Act should be maintained. The Committee also considers that the police must continue to issue licences, bearing in mind that the police should continue to be the supervisory authority.

Under Section 2(2), second sentence, of the Antique Shop Act, a licence grants the right to operate activities within and from the police district covered by the licence.

This geographical demarcation, which is linked, *inter alia*, to the rules of the Act on requirements for permanent places of business, should be modernised. It is thus often the case today that trade is carried out online, and this suggests that the geographical demarcation of the licence should be deleted. On the other hand, it should be possible for the police, as the supervisory authority, to exercise effective supervision.

Following an overall assessment of the opposing considerations and in the light of social and technological developments, the Committee proposes that a licence for trading in second-hand goods or pawnbroking activities should not be geographically demarcated.

On the other hand, it is proposed that licences should be granted by the police district in which activities are operated would then be responsible for supervising the activities in question. Reference is also made to point 3.8 and the discussion below.

With regard to payments for the issuance of licences, the Committee considers that a cost-oriented fee shall continue to be paid in order to obtain a licence to trade in second-hand goods or operate pawnbroking activities. However, in the Committee's view, the amount of the fee must be based on a more detailed assessment of the costs of issuing licences and the economic impact of the draft Act which is intended to implement the Committee's proposal. Against this background, the Committee proposes to maintain the provision on payments for issuing licences, but to modernise it linguistically.

### 3.2.3. Considerations of the Ministry of Justice and the proposed scheme

The Ministry of Justice agrees with the Committee's considerations and proposals, and the draft Act is drafted accordingly with legislative technical adaptations.

However, in relation to the Committee's proposal, an empowerment has been added to lay down rules on proceedings by issuing licences pursuant to the Act. Under the provision, rules will be laid down in accordance with Article 13 of the Services Directive, including on the duration of proceedings, cf. point 10 on the relationship with EU law.

Reference is made to Section 2 of the Draft Act and the comments thereon.

### **3.3. Conditions for obtaining licences**

#### **3.3.1. Existing law**

There are a number of conditions which must be met in order to obtain a licence to operate certain independent commercial activities in connection with the trade in or purchase of second-hand goods and pawnbroking activities.

According to Section 3(1) of the Antique Shop Act, anyone who satisfies the conditions laid down in the Commercial Act for obtaining a commercial licence as a trader, craftsman and industrial operator is entitled to a licence.

In 1966, when the Antique Shop Act was adopted, a person had to comply with the following conditions under the Commercial Act for obtaining a licence (and thus also to obtain a licence to trade in second-hand goods or operate pawnbroking activities):

- 1) be a Danish citizen;
- 2) be a resident in Denmark;
- 3) be of age or have been granted permission under the Majority Act to carry on the activities for which the person applies for a licence on his own; and
- 4) not be bankrupt.

Under Section 3(2) of the Antique Shop Act, the Minister for Justice may authorise the granting of a licence even if the conditions referred to in paragraph 1 are not met.

Under Section 3(3), first sentence, licences may be refused if the applicant has been convicted of a criminal offence giving rise to an imminent risk of misuse of the licence, or if there are other reasons to believe, on the basis

of the information available on the personal circumstances of the applicant, that the person will not properly operate the activities. Licences may also be refused if the applicant has significant overdue debts to the public sector, meaning amounts of the order of DKK 50 000 or more, cf. Section 3(3), second sentence.

If the applicant is a limited liability company, licences may be refused if there is information available to a member of the company's management or board of directors which may justify refusing licences under Section 3(3). If there are new members in management or the board of directors, this shall be notified to the police within 14 days. The police then decides whether the licence can be maintained, cf. Section 3(4).

Whether licences may be refused if the applicant has been convicted of a criminal offence giving rise to an imminent risk of misuse of the licence or there are other reasons to believe, on the basis of the information available on the personal circumstances of the person concerned, that the person will not properly operate the activities, it is clear from the comments, cf. the Folketing Hansard 1964–65, Annex A, columns 1287–1288, that '*however, in view of the particular possibilities which exist for persons operating activities of the present kind to abuse their activities, in particular by purchasing stolen items, it cannot be considered appropriate to completely withdraw the possibility to refuse licences in cases where the risk of such abuse is specifically justified*'.

It should be noted in this regard that, for example, the absence of a criminal record is not a condition for obtaining a licence. The provision implies that the police is able to refuse a licence to a person only if the police *specifically* considers that there is a risk of misuse of the licence or a risk that the activities will not be properly operated.

Reference is also made to Report No 1580/2022, page 144 et seq.

### 3.3.2. Considerations of the Committee

As one of the main objectives of the Act is to limit the marketing of stolen goods, the Committee considers it appropriate that the trade in second-hand goods and pawnbroking activities should continue to be subject to obtaining a licence, cf. point 3.2.2 above. In this context, the Committee considers that, for reasons of transparency, the conditions for obtaining a licence should follow directly from the Antique Shop Act.

In determining the conditions under which licences may be granted under the Antique Shop Act, the Committee notes that the conditions for licences

in the current Antique Shop Act largely correspond to those otherwise applicable in other legislation for activities for which public authorisations, appointments, licences, approvals or the like are required. The Committee therefore considers that the conditions should be maintained as appropriate, cf. immediately below. The reference to the Commercial Act, in the light of the amendments made to the Act in recent years, is devoid of any independent content, and the Committee therefore considers that the reference should be deleted.

As stated above, it was previously a condition for obtaining a licence to trade in second-hand goods and operate pawnbroking activities that the applicant was a Danish citizen. Similar legislation for activities requiring public authorisations, appointments, licences, approvals or the like does not require this, and in the Committee's view, no relevant considerations which could justify such a requirement in the field of antique shops can be identified. The requirement is therefore proposed to be repealed.

On the other hand, the fact that the economic operator has a business address in Denmark is relevant to the prevention of trade in second-hand and stolen goods and to ensure effective supervision of the economic operator, which is why the Committee suggests that this should be a condition for obtaining a licence. The business address is where the activities are operated from.

The Committee also considers that it should be a condition for obtaining a licence that the applicant is of age, since minors and persons deprived of legal capacity cannot, in principle, operate self-employed activities. The Committee considers, however, that minors/incapacitated persons who, with the approval of the Agency of Family Law ('Familieretshuset'), have obtained permission to exercise trade or other activities on their own, cf. Section 43(1) of the Guardianship Act, should also be able to obtain a licence for trading in second-hand goods.

The Committee also proposes that licences be granted to persons who are not under guardianship under Section 5 of the Guardianship Act or under curatorship under Section 7 of the Guardianship Act.

Finally, the Committee proposes to maintain the requirement that the applicant should not be bankrupt or subject to restructuring proceedings.

The Committee has considered whether the provision under which licences may be refused if the applicant has been convicted of a criminal offence giving rise to an imminent risk of misuse of the licence or if there are other

reasons to believe, on the basis of the information available on the personal circumstances of the person concerned, that the person will not properly operate activities, should be maintained. The assessment of when a licence may be refused under that provision is a matter of judgement.

Since persons trading in second-hand goods or operating pawnbroking activities have special access to purchases for the purpose of reselling goods which may have been stolen, the Committee considers that the police should continue to be able to refuse a licence if it specifically considers that there is a risk of misuse of the licence or a risk that the activities will not be properly operated. Against this background, the Committee considers that the provision should be maintained so that licences can continue to be refused in cases where the risk of abuse is specifically justified.

In the police's assessment of whether licences should be refused, the facts of the case must be taken into account, including, *inter alia*, the nature of the criminal offence and the relationship to the activities of the person concerned, whether the offence has been repeated, the time which has elapsed since the offence was committed, etc.

A number of laws, including, for example, the Administration of Justice Act with regard to lawyer appointments, the Collection Act with regard to authorisations for debt collection and the Guard Activity Act with regard to authorisations as a guard, provide the legal basis for refusing to grant an appointment or authorisation if the applicant has significant overdue debts to the public sector. As we have seen, a similar legal basis currently exists in Section 3(3) of the current Antique Shop Act.

In view of the fact that the profession of trader in second-hand goods and pawnbroking activities are exercised precisely on the basis of authorisations, etc. (licences) and that the accumulation of arrears to the public sector should be minimised as far as possible, the Committee proposes to maintain the condition that the licence can be refused to those who have significant overdue debts to the public sector of the order of DKK 50 000 or more.

The Committee notes in this regard that specific debts in the form of tax arrears and non-payment of VAT, in the same way as in other areas where significant overdue debts to the public sector may hinder an appointment or authorisation, could justify the refusal of a licence. In order to refuse a licence, the debt must have arisen in connection with the operation of similar activities. If an appointment is refused for that reason, this does not prevent the applicant from working in the profession if he is a trader holding

the necessary licence. Since that provision is intended to penalise the lack of willingness to pay, it is possible for a person to avoid the rejection of his application by concluding an instalment agreement with the authorities having a financial claim against him.

The Committee has considered what should apply to legal persons, such as companies wishing to obtain a licence to trade in second-hand goods or operate pawnbroking activities. The reason for this is that, in the case of companies, including private limited companies and public limited companies, liability is limited to the share capital provided, as opposed to an individual enterprise, in which the owner has personal and unlimited liability. The Committee believes that this should be taken into account. With a view to ensuring that legal persons also properly operate activities, including the absence of significant overdue debts to the public sector and lack of willingness to pay, the Committee proposes that licences be granted to legal persons, including public limited companies or private limited companies registered with the Danish Business Authority, other companies, associations, foundations and the like established in Denmark, provided that the *members* of the board of directors and management of the legal person fulfils the conditions laid down by the Act for obtaining a licence. For these legal persons, the police will decide whether the conditions for obtaining a licence have been met.

As for other persons wishing to obtain licences to trade in second-hand goods and operate pawnbroking activities, the Committee therefore proposes that licences may be refused to a company, etc., if a member of management or the board of directors has been convicted of a criminal offence, if the offence gives rise to an imminent risk of misuse of the licence or if there are other reasons to believe, on the basis of the information available on the personal circumstances of the person concerned, that the person will not properly operate activities. Against this background, the Committee proposes that a licence may also be refused to a company, etc., if a member of management or the board of directors has significant overdue debts to the public sector of the order of DKK 50 000 or more. In these cases too, it is the police that carries out an individual assessment of whether licences should be refused on the basis of the facts of the case, cf. above.

In order to ensure that the above persons meet at all times the conditions for obtaining a licence to trade in second-hand goods and operate pawnbroking activities, the Committee proposes that the company, etc., must notify the police within 14 days if there are new members in management or the board of directors. It is then the police that decides whether the li-

cence can be maintained. If notification is not made in a timely manner, the Committee proposes that the licence shall be terminated, cf. point 3.5.2 below on terminations and withdrawals of licences.

There are no relevant reasons in favour of maintaining the provision according to which the Minister for Justice may authorise the granting of licences even if the conditions for obtaining a licence are not met, and the Committee therefore proposes that the provision be deleted.

Reference is also made to Report No 1580/2022, page 146 et seq.

### 3.3.3. Considerations of the Ministry of Justice and the proposed scheme

The Ministry of Justice agrees with the Committee's considerations and proposals, and the draft Act is drafted accordingly with legislative technical adaptations.

However, in relation to the Committee's proposal, a clarification has been added that foreign companies, etc. may also be granted licences if this is provided for in an international agreement or by provisions laid down by the Minister for Justice. This takes account of the fact that foreign companies, etc. may have opened a secondary establishment in such a way that they would not meet the specific conditions set out in the draft as to when companies, etc. may normally obtain licences.

Reference is made to Sections 3 and 4 of the draft Act and the comments thereon.

## 3.4. Requirements for permanent places of business

### 3.4.1. Existing law

Section 4(1), first sentence, of the Antique Shop Act states that the activities may only be operated from permanent places of business with separate business premises.

Section 11 and Section 3(4) and (12) of the Commercial Act shall, under paragraph 1, second sentence, apply mutatis mutandis to personal enquiries concerning the collection of orders and itinerant trade. The above-mentioned provisions of the Commercial Act are no longer applicable and the references to them are therefore devoid of any independent content.

Before commencing activities, the holder must report to the police the place where the activities are intended to be operated. Where the activities

are moved, the licence holder must notify the police in advance, cf. Section 4(2) of the Antique Shop Act.

Under Section 7(2) of Order No 7 of 9 January 1969 on trade in second-hand goods and pawnbroking activities (hereinafter ‘the Order’), the business premises must be directly accessible from the street and well organised. However, this does not apply to trade in old scrap or other waste. In companies which also distribute new goods, these must be clearly separated from the second-hand goods, cf. Section 7(3) of the Order, and a telephone must be installed in every shop, cf. Section 7(4).

The licence holder’s licence or a duplicate copy issued by the police must be displayed in a place that is clearly visible to customers, cf. Section 5 of the Antique Shop Act.

As regards the trade in second-hand goods online, the Act’s requirements for permanent places of business with separate business premises from which no derogation may be granted is of particular importance.

Thus, in a number of specific cases, a licence for trading in second-hand goods online has been refused on the grounds that the company does not comply with the requirement in Section 4(1), first sentence, of the Act that activities covered by the Act may only be operated from permanent places of business with separate business premises.

Reference is also made to Report No 1580/2022, page 150 et seq.

### 3.4.2. Considerations of the Committee

Currently, the trade in second-hand goods takes place to a large extent online on various sales platforms, such as ‘GulogGratis’, ‘DBA’, online stores, social media, etc.

For economic operators selling only online, the requirement of a business premise accessible from the street is obsolete and difficult to meet. The current legislation thus fails to take account of technological and social developments.

In the light of this, the Committee has considered the need to maintain the requirements for permanent places of business laid down in the Antique Shop Act (Section 4(1) of the Act), as well as the requirement that business premises must be directly accessible from the street and well organised (Section 7(2) of the Order).

On the one hand, the possibility for the police to supervise the trade in second-hand goods militates in favour of maintaining the Act's requirements for permanent places of business. With the requirement to have a permanent place of business, the police is at all times aware of the location from which each trader in second-hand goods exercises his activities and, in the event of suspicion of trade in stolen second-hand goods, the police can intervene quickly and carry out the relevant investigative measures at the physical location.

However, in many cases, the trade in second-hand goods takes place in a way that does not require a permanent place of business directly accessible from the street, for example when the activities of trading in second-hand goods are operated online. On the other hand, this militates against maintaining the requirement.

As a consequence of social and technological developments, and recognising that online trade is constantly growing, the Committee believes that there is a need to adapt the rules to practical realities.

The Committee therefore suggests that anyone wishing to operate activities covered by the Act should inform the police of the location of the company's accounting documents and any business premise. The economic operator must also inform the police, upon request, of the location of the company's stocks of goods. This information must be sent to the police district from which the activities are to be operated in connection with an application for a licence to trade in second-hand goods. The Committee also suggests that the operator of the activities covered by the Act should also be required to inform the police of subsequent changes in the circumstances.

The requirement will cover both operators in the traditional sense (antique traders, antique shops, etc.) and private operators whose trade in or purchase of second-hand goods is of a commercial nature, cf. point 3.1.2.1 above. In this way, the police will be provided with the information needed to exercise supervision, regardless of whether the activities are operated from a physical store or online.

In order to ensure that the police can exercise the necessary supervision of the proper exercise of the activities, the Committee also proposes that the current provision of the Antique Shop Act be maintained, according to which the police at any time, without a court order and upon providing proper identification, have access to a company's accounting documents, potential business premise and stocks of goods, cf. point 3.8.2.

This means that a trader in second-hand goods, regardless of the selling method, must keep his goods in a physical location separate from private dwellings, including, for example, a garage, a storage room or the like, which the police is entitled to supervise without a court order. Those requirements ensure that traders in second-hand goods, regardless of the type of sale, can conduct business under contemporary conditions, while allowing the police to exercise the necessary supervision.

In the Committee's view, the requirement in the Order that new goods should be clearly separated from second-hand goods, should be deleted. In that regard, it should be noted that the police is able, through the accounting documents, to identify the origin of an antique shop's goods and the date on which a given good was resold, and it would therefore be excessively burdensome to maintain the requirement in question. Finally, it should be noted that the requirement of the Order that a telephone must be installed in every shop is obsolete and should therefore be repealed.

Reference is also made to Report No 1580/2022, page 151 et seq.

### 3.4.3. Considerations of the Ministry of Justice and the proposed scheme

The Ministry of Justice agrees with the Committee's considerations and proposals, and the draft Act is drafted accordingly with legislative technical adaptations.

Reference is made to Sections 9 and 10 of the draft Act and the comments thereon.

## 3.5. Terminations and withdrawals of licences

### 3.5.1. Existing law

#### 3.5.1.1. Terminations of licences

In accordance with Section 6(1) of the Antique Shop Act, a licence to trade in second-hand goods or operate pawnbroking activities is terminated upon the death of the licence holder, without prejudice to Section 7 of the Act. The same shall apply where the licence holder ceases to fulfil the conditions laid down in Section 3(1) or if the notification under Section 3(4) is not made in a timely manner. Pursuant to Section 6(2) of the Act, the Minister for Justice may provide for an exemption from the provisions of paragraph 1.

The provision on terminations of licences is closely linked to the conditions for obtaining a licence (current Section 3(1)). If the licence holder no

longer meets the conditions for obtaining a licence, the licence is automatically terminated.

In the event of the death, bankruptcy or incapacity of the licence holder, in accordance with Section 7 of the Antique Shop Act, an estate of a deceased person, a spouse in undivided estate, a bankruptcy estate or person who is under guardianship with the deprivation of legal capacity, cf. Section 6 of the Guardianship Act, may, upon notification to the police, continue the activity of the deceased, the insolvent party or the minor/incapacitated person with a view to liquidation, sale or the like, cf. Section 11(3). This shall be possible for 1 year after the death, decree of bankruptcy or implementation of the guardianship. In exceptional cases, the police may extend the deadline.

Reference is also made to Report No 1580/2022, page 153 et seq.

### 3.5.1.2. Withdrawals of licences

In accordance with Section 8(1) of the Antique Shop Act, the police may withdraw a licence issued pursuant to the Act if the licence holder is guilty of serious or repeated failure to comply with the obligations incumbent on the licence holder pursuant to the Act or regulations laid down pursuant to the Act and there is reason to believe, on the basis of the facts established, that he will not continue to properly operate the activities. If the police decides to withdraw a licence, the decision must, pursuant to Section 9 of the Act, contain information on the recourse to judicial review and the deadline for doing so. For a review of the rules of the Antique Shop Act on judicial review, reference is made to point 3.6.1 below.

The 1966 comments to the Act state that Sections 8 and 9 of the proposal are drafted in accordance with the guidelines followed at that time in the drafting of corresponding provisions in other commercial laws, where it was considered necessary to provide for a wider right of withdrawal than that provided for in Section 79 of the Criminal Code.

Under Section 79(1) of the Criminal Code, a person who exercise one of the activities referred to in Section 78(2) of the Criminal Code may, following a conviction for a criminal offence, be deprived of the right to exercise the activities in question or to exercise them in certain forms, if the facts established give rise to an imminent risk of abuse of position. Section 78(2) of the Criminal Code deals with activities which require special public authorisations or approvals, including, for example, antique shops and pawnbrokers.

Under Section 79(1) of the Criminal Code, in order to withdraw a person's licence, the licence holder must be convicted of a criminal offence and the facts established must justify an obvious risk of abuse of position. The application of the provision is not subject to an infringement of the provisions of the Criminal Code. An infringement of, for example, the accounting legislation could therefore also, depending on the circumstances, constitute grounds for withdrawal. Moreover, a penalty of a certain amount is not required to be imposed in order for withdrawals to take place. That provision therefore also applies in cases where proceedings are brought to an end by the imposition of a fine.

The possibility of withdrawing a person's licence under Section 8(1) of the Antique Shop Act is thus wider than the possibility under Section 79(1) of the Criminal Code. While Section 79(1) of the Criminal Code provides for the requirement that the licence holder has been convicted of a criminal offence, it is sufficient under Section 8(1) of the Antique Shop Act that the licence holder has failed to fulfil the obligations arising from the Act and the Order, regardless of whether the act constitutes a criminal offence and whether or not the person concerned has been convicted for it.

In both cases, however, the act must *specifically* justify an imminent risk of abuse of position, cf. Section 79(1) of the Criminal Code, or that there are reasons to believe that the person concerned will not properly operate the activities, cf. Section 8(1) of the Antique Shop Act.

In addition, it should be noted that under Section 79(1) of the Criminal Code, a disqualification follows from a judgment, whereas under Section 8(1) of the Antique Shop Act, a withdrawal is carried out administratively (by the police). In the latter case, the addressee of the decision may refer the decision to the courts pursuant to Section 9(1) of the Act.

In accordance with Section 8(2) of the Act, the police may also withdraw a licence if the licence holder has significant overdue debts to the public sector, meaning amounts of the order of DKK 100 000 or more. The licence may be withdrawn from 1 to 5 years or until further notice. The decision shall contain information on the recourse to judicial review under Section 9 of the Act and the deadline for doing so.

A number of laws on the exercise of professional activities on the basis of authorisation etc., including the Antique Shop Act, were amended by Act No 936 of 27 December 1991 amending various legislative provisions on the exercise of professional activities on the basis of authorisations, etc. (Issuances and withdrawals of authorisations, etc.). In this context, a legal

basis was introduced for both refusing and revoking an authorisation, etc., if the applicant or the authorisation holder has significant overdue debts to the public sector. The Act specifies that, for refusals of authorisations, etc., there must be debts of the order of DKK 50 000 or more, while revocations of authorisations require a debt of the order of DKK 100 000 or more. The reason for the Act was to reduce arrears to the public sector for parts of the private business sector.

The comments to that Act, cf. the Folketing Hansard 1991–92, Appendix A, column 1754–1755, state that in the event of the revocation of an authorisation, etc., more serious facts must be required than in the case of the refusal of an authorisation before an authorisation which may have been used for a number of years can be revoked on the grounds that the authorisation holder is in arrears to the public sector.

### 3.5.2. Considerations of the Committee

In the Committee's view, it is essential, in the light of the purpose of the Act to minimise trade in stolen second-hand goods, that traders in second-hand goods continue to comply with the requirements for obtaining a licence.

In view of the above, the Committee proposes that the provisions on *terminations* of licences, so that a licence is in future terminated when the licence holder dies or if the licence holder ceases to fulfil the conditions for obtaining a licence (business address in Denmark, not a minor/incapacitated person or under guardianship and not subject to restructuring proceedings or bankrupt), cf. point 3.3 on the conditions for obtaining a licence. The same should apply if the licence holder is a company, etc. and a member of the company's management or board of directors ceases to fulfil the said conditions. In the case of a potential revocation due to overdue debts to the public sector, the person concerned must be given notice to that effect in order to enable him to settle arrears within a reasonable period of time. Similarly, reasonable notice must be given to the company concerned, etc.

Under existing law, when there are new members in management or the board of directors, companies, etc. must notify this to the police within 14 days, cf. point 3.3.1 above. This is essential for the police to ensure that the conditions for licences to trade in second-hand goods as well as operate pawnbroking activities continue to be met. Against this background, the Committee proposes to maintain the provision that companies' etc. licences should be terminated if there are new members in management or

the board of directors, and notification thereof is not made in a timely manner, cf. point 3.3.2.

Since a licence holder's failure to comply with the conditions for having a licence may be of a temporary or short-term nature, the Committee proposes that the Minister for Justice should have the possibility, as is currently the case, to decide that a licence holder who is, for example, subject to restructuring proceedings, may maintain his licence. There may therefore be situations in which the conditions for obtaining a licence for a short and clearly defined period alone are not met, but in which, despite the failure to comply with the conditions, there is in fact no risk that the activities will not be properly operated. Consideration of the trader's ability to maintain his activities and thus to avoid suffering financial damage during the shorter limited period during which the conditions for licences are not met should therefore, depending on the circumstances of the case, prevail. The consideration will be based on an individual assessment of the facts of the individual case.

When the licence holder dies or if the licence holder ceases to fulfil one or more of the conditions for obtaining a licence, for example because the licence holder becomes bankrupt, there may be a need to continue the operations for a shorter period of time in order to ensure their orderly liquidation and avoid unnecessary losses to, for example, the survivors or creditors. Against this background, the Committee also suggests that the possibility of continuing the operations for a shorter period with a view to liquidation, sale or the like should be maintained in the event of the death, bankruptcy or incapacity of the licence holder. In this context, the Committee suggests that such a continuation should be notified to the police within four weeks of the death, decree of bankruptcy or implementation of the guardianship. The period starts to run from the occurrence of the event, such as the commencement of restructuring proceedings or (final) decree of bankruptcy. It is proposed that this shall be possible for 1 year after the event giving rise to the termination of the licence, which should be extended in exceptional cases with police permission.

In relation to the provisions of the Antique Shop Act on *withdrawals* of licences the Committee has considered whether the possibility of withdrawing licences under Section 79(1) of the Criminal Code is sufficient.

As stated above, the application of Section 79(1) of the Criminal Code is not conditional on the existence of an infringement of the provisions of the Criminal Code. An infringement of, for example, the accounting legisla-

tion could therefore, depending on the circumstances, constitute grounds for withdrawal. In the Committee's view, the broad scope of the provision suggests, on the one hand, that Section 79(1) of the Criminal Code is sufficient and that there is therefore no need to maintain the provisions of the Antique Shop Act on withdrawals of licences.

However, the rule on withdrawals in the Antique Shop Act has been drafted in accordance with the guidelines followed in recent years in the drafting of similar provisions in other commercial laws where it has been considered necessary to provide for a *wider* right of withdrawal other than that provided for in Section 79(1) of the Criminal Code. In the Committee's view, the interests of those who trade with the licence holder require the continued need to be able to withdraw a licence before the licence holder has been convicted of a criminal offence. This is the case, for example, in cases where the licence holder is guilty of serious or repeated failure to comply with his obligations pursuant to the Act, for example by repeatedly failing to fulfil his examination obligation, and there is reason to believe that the person will not properly operate the activities in future. In the Committee's view, this militates in favour of the inadequacy of Section 79(1) of the Criminal Code.

In order to ensure the best possible protection of the interests behind the Antique Shop Act, such as ensuring the control of trade in second-hand goods and preventing the resale of stolen, falsified or illegally exported goods, the Committee considers that the possibility for the Antique Shop Act to revoke a licence should be maintained. In this connection, the Committee suggests that the provision should use the term 'revocations of licences' instead of 'withdrawals', in accordance with the corresponding provisions of other commercial legislation on the revocation of licences or the like.

In so doing, the fact that the licence holder has failed to fulfil the obligations arising from the Act and the Order, regardless of whether the act constitutes a criminal offence and whether or not the person concerned has been convicted for it, will suffice for the licence to be revoked.

A licence may therefore continue to be revoked if the licence holder is guilty of serious or repeated failure to comply with his obligations pursuant to the Act and there is reason to believe, on the basis of the facts established, that the person will not properly operate the activities in future. As stated above, for example, this would be the case if the licence holder repeatedly fails to fulfil his examination obligation or if he is suspected of

possessing stolen goods. It will depend on an individual assessment whether there is reason to believe that the person concerned will not properly operate the activities. The rule thus supplements Section 79(1) of the Criminal Code.

Under point 3.3.2 above, bearing in mind that the accumulation of arrears to the public sector should be minimised as far as possible, it is proposed to maintain the current provision according to which, under the Act, licences may be refused to an applicant who has significant debts to the public sector of the order of DKK 50 000 or more. For the same reasons, the Committee proposes to maintain the provision that an appointment may be revoked if a trader, after the licence has been granted and in connection with the activities, accumulates debts to the public sectors. In the Committee's view, revocations of already granted licences on the basis of accumulated public arrears are so restrictive for the person concerned, in the light of general adjustment views, that the amount of the debt must, however, be subject to stricter requirements (in comparison to the requirements for refusing appointments). Against this background, the Committee proposes to maintain the provision that a licence may be revoked if the appointed person has overdue debts to the public sector of DKK 100 000 or more. It should be noted that the threshold of DKK 100 000, which is indicative, corresponds to the threshold for revoking authorisations, licences, etc. in other areas, including, for example, the rule of the Administration of Justice Act on the revocation of lawyer appointments, the rule of the Collection Act on the revocation of authorisations to engage in debt collection, etc.

In these cases, as in the past, an individual assessment will have to be made of the circumstances in which the debt arose and developed, including the extent to which the licence holder has shown his willingness to have the debt reduced. The Committee considers that prior to a potential revocation due to overdue debts to the public sector in the amount indicated, notice should be given to the licence holder concerned in order to enable him to settle arrears within a reasonable period of time.

In the Committee's view, the provisions on revocations of licences should also apply in cases where the licence holder is a company, etc., and where the information provided is available to a member of the company's management or board of directors, since, in the Committee's view, there will also be reason to believe that the licence holder will not properly operate the activities in the aforementioned situations in future. In these situations, reasonable notice should be given to the company concerned, etc. It should

be noted that similar requirements apply, for example, with regard to the rule of the Administration of Justice Act on the revocation of lawyer appointments, the rule of the Collection Act on the revocation of authorisations to engage in debt collection, etc.

Since the nature of the reason(s) justifying the revocation of licences may vary, the Committee proposes that the provision allowing the revocation to take place for a period of 1 to 5 years or until further notice be maintained. Thus, it may be necessary in some cases to revoke a licence for a clearly defined period, whereas in other cases, depending on the seriousness of the reason justifying the revocation, it may be necessary to revoke the licence until further notice. This would be the case, for example, if an investigation is ongoing as a result of suspicion of possessing stolen goods and this suspicion, once the investigation has been completed, can be either confirmed or ruled out. Furthermore, the provision that the police's decision to revoke a licence must contain information on the possibility to apply for judicial review and the deadline for doing so is also proposed to be maintained. For a review of the rules on judicial review of police decisions to withdraw licences, reference is made to point 3.6.1 below.

As regards the above provisions on terminations and revocations of licences, the Committee proposes that these be drafted essentially in accordance with the corresponding provisions of other commercial legislation concerning activities for which public authorisations, appointments, licences, approvals or the like are required, cf. *inter alia*, Sections 21 and 22 of the Collection Act, Sections 14–17 of the Guard Activity Act, Sections 19 and 18 of the Restaurant Act and Sections 7 and 8 of the Act on approved auditors and audit firms.

Finally, in order to ensure that the police can exercise effective supervision of the persons with a licence to trade in second-hand goods as well as operate pawnbroking activities, the Committee proposes to maintain the provision that a licence which is terminated, revoked or withdrawn should be handed over to the police. This also applies when the licence holder voluntarily ceases to conduct business.

### 3.5.3. Considerations of the Ministry of Justice and the proposed scheme

The Ministry of Justice agrees with the Committee's considerations and proposals, and the draft Act is drafted accordingly with legislative technical adaptations.

Reference is made to Sections 5, 6 and 8 of the draft Act and the comments thereon.

### **3.6. Judicial review**

#### **3.6.1. Existing law**

##### **3.6.1.1. Judicial review of decisions to withdraw licences**

A decision under Section 8(1) of the Antique Shop Act to withdraw licences for failure to comply with obligations may, pursuant to Section 9(1), first sentence, of the Act, be required to be referred to the courts by the addressee of the decision. The request must be made to the police within 4 weeks of the decision being notified to the person concerned, cf. Section 9(1), second sentence. It is stated that the police then refers the case to the court in accordance with the rules on police cases, cf. Section 9(1), third sentence. The rules on police cases were set out in Chapter 81 of the Administration of Justice Act, which, however, was repealed by Act No 538 of 8 June 2006 amending the Administration of Justice Act and various other laws (police and judicial reform).

A request for referring the decision to the court pursuant to Section 9(1) shall have suspensory effect pursuant to Section 9(2), first sentence, but the court may order, in the course of proceedings, that the person concerned may not exercise activities under the licence. The suspensory effect of the request implies that the antique shop/pawnbroker may continue its activities until the court's decision. If the decision is upheld by the judgment, the decision may provide that an appeal does not have suspensory effect, cf. Section 9(2), second sentence, of the Act.

Reference is also made to Report No 1580/2022, page 160 et seq.

##### **3.6.1.2. Judicial review of decisions to withdraw licences on grounds of significant overdue debts to the public sector**

A decision under Section 8(2) of the Antique Shop Act to withdraw licences on grounds of significant overdue debts to the public sector may also be required, pursuant to Section 9(3) of the Act, to be referred to the courts by the addressee of the decision. The request must be made to the police within 4 weeks of the decision being notified to the person concerned. Proceedings shall be brought against the person concerned in the form of civil procedure.

The reason why, unlike cases where licences are withdrawn for failure to comply with obligations, such cases must be brought in the form of civil procedure is that matters relating to charges for infringements are not in-

cluded in the Criminal Code or other legislation, cf. the Folketing Hansard 1991–92, Appendix A, column 1757.

Unlike a withdrawal under Section 8(1), it is therefore necessary in these cases, in principle, to examine the justification of the withdrawal on the basis of the information provided by the parties.

A request for referring the decision to the court pursuant to Section 9(3) shall not have suspensory effect pursuant to Section 9(4), first sentence, but the court may order, in the course of proceedings, that the person concerned shall be allowed to exercise activities under the licence. In the event of an appeal against a judgment finding that a revocation is not lawful, the court which delivered the judgment or the court seised may order that activities under the licence may not be operated in the course of appeal proceedings, cf. Section 9(4), second sentence.

The draft Act No L 81 on the draft Act amending various legislative provisions on the exercise of professional activities on the basis of authorisations, etc., cf. the Folketing Hansard 1991–92, Appendix A, column 1755, states that the reason why the request does not have suspensory effect is that the definition of the circumstances which may lead to the revocation of the authorisation, etc. is much more clear than the definition of the provisions on revocation in force at the time, where it must be proved that the authorisation holder, etc., is guilty of infringements which give reason to believe that he will not continue to properly exercise the activities for which the authorisation has been issued.

### 3.6.2. Considerations of the Committee

It is a very restrictive decision for an economic operator to have his licence to operate activities withdrawn. In the Committee's view, a decision to withdraw a licence for trading in second-hand goods, in the same way as in other areas where a special authorisation or licence is required, should therefore be subject to judicial review.

The judicial review of an administrative decision to withdraw licences for failure to comply with obligations includes criminal matters, including the infringement by the licence holder of his obligations under the Act or regulations pursuant to the Act, which may entail financial penalties, cf. point 3.9.1 on the provisions on penalties of the Antique Shop Act. As a consequence, the Committee considers that these cases should, as hitherto, be dealt with in the form of criminal procedure.

The judicial review of cases on withdrawals of licences on grounds of significant overdue debts to the public sector does not include criminal matters. Instead, it is necessary to verify whether the person concerned actually has significant overdue debts to the public sector of the order laid down by the Act. Against this background, the Committee considers that, as is the case today, these cases should be dealt with in the form of civil procedure.

As for practical arrangements, the Committee suggests that a request for a decision to be referred to the court should be made to the police within four weeks, giving the licence holder a reasonable time to react. As at present, the Prosecution Service then either refers the case to the court in accordance with the provisions of Chapter 80 of the Administration of Justice Act on criminal cases in which no jurors are involved, or brings proceedings against the person concerned in the form of civil procedure.

The Committee has considered whether to grant suspensory effect to a request for judicial review. In the Committee's view, on the one hand, the need for the licence holder to continue his activities until the court's decision militates in favour of granting suspensory effect to a request for judicial review. It will, *inter alia*, be decisive for the income basis of the licence holder to continue his activities until a final decision has been issued in the case. Furthermore, there is a risk that the licence holder will suffer such significant losses that he will be precluded from actually continuing his activities in the event of a final decision if the request for judicial review does not have suspensory effect. On the other hand, the risk that the licence holder will not properly conduct business militates against the granting of suspensory effect to a request for judicial review. At the same time, the fact that the police issued a decision suggests that the person to whom the decision relates should adapt accordingly. Furthermore, if a request for judicial review were to have suspensory effect, there would be a risk that, until a final decision is issued, the licence holder will continue the conduct which led to the police initially withdrawing the licence.

After weighing the interests between, on the one hand, the need for the licence holder to continue his activities until the court's decision and, on the other hand, the fact that the licence holder will not properly conduct business, the Committee considers that the current rules on suspensory effect in the Antique Shop Act should be maintained. The Committee therefore considers that situations in which a judicial review of a decision to withdraw a licence for failure by the licence holder to comply with his obligations should continue to be different from those in which there is a judicial

review of a decision to withdraw licences because the licence holder has significant overdue debts to the public sector. This is because the judicial review of whether a licence holder has failed to fulfil his obligations involves a discretion and is therefore based more on an individual assessment, whereas the assessment of whether the licence holder has significant overdue debts to the public sector is largely objectively verifiable.

A continuation of the rules means that the licence holder may, when requesting a decision to be referred to the court, where the police has decided to withdraw licences for failure to comply with obligations, continue to exercise his activities under the licence until a final decision has been issued in the case, unless the court orders that the person concerned may not exercise his activities. However, when the licence holder requests a decision to be referred to the court in respect of significant overdue debts to the public sector, the person concerned must, in principle, comply with the police's decision until the appeal has been examined by the court and, where appropriate, a different decision is taken, unless, in the course of proceedings, the court decides that the person concerned must nonetheless be allowed to exercise activities under the licence.

Moreover, as regards the provisions on judicial review, the Committee proposes that these be drafted essentially in accordance with the corresponding rules laid down in other commercial legislation.

### 3.6.3. Considerations of the Ministry of Justice and the proposed scheme

The Ministry of Justice agrees with the Committee's considerations and proposals, and the draft Act is drafted accordingly with legislative technical adaptations.

Reference is made to Section 7 of the Draft Act and the comments thereon.

## **3.7. Day-to-day operation of activities**

### 3.7.1. Existing law

Under Section 11(1) of the Antique Shop Act, the day-to-day operation of activities must be carried out by the licence holder himself or by a manager approved by the police. If the activities are exercised from several places of business, only one of these may be carried out by the licence holder. In that case, the operation of the other places of business shall be carried out by approved managers, cf. Section 11(2). Where the licence holder is a company or the like, the operation shall be carried out by an approved manager. The same shall apply in the cases referred to in Section 7,

cf. Section 11(3). Under Section 7 of the Antique Shop Act, an estate of a deceased person, a spouse in undivided estate, a bankruptcy estate or person who is under guardianship with the deprivation of legal capacity, cf. Section 6 of the Guardianship Act, may, upon notification to the police, continue the operations of the deceased, the insolvent party or the minor/incapacitated person with a view to liquidation, sale or the like of the company, cf. Section 11(3). This shall be only be possible for 1 year after the death, decree of bankruptcy or implementation of the guardianship. In exceptional cases, the police may extend the deadline. Sections 3, 6, 8 and 9 of the Act shall apply mutatis mutandis to the conditions for the approval of the manager and terminations and withdrawals of the authorisation, cf. Section 11(4). Reference is also made to points 3.5.1 and 3.6.1 above on terminations and withdrawals of licences and judicial review.

Following the provision in Section 11, the police may, in accordance with Section 12 of the Act, prohibit a licence holder, through his activities, to allow persons who do not meet the conditions for obtaining a licence, to conclude purchases or loans on their own.

The rules on managers were introduced in 1966 in accordance with the corresponding rules in Section 6(2) of the Hosting Act (the current Act on restaurant services and alcohol licences, etc., Sections 14a and 15).

The reason for the rules on managers is that, for each place of business, there is a person responsible for the day-to-day operation of activities, including for compliance with the obligations arising from the Act, such as the obligation to notify the police in case of a suspicion of illicit provenance and the obligation to keep business records.

Reference is also made to Report No 1580/2022, page 164 et seq.

3.7.1.1. Common rules for trade in second-hand goods and pawnbroking activities

Chapter 2 (Sections 3 to 8) of Order No 7 of 9 January 1969 on trade in second-hand goods and pawnbroking activities contains a number of common rules for trade in second-hand goods and pawnbroking activities.

As regards the obligations of the economic operator in relation to a suspicion of illicit provenance in Section 8 of the Order, reference is made to point 3.8.1 below.

### 3.7.1.1.1. Requirements for the keeping of business records

Under Section 3(1) of the Order, commercial operators who exercise activities under a licence for trading in second-hand goods or for pawnbroking activities or who, under Section 2 of the Order, are covered by the rules in Chapter 3 of the Antique Shop Act, shall keep business records authorised by the police.

The authorisation requirement implies that the antique shops must draw up physical books that meet specific criteria and submit them to the police. With regard to the requirement for records to be submitted to the police, it should be noted that, under Section 13 of the Antique Shop Act, the police is allowed to inspect an antique shops' business records (accounting).

The business records must be located at the place of business and kept there for two years after being printed. If the company changes ownership, the records shall be transferred to the new owner and, at the cessation of the activities, they shall be handed over to the police, cf. Section 3(2).

Any purchase, sale or loan under a special serial number shall be entered in the business records at the same time as the end of the business, cf. Section 4(1) of the Order. This does not include the purchase and sale of old scrap and other waste for which the purchase or sales price does not exceed DKK 25, cf. Section 4(2). The business records must be kept properly, in full and in legible writing, cf. Section 7(5) of the Order.

Pursuant to Section 5 of the Order, the police may exempt commercial operators from keeping the business records referred to in Section 3 if they use other equally reliable accounts.

Antique shops and pawnbrokers are also obliged, under the accounting legislation, to register the purchases, sales and loans of the company.

Reference is also made to Report No 1580/2022, page 165 et seq.

### 3.7.1.1.2. Identification requirements

In accordance with Section 6(1) of the Order, the commercial operator shall require any person who wishes to conclude a contract on sales or pledging to provide identification through his passport, driving licence or identity card from Danish financial institutions. The type and number of the identification presented must be recorded in the business records. Under paragraph 2 of the provision, the police may, exceptionally, permit sales or pledging to take place on production of other types of identification than those referred to in paragraph 1.

Section 6(1) of the Order was adopted on the basis of Section 15(1)(2) of the Antique Shop Act, according to which the Minister for Justice may lay down more detailed rules on the exercise of activities pursuant to the Act, including rules on, *inter alia*, the obligation to require customers' identification.

The money laundering legislation also contains rules on customer due diligence.

Reference is also made to Report No 1580/2022, page 168 et seq.

#### 3.7.1.1.3. Registers

It follows from Section 7(1) of the Order that the commercial operator must examine the notifications of missing items, including 'Kosterbladet' (police magazine on lost and stolen goods), which he receives from the public authorities, and keep the notifications at the place of business for six months in chronological order. 'Kosterbladet' is no longer published.

In addition, commercial operators must keep separate registers of certain types of missing items and declare certain goods found to the local police or the missing item centre in accordance with instructions of the police, cf. Section 7(6) of the Order.

#### 3.7.1.2. Specific rules for trade in second-hand goods

Chapter 7 (Sections 3–9) of Order No 12 of 9 January 1969 on trade in second-hand goods and pawnbroking activities contains a number of specific rules for trade in second-hand goods.

The rules mainly concern the handling of second-hand goods.

Under Section 9 of the Order, goods purchased must be marked with a serial number with the year in which they are entered in the business record. However, this does not apply to old scrap and other waste.

The reason for the requirement that purchased goods be marked is that the police must have the possibility to exercise supervision. When inspecting an antique shop's business premises, the police is currently able to check that the goods of the person concerned marked with serial number also correspond to the goods entered in the business records under the same numbers.

Section 10 of the Order prohibits the purchase of lottery tickets or loan certificates issued for pledged lottery tickets.

In addition, Section 11(1) of the Order states that purchased goods may not be sold or changed until the 12th working day after receipt.

Goods covered by Section 11(1) shall, within the deadline referred to in the provision, be kept separately from other stock. However, this does not apply to furniture, cf. Section 12 of the Order.

Reference is also made to Report No 1580/2022, page 170.

### 3.7.1.3. Specific rules for pawnbroking activities

Chapter 4 (Sections 13–23) of Order No 7 of 9 January 1969 on trade in second-hand goods and pawnbroking activities contains a number of specific rules for pawnbroking activities. These rules relate mainly to the handling of mortgages. Chapter 4 contains, in Sections 17–18, rules on pawnbroking activities with respect to lottery tickets and, in Sections 19–23, rules on pawnbroking activities with respect to other items.

Under Section 13 of the Order, all mortgages must be marked with a serial number with the year in which they are entered in the business record.

It follows from Section 14 of the Order that, at the end of any loan on a form approved by the Ministry of Justice, that loan certificates must be issued to the borrower indicating the sum lent, the pledged goods, the agreed interest and the terms otherwise laid down in the loan agreement. It follows from paragraph 2 of that provision that returned loan certificates must be kept at the place of business for 3 months.

Pawnbrokers may not, pursuant to Section 15 of the Order, impose or receive higher interest on sums lent than 1.5 % per commenced month nor may they, in addition, impose costs on the pledgor, cf. without prejudice to Section 18(1) on pledged lottery tickets and Section 20 on registrations for auctions.

In the comments to the original Act of 1921, it is stated that the rationale for the interest rate cap is to protect (disadvantaged) citizens from over-indebtedness and excessive interest. Conversely, it was not the intention to set the interest rate cap so low that pawnbroking activities could not recover their costs, risks, etc. through lending.

In addition, under Section 19 of the Credit Agreement Act, the consumer has a right of withdrawal of 14 days from all loans other than mortgage loans.

Under Section 16 of the Order, the pledgor may execute the mortgage at any time in return for payment of the accrued granting. It follows from the corresponding provision in Section 26(1) of the Credit Agreement Act that the consumer is entitled at any time to settle all or part of his obligations under a credit agreement. The consumer is then entitled to a reduction in the total cost of the credit, consisting of interest and costs for the remaining part of the maturity of the contract.

Reference is also made to Report No 1580/2022, page 170 et seq.

#### 3.7.1.3.1. Pawnbroking activities with respect to lottery tickets

Under Section 17 of the Order, pawnbrokers may not conclude a contract under which the due date of the loan in the case of the lending of lottery tickets falls between the first and last drawing day, both days included.

In accordance with Section 18 of the Order, if the pawnbroker agrees with the pledgor to renew the pledged lottery ticket, a fee may be calculated in accordance with Section (1) of the Order, which shall be set by the Minister for Justice. Notification shall be made in the Official Gazette.

If the loan is not settled in a timely manner, the pledged lottery shall accrue to the borrower.

Under Section 18(3) of the Order, Section 2 of Act No 187 of 23 June 1932 concerning the sale of tickets for 'Klasselotteriet' ('class lotteries') prohibits the sale of a class lottery ticket in order to satisfy a claim against that player.

Reference is also made to Report No 1580/2022, page 172 et seq.

#### 3.7.1.3.2. Pawnbroking activities with respect to other items

Under Section 19 of the Order, the pawnbroker may not conclude a contract under which the maturity of the loan in the case of non-lottery tickets lending is set at less than three months.

If a loan is settled or a mortgage is renewed after the mortgage has been registered in an auction set to be held within the following three weeks, the pawnbroker is, pursuant to Section 20(1) of the Order, entitled to a remuneration for incurred costs of 5 % of the sum of the loan plus accrued interest, but not exceeding DKK 15 for each mortgage. If a mortgage has been issued for auction but the mortgage has been withdrawn because of a lack of reasonable bid, the pawnbroker is entitled to a corresponding remuneration, cf. Section 20(2) of the Order.

Under Section 21(1) of the Order, if a loan is not settled in a timely manner, the pawnbroker may, one month after the due date, seek enforcement of the mortgage by public auction.

In the auction catalogue to be drawn up pursuant to Section 12 of the Auctioneer Act, goods included under different loan certificates may not be offered together. The catalogue shall indicate the pawnbroker from which the mortgages originate and shall bear a serial number next to the serial number of each pledged good as entered in the pawnbroker's business record, cf. Section 21(2) of the Order. The pawnbroker must send two copies of the auction catalogue to the police before the auction, cf. Section 21(3) of the Order.

In accordance with Section 22(1), first sentence, of the Order, the pawnbroker must, within 2 months of the enforcement of the mortgage, determine his outstanding accounts with the pledgor. Under Section 22(1), second sentence, if the pledgor has a receivable, the pledgee shall, within the same deadline (2 months) and via a notice in one or more local newspapers determined by the police, invite the holder of the loan certificate to collect his claim within one year of the auction, in return for the loan certificate. The statement shall be drawn up on a form approved by the Ministry of Justice and, together with a copy of the auction catalogue and of the Order referred to in paragraph 1 of the provision, shall be kept together with the business record, cf. Section 22(2) of the Order.

In accordance with Section 22(3) of the Order, sums which are not collected within the 1-year deadline shall accrue to the pawnbroker.

Under Section 23 of the Order, a pawnbroker who has given a collateralised loan in a Royal Pawn's leaflet may execute the mortgage from the Royal Pawn.

Reference is also made to Report No 1580/2022, page 173 et seq.

### 3.7.2. Considerations of the Committee

The Committee has considered whether the rules in the Antique Shop Act on the day-to-day operation of activities are up to date, including whether the rules on managers should be repealed.

In the Committee's view, it militates in favour of maintaining the provisions that it is ensured that there is a particular person who must satisfy the conditions for obtaining a licence and who is responsible for the day-to-day operation of activities, including the responsibility for ensuring that

the activities are operated properly and that no trade in stolen second-hand goods is taking place. However, it must be assumed that traders in second-hand goods and pawnbrokers only currently use the managers to a limited extent for their activities, just as a (large) part of the trade in second-hand goods does not take place from physical stores. Today, as a result of technological and social developments, the trade in second-hand goods takes place to a large extent via other platforms. In the Committee's view, these developments have meant that there is no longer any need to meet the specific requirements underlying the rules on day-to-day operations and managers. In the Committee's view, this fact, together with the fact that any trade is carried out under the responsibility of a trader holding a licence, militates in favour of the repeal of the rules and managers.

The Committee notes in this regard that the current system appears to be disproportionately burdensome both for individual economic operators and for the police. The scheme thus requires economic operators to report almost any employment change to the police, and the police must verify, in the event of such a report, whether the manager meets the conditions for obtaining a licence.

Against this background, the Committee proposes that the provisions of the Antique Shop Act on the day-to-day operation of activities and managers be repealed, so that only one (responsible) licence holder should be notified to the police.

### 3.7.2.1. Common rules for trade in second-hand goods and pawnbroking activities

The Committee has also considered whether the rules on day-to-day operations of the Order should be maintained. Thus, the Order does not appear to have followed technological and social developments and the rules are therefore obsolete. This is not only about, for example, the requirement that business records must be kept physically, but also that the matters are regulated by other and more recent legislation.

Against this background, and since traders in second-hand goods and pawnbrokers already have an accounting obligation in accordance with the rules laid down in the Accounting Act, which imposes requirements on a company's accounts which go beyond those laid down in the Order, and the Accounting Act allows for electronic accounting, there is no need to maintain the provisions on the *keeping of business records* of the Order. Against this background, the Committee proposes that all the relevant provisions be repealed.

Furthermore, since the purchase and sale of old scrap and other waste must in any case be registered in accordance with the rules laid down in the Accounting Act, the Committee considers that there is no basis for maintaining the de minimis threshold applicable to such purchases and sales, cf. Section 4(2) of the Order. The Committee therefore suggests deleting this provision as well.

The Committee also considers that the requirement of the Order that the accounting records be sent to the police should be deleted, as police access to accounting documents is deemed sufficient to exercise the necessary supervision.

As regards the obligation to require customers' identification, the Committee considers that this obligation is essential in preventing the sale and lending of stolen goods, so that traders in second-hand goods and pawnbrokers should continue to be subject to such an obligation. Thus, it must be assumed that a person, provided that he is aware or suspects that a good has been stolen, would be less inclined to sell or lend the good if he was required to identify himself.

In view of the obligation to require customers' identification and the already existing obligation for pawnbrokers to record it following the money laundering legislation, the Committee proposes that the rules on this in the Order should be maintained only with regard to traders in second-hand goods. In order to ensure that the provision also applies to any similar concepts, such as activities involving sales with a right of repurchase, the Committee proposes to maintain the provision in Chapter 2 of the Order, entitled 'common rules for trade in second-hand goods and the like'.

The Committee is aware that an obligation to require customers' identification may be burdensome. After weighing, on the one hand, the concern not to impose disproportionate burdens on economic operators vis-à-vis, on the other hand, the need to minimise trade in stolen goods, the Committee proposes that the obligation to require customers' identification should only apply in the case of trade in second-hand goods and the like if the price of the good to which the sale relates exceeds DKK 2 000. Trade in second-hand goods and the like of up to DKK 2 000 will then be covered only by the rules of the Accounting Act.

With regard to the type of identification, the Committee suggests that the person who will conclude a contract on sales should provide identification via 'MitID' (Denmark's national eID) or through valid photo identification

in accordance with the identification documents in force at the time, as they appear on the Agency for Digital Government's website.

In the Committee's view, the identification that may be required should not be limited, as is currently the case, to either a passport, driving licence or identity card from Danish financial institutions. For this reason, the Committee also considers that there is no need to maintain the exemption that the police may exceptionally permit sales or pledging to take place on production of other types of identification (other than a passport, driving licence or identity card from Danish financial institutions).

Bearing in mind that the Committee proposes that the requirement to keep business records be deleted, only the type and number of the identification shown should be recorded in the economic operator's accounting documents in order to ensure that the police can exercise supervision. Recording has been made when the information is sufficient to enable the police to identify who has concluded the sale contract. The economic operator must keep proof of the recorded identification for 5 years.

In view of the fact that 'Kosterbladet' is no longer published, the Committee proposes that the provision in Section 7(1) of the Order be deleted. Bearing in mind that, apart from the bicycle register, no separate register is currently kept for certain types of missing items, the Committee also proposes that the provision in Section 7(6) of the Order, which requires the commercial operator to keep separate registers of certain types of missing items and to declare certain goods found to the local police or the missing item centre in accordance with instructions of the police, should also be repealed.

On the Committee's considerations on the creation of an electronic searchable register of stolen goods, reference is made to point 3.8.2 below on supervision.

Reference is also made to Report No 1580/2022, page 175 et seq.

### 3.7.2.2. Specific rules for trade in second-hand goods

The Committee has considered whether the Order on *labelling obligations* should be maintained. This is an administrative burden on traders, which should only be maintained if it is necessary in order for the police to exercise the necessary supervision.

Traders in second-hand goods are required, *inter alia*, under the Accounting Act, to record all purchases and sales in the order in which they were

effected, and the registers must refer to supporting documents. The Accounting Act also states that records may be carried out electronically and that the documents must be kept for at least 5 years. The police is currently allowed to inspect business premises, stocks of goods and business records (accounting documents) under the Antique Shop Act, the rules of which are proposed to be maintained, cf. point 3.8.2 below.

In addition to the accounting obligation, traders in second-hand goods are obliged to require the person who wishes to conclude a contract on sales to provide identification through valid photo identification, cf. point 3.7.1 above. In doing so, antique shops shall note the type and number of the identification shown. This means that the police (through accounting documents) is able to identify the origin of an antique shop's goods. The recording of identification information enables the police to subsequently identify the parties to the antique shop's contract.

Since the labelling requirement is regulated by other and more recent legislation, it must be assumed that the police can exercise the necessary supervision, and the Committee therefore proposes that the provision on labelling be deleted.

As regards the requirements that *goods purchased must be stored (intact) for a certain period of time after receipt and that, during that period, the goods must be kept separate from other stock*, it should be noted that, as a result of a lack of space, antique shops are often forced to discard goods quickly after receipt, and that the storage requirement is therefore very burdensome for economic operators. In the Committee's view, on the one hand, this militates in favour of repealing the requirements.

On the other hand, it may be argued that the storage requirement allows a person who has been the victim of theft to report the theft before the good is transferred. It also allows the police to investigate the case. Conversely, in the Committee's view, this militates in favour of maintaining the requirements.

In view of the fact that the police (through accounting documents) is able to identify the origin of an antique shop's goods, just as the police can see when a given good has been resold, together with the fact that the storage requirements are burdensome for traders in second-hand goods, the Committee proposes, after an overall assessment, that the requirements could be deleted.

### 3.7.2.3. Specific rules for pawnbroking activities

The reason for the specific rules of the Order on pawnbroking activities is, in particular, to avoid the lending of stolen goods and to prevent the abuse and exploitation of customers. The Committee therefore considers that the detailed rules on pawnbroking activities depend, *inter alia*, on the rules which otherwise apply to such activities and whether those rules adequately address the relevant protection concerns.

Regarding the requirement on *labelling* for pawnbrokers of the Order, reference is made to the Committee's considerations above on the corresponding requirement for second-hand traders. It is then proposed to repeal the provision of the Order on labelling with regard to pawnbrokers.

With regard to the requirement that *pawnbrokers at the end of any loan, on a form approved by the Ministry of Justice*, should issue a loan certificate to the borrower, it should be noted that, in principle, pawnbroking activities are not covered by the rules of the Financial Business Act, since traditional pawnbroking activities covered by the Antique Shop Act are operated by granting loans and not simultaneously by accepting deposits, as is the case with banks, for example. Pawnbroking activities are on the other hand covered by the provisions of the Credit Agreement Act. The comments to the Credit Agreement Act, cf. the Folketing Hansard 2009–10, A, L 91, as presented, page 44, state that there are currently no specific rules on credit agreements where the consumer must deposit a good as collateral with the creditor at the time of the conclusion of the agreement and where the consumer is only liable for the good in question, that is to say, where the creditor exercises a type of pawnbroking activity. It is also apparent from the comments that such agreements are therefore, in principle, covered by the general rules of the Credit Agreement Act. The rules in the Credit Agreement Act are mandatory and cannot therefore be derogated from by agreement to the detriment of the consumer, cf. Section 7(1) of the Credit Agreement Act.

Under Section 8(1) of the Credit Agreement Act, a credit agreement, including a pawnbroking agreement, must be drawn up on paper or on another durable medium and contain a number of detailed information. All the parties to the agreement must receive a copy of the credit agreement. Since a pawnbroker is already obliged under the Credit Agreement Act to draw up a loan agreement containing more detailed information on the loan agreement than that provided for in the Order, the Committee proposes that the relevant provisions be repealed.

As stated in point 3.7.1, the background for the *interest rate cap* mentioned in the Order is, in particular, to protect (disadvantaged) citizens from over-indebtedness and excessive interest against the concern that the interest rate cap shall not be set so low that pawnbrokers cannot recover their costs, risks, etc. through lending. There are already a number of rules aimed at avoiding over-indebtedness and excessive interest, including those in Sections 7a, 7c and 22 of the Credit Agreement Act.

The Committee notes in this connection that mortgages are different from 'ordinary loans' in that the pawnbroker holds pledges on the customer's property/properties. There are currently very many possibilities to contract unsecured loans, and against this background it must be assumed that persons who take up mortgages and thus provide their property as collateral for the loan are probably not wealthy citizens.

In the Committee's view, the advantage of maintaining the interest rate cap in the Order would be to ensure that the borrower takes up loans with reasonable and legally prescribed interest terms. Thus, the pawnbroker does not have the possibility to issue very risky loans with very high interest. The interest rate cap will also make it easier for the borrower to understand the market and avoid that the pawnbroker takes advantage of the customer's potential lack of knowledge about interest conditions.

However, the disadvantage of creating the interest rate cap is, in the Committee's view, that the cap limits the competitiveness of the pawnbroker. There is also a risk that the cap will regulate the price formation in the pawnbroking market, so that all pawnbrokers impose a maximum interest of 1.5 % per month. This may also have the effect of restricting competition. The restriction of competition would ultimately be detrimental to the consumer.

In the Committee's view, it is clear that the advantages and disadvantages listed will depend on the level at which the cap is set. Taking into account the Act's protective objective of preventing the abuse and exploitation of the company's customers, the Committee therefore proposes that the interest rate cap be maintained, but that, to the extent that it is no longer up to date, the level should be adjusted.

In this context, the Committee notes that an interest rate of 1.5 % per month corresponds to a percentage rate of charge for the loan of 19.6 %. In the Committee's view, the interest rate referred to above cannot be regarded as unreasonable in comparison with many other short-term loans, but should not be increased, since the lender has collateral through

pledges. Against this background, the Committee suggests that the maximum interest rate should be maintained.

With regard to the provision of the Order on the *execution right*, the Committee agrees that the provision shall be repealed in order to avoid double regulation, cf. Section 26(1) of the Credit Agreement Act, which has the same purpose and content.

#### 3.7.2.3.1. Pawnbroking activities with respect to lottery tickets

The Committee has considered whether pawnbroking activities with regard to lottery tickets should continue to be regulated separately in the Act.

In the Committee's view, it is doubtful whether loans with mortgages on lottery tickets are currently granted at all. In view of this, and given that pawnbroking activities in respect of lottery tickets are also covered by the general provisions of the Antique Shop Act and the Order, including in relation to, *inter alia*, the interest rate cap, the Committee proposes that the specific provisions in this regard be deleted.

#### 3.7.2.3.2. Pawnbroking activities with respect to other items

In order to ensure that a borrower has a real opportunity to repay the sum borrowed and thus recover the pledged good, the Committee considers that the provision of the Order that *the pawnbroker shall not conclude a contract under which the loan is to be repaid within 3 months* should be maintained.

The Committee notes that, if the minimum maturity requirement is deleted, (short) pawnbroking agreements, which are exempt from the rules of the Credit Agreement Act, such as those on the right of withdrawal, could be concluded in the future. In that case, for consumer protection concerns, there would be a need to lay down more detailed rules for pawnbroking activities. Moreover, the shorter the minimum maturity, the weaker the borrower's actual ability to settle the loan and recover the pledged good.

In the Committee's view, if a loan is settled or a mortgage is renewed after the mortgage has been registered in an auction set to be held within the following three weeks, the pawnbroker should, as it has hitherto, be entitled to a remuneration for sunk costs related to, for example, the auctioneer. The provision in this regard is therefore proposed to be maintained.

As regards the amount of the remuneration, it may be argued that the pawnbroker already receives interest on the loan, so that the amount should not depend on the amount of the loan but on the costs incurred by

the borrower in connection with an upcoming auction. Conversely, if the remuneration is (fully) cost-oriented, there is a risk that a customer who has not settled a small loan in a timely manner will have to pay to the pawnbroker a fee that is disproportionate to the amount of the loan or the value of the pledged good.

In the light of the above, the Committee proposes that the amount of the remuneration should be maximised depending on the value of the good, with the proviso that the remuneration may not exceed a certain amount. The Committee therefore considers that the remuneration is fair, but should be projected to 2022 levels. The Committee therefore proposes that, in the given situation, the pawnbroker should be entitled to a remuneration for incurred costs of 5 % of the sum of the loan plus accrued interest, but not exceeding DKK 125 for each mortgage.

The Committee believes that, in the event of the default of the borrower, a pawnbroker should continue to be able to seek *enforcement of the mortgage by public auction*. However, in the interest of the borrower, there should be a certain level of default, and the provision in this regard is proposed in accordance with the corresponding provision in Section 29 of the Credit Agreement Act, so that the pawnbroker may seek enforcement of the mortgage by public auction if the borrower has defaulted 30 days after its due date and the amount due represents at least one-tenth of the total amount to be paid or if the amount due includes several instalments, at least one twentieth of the total amount to be paid or the entire remaining debt.

In order for the police to be able to identify the current location of (possibly stolen) pledged goods sold at auction, the Committee considers it appropriate to maintain the requirements that *pledged goods covered by different loan certificates are not offered together and the identity of the pawnbroker and the mortgage number, as shown in the pawnbroker's accounting, are recorded in the auction catalogue*. Against this background, the Committee proposes that the relevant provision of the Order be maintained in a modernised form.

The auction catalogue is updated by the auctioneer or a person under the immediate supervision of the auctioneer. Since requirements for the auction catalogue are laid down in the Auctioneer Act and the administrative regulations issued on the basis thereof, the requirement to update the auction catalogue and its relationship with the enforcement of pledged goods are more naturally related to the auctioneer legislation.

However, it should be stipulated in the pawnbroking legislation that the pawnbroker is obliged (ex officio) to provide the auctioneer with the information necessary for the auction catalogue to be updated in accordance with the formal requirements laid down by law. The information to be provided is the identity of the pawnbroker and the mortgage number, as shown in the pawnbroker's accounting documents. This information should be sufficient to enable the auctioneer to comply with his examination obligation.

As regards the current provisions on the *determination of the outstanding accounts between pawnbrokers and pledgors*, these appear to be obsolete in the Committee's view, since the provisions seem to require the loan to be paid out in cash. The provisions also seem to presuppose that the pawnbroker does not have the necessary information on the borrower to be able to pay him any excess amount.

Under Section 8(2)(2) of the Credit Agreement Act, a loan agreement must indicate the name and physical address of the parties to the agreement, including the borrower, and the pawnbroker must keep the borrower's identification documents in accordance with Section 30 of the Money Laundering Act. The Committee considers that it is sufficient for the pawnbroker to be in possession of this information.

With regard to the requirement that the pawnbroker's statement be drawn up on a form approved by the Ministry of Justice, the Committee notes that the Ministry has not drawn up such a form. The Committee suggests that the Order should instead require the statement to contain information enabling the pledgor (borrower) to check that the determination has been carried out correctly and to remove the requirement that the draft Act be drawn up on a form approved by the Ministry of Justice.

The Committee has considered whether the 2-month deadline for the pawnbroker's determination of his outstanding accounts with the pledgor after the enforcement of the mortgage is reasonable, or whether the deadline should be shortened. It follows from Section 8 of the Credit Agreement Act that the pawnbroker is obliged to draw up a loan agreement containing detailed information on the terms of the agreement. In addition, the Committee proposed to maintain an interest rate cap, so that the pawnbroker may not impose or receive higher interest on sums lent than that provided for in the Order. Furthermore, the Committee has suggested that the borrower should not, in addition, impose costs on the pledgor unless the loan is settled or the mortgage is renewed after the mortgage has been reg-

istered in an auction set to be held within the following three weeks, in which case the pawnbroker is entitled to a remuneration for sunk costs related to, for example, the auctioneer. In view of the above, it must be assumed that, immediately after the enforcement of the mortgage, the pawnbroker has the necessary information to determine his outstanding accounts with the pledgor, and it is therefore proposed that a deadline of 4 weeks be set after the enforcement of the mortgage to determine the outstanding accounts.

In view of the fact that the Royal Pawn institution was abolished around 1970, the Committee proposes that the provision of the Order that a pawnbroker who has given a collateralised loan in a Royal Pawn's leaflet may execute the mortgage from the Royal Pawn should be removed.

### 3.7.3. Considerations of the Ministry of Justice and the proposed scheme

The Ministry of Justice agrees with the Committee's considerations and proposals, and the draft Act is drafted accordingly.

With regard to the threshold of DKK 2 000 recommended by the Committee in relation to the obligation to require customers' identification, it should be noted that, in the Ministry of Justice's view, there may be a need to adjust the threshold on an ongoing basis in line with changes in society. It is therefore assumed that the threshold can be adjusted on a regular basis when laying down detailed rules. This applies both downwards and upwards.

In relation to the rules proposed by the Committee for the protection of borrowers when concluding pawnbroking agreements, the Ministry of Justice has, when clarifying the scope of the Act ('established in Denmark', cf. Section 1(1) of the draft Act), considered it appropriate to add an explicit legal basis to lay down rules in this regard, and that such rules apply to pawnbrokers regardless of whether they are established in Denmark, cf. Section 1(4) and point 10 of the draft Act on the relationship with EU law.

Reference is made to Sections 1 and 13 of the draft Act and the comments thereon.

## 3.8. Supervision

### 3.8.1. Existing law

Chapter 3 of the Antique Shop Act (Sections 13–15 of the Act) contains rules on police supervision of natural and legal persons holding licences either for trading in second-hand goods or for pawnbroking activities, as

well as rules on the handling by the licence holder of goods offered to the licence holder for purchase or as mortgage in suspicious circumstances or when the licence holder finds that goods that he has purchased or received as mortgage are missing goods.

### 3.8.1.1. Police access to inspect business premises, stocks of goods and business records

Under Section 13 of the Antique Shop Act, the police is allowed to inspect the company's business premises, stocks of goods and business records.

Each police district supervises, within its area, that persons covered by the Act comply with the rules. It is therefore up to each police district to organise and carry out the tasks associated with supervision under the rules of the Antique Shop Act.

Reference is also made to Report No 1580/2022, page 183 et seq.

### 3.8.1.2. Obligations of the economic operator in relation to a suspicion of illicit provenance

If the licence holder is offered goods for purchase or as mortgage in circumstances which may give rise to a suspicion of illicit provenance, the licence holder shall immediately notify the police thereof and retain the goods until the arrival of the police, cf. Section 14(1), first sentence, of the Antique Shop Act. The same shall apply where it is established that goods purchased or received as mortgage by the licence holder are missing goods, cf. Section 14(1), second sentence.

Section 8(1) of Order No 7 of 9 January 1969 states that grounds for suspicion may arise in particular if certain goods listed in the provision are offered.

If it is established that goods purchased or received by the commercial operator as mortgage are missing goods, the operator shall immediately notify the police and retain the goods until the arrival of the police, cf. Section 8(2) of the Order.

Under Section 14(3) and Section 2(8) of the Order, cf. Section 14(2) of the Act, the licence holder may not purchase second-hand goods or receive a mortgage from minors or from intoxicated persons.

The Minister for Justice may, in accordance with Section 15(1) of the Antique Shop Act, lay down detailed rules on the exercise of activities pur-

suant to the Act. The legal basis is used by Order No 7 of 9 January 1969 on trade in second-hand goods and pawnbroking activities.

Pursuant to Section 15(2) of the Act, the Minister for Justice may lay down rules on which authority within the police carries out police tasks under the Act. The empowerment was introduced by Act No 736 of 25 June 2014 amending the Act on television surveillance, the Act on the safety of certain sports events, the Act on restaurant services and alcohol licences etc. and various other laws as part of a general amendment of competence provisions in the field of weapons, permissions and traffic.

Reference is also made to Report No 1580/2022, page 185 et seq.

### 3.8.2. Considerations of the Committee

Today, the trade in second-hand goods takes place to a large extent online from various sales platforms and social media, including e.g. 'DBA', 'GulogGratis', Facebook, etc. Unlike in the past, where the exchange of goods usually took place from physical stores, the exchange of goods nowadays often takes place from many different locations. The extension of the area from which second-hand goods are traded imposes higher requirements on police supervision and makes it more difficult to ensure the control of trade in second-hand goods and to prevent the resale of stolen, falsified or illegally exported goods.

In the Committee's view, the provisions of the Antique Shop Act on supervision are not in line with social and technological developments, including, in particular, that the rules do not take account of widespread online trade.

Police supervision aims, among other things, to prevent trade in stolen second-hand goods. However, it is difficult in practice to exercise sufficiently effective supervision, which also limits the preventive effect of supervision. Therefore, in the Committee's view, it cannot be ruled out that police resources are better used for the police's actual investigative work in specific cases, including, for example, when the police receives a report of theft or notification of suspicious situations or criminal offences in connection with the trade in second-hand goods. In that regard, it should be noted that, as mentioned above, the licence holder is under an obligation to inform the police immediately in case of a suspicion of illicit provenance.

In the light of this, the Committee has considered how to adapt the provisions of the Antique Shop Act on supervision in order to better ensure that the police is able to exercise effective supervision.

In order to ensure that the police continues to be able to check that the goods and pledged goods of the antique shop and the pledged good correspond to the goods listed in the accounting documents, the Committee considers that the police shall continue, at all times, without a court order and upon providing proper identification, to have access to a company's accounting documents, potential business premise and stocks of goods.

The Committee proposes, as indicated in point 3.4.2, that the requirement of a permanent place of business be repealed so that a trader in second-hand goods, regardless of the selling method, must keep his goods in a physical location separate from private dwellings, including, for example, a garage, storage room or the like, which the police is entitled to supervise. In doing so, traders in second-hand goods, regardless of the type of sale, can conduct business under current conditions, while allowing the police to exercise the necessary supervision.

As regards the scope of the supervision, this depends, in the Committee's view, on what is deemed necessary by the police, taking into account the type, activities and circumstances of the specific company. In that regard, it should be noted that the supervision is limited to the premises which are relevant for police checks. Thus, the supervision does not cover buildings or parts of buildings used exclusively for private residential purposes.

In the Committee's view, the obligation incumbent on the economic operator, in relation to a suspicion of illicit provenance, to inform the police immediately is essential in order to prevent the sale of stolen goods, and it is therefore proposed that the obligation be maintained. Thus, the licence holder must continue to be obliged to inform the police immediately if goods are offered to the licence holder for purchase or as mortgage in circumstances which may give rise to a suspicion of illicit provenance. Furthermore, in order to contribute as much as possible to the police's investigative work, the licence holder must continue to be obliged to retain the goods until the arrival of the police.

Following the Committee's considerations of the economic operator's obligations in relation to a suspicion of illicit provenance, a representative of the Committee expressed the wish that specific and permanent contact persons in the police be communicated to the economic operator. Such contacts would help the economic operator to react in a timely and appropriate manner, for example, in case of a suspicion of illicit provenance.

The Committee is aware it might be difficult for the licence holder to assess in practice when a trade gives rise to a suspicion of illicit provenance.

In this context, the Committee notes that special attention should be paid by the licence holder in the case of valuable and/or rare goods, for which it may be particularly justified for the licence holder to require details on provenance, for example when requesting the submission of relevant proof in the form of a receipt or equivalent.

The Committee also proposes to maintain the provision that the licence holder is obliged to notify the police of a suspicion of illicit provenance if the licence holder, *after the conclusion of the contract*, obtains information justifying that suspicion.

In addition, the Committee suggests that, in order to minimise the sale of stolen goods, an electronic searchable register of such goods should be established.

There are currently many possibilities to market stolen goods, including sales between private individuals online and via specific social media groups, and a number of stolen goods are very likely to be sent out of the country. The Committee also has no doubt that, notwithstanding the establishment of an electronic searchable register of stolen goods, there will continue to be a market for stolen goods. However, the establishment of such a register, whether the information contained therein is useful and valid, would, in the Committee's view, help reduce the ability of criminals to market such goods without risk of detection and thus be likely in the long term to contribute to a reduction in the number of burglaries.

As we have seen, one of several prerequisites for this is that the information on stolen goods in such a searchable register is useful and valid, and the register must be easy to access. The Committee does not have the necessary competences to describe more precisely the structure of such an electronic register, which, in the Committee's view, should be done under the oversight of the Danish National Police. However, in the Committee's view, it is essential, with regard to the usefulness of such a register for traders in second-hand goods and pawnbrokers — and, similarly, for the auction, art and antique trading sectors, as well as the insurance sector and the Commission on the Export of Cultural Assets, which, in its view, should have access to the register — that relevant 'hits' in the register should be obtained after entering a few defined search criteria. The register should also contain all types of items which are subject to theft, possession of stolen goods, etc. which are likely to be resold, including, for example, designer furniture, electronics, jewellery and wrist-watches. The register must also be kept up to date so that stolen goods are immediately recorded

in the register and goods which, for example, are found, are deleted. In the Committee's view, it would be beneficial to link the register with the police's proceedings systems, so that a stolen good is recorded in the register when a citizen has reported a theft to the police. In the Committee's view, the electronic register in question should also be developed with the involvement of relevant stakeholders, including, *inter alia*, the auction, art and antique trading sectors, as well as the insurance sector, possibly by setting up a monitoring group.

Subject to the establishment of such a register, the Committee proposes that the licence holder be obliged, where appropriate, to search for the good in that register before the licence holder concludes a contract on the purchase or pledging of a good.

With regard to the list in No 8, paragraph 1, of the Order of goods which should give rise to a suspicion of illicit provenance, the Committee considers that the provision is no longer of any practical relevance, and it is therefore proposed that the provision be deleted.

With regard to the prohibition in Section 14(2) of the Antique Shop Act on concluding agreements with minors and intoxicated persons, the Committee considers that the reason for this provision is, in particular, to protect these groups of persons. However, there are also provisions in the Guardianship Act and the Agreement Act which protect the persons that are to be protected by the provision in Section 14(2) of the Antique Shop Act. Minors are protected, *inter alia*, by the general rule in the Guardianship Act that minors may not enter into legal transactions or dispose of their assets unless otherwise provided. Thus, a minor who concludes a contract on purchases and sales of second-hand goods or pledging would not be bound by it. In the case of intoxicated persons, that group is protected, *inter alia*, by Section 33 of the Agreement Act on contracts contrary to the requirement of good faith and may therefore, depending on the specific circumstances surrounding the conclusion of the contract, withdraw from the contract. In the Committee's view, the provisions of the Guardianship Act and the Agreement Act respectively provide adequate protection for minors and intoxicated persons with regard to the conclusion of contracts concerning the purchase of second-hand goods and pledging, and the Committee therefore proposes that Section 14(2) of the Antique Shop Act be repealed.

Finally, the Committee proposes to maintain the enabling provision so that the Minister for Justice can lay down more detailed rules on the exercise of

activities pursuant to the Act. The Committee also proposes to maintain the provision according to which the Minister for Justice may lay down rules on which authority within the police carries out police tasks under the Act.

Reference is also made to Report No 1580/2022, page 187 et seq.

### 3.8.3. Considerations of the Ministry of Justice and the proposed scheme

The Ministry of Justice agrees with the Committee's considerations and proposals, and the draft Act has been drafted accordingly with legislative technical adaptations, without prejudice to what is mentioned below.

The Ministry of Justice agrees that it would be appropriate to establish an electronic searchable register of stolen goods.

A provision is therefore proposed under which the Minister for Justice may lay down more detailed rules on the examination by the licence holder of goods which are offered to the licence holder for purchase or as mortgage. It is understood that it will be possible to lay down rules requiring the licence holder to carry out relevant searches in an electronic searchable register of stolen goods.

The establishment and details of such a register, including its public availability, fall outside the scope of the draft Act.

Reference is made to Sections 9-11 of the draft Act and the comments thereon.

## 3.9. Penalties

### 3.9.1. Existing law

Chapter 4 (Section 16) of the Antique Shop Act contains the penal provisions of the Act.

It follows from Section 16(1) of the Act that infringements of Section 2(1) (licence requirements), Section 4 (requirements for, *inter alia*, permanent places of business with separate business premises), Section 5 (licences displayed in visible places), Section 10 (handover of terminated or withdrawn licences to the police), Section 11(1)(1-3) (licence holders or approved managers are responsible for day-to-day operations), Section 12 (prohibition for persons who do not meet the conditions for obtaining a licence to conclude contracts on purchases or loans) and Section 14 (notifi-

cation to the police in case of a suspicion of illicit provenance) shall be punishable by a fine.

Section 16(2) and (3) provides, respectively, legal basis for the adoption of provisions on penalties in the regulations laid down pursuant to the Act and for the imposition of financial penalties for infringements of the provisions referred to in Section 16(1) on public limited companies or the like.

Under Section 24(1) of Order No 7 of 9 January 1969, infringements of Sections 3 and 4(1) of the Order (requirements for business records), Section 6 (identification requirements), Section 7 (inspection of, *inter alia*, 'Kosterbladet' and requirements for business premises), Section 8 (list of circumstances which may give rise to a suspicion of illicit provenance), Section 9 (labelling of goods), Section 10 (prohibition on the purchase of certain lottery tickets), Section 11 (storage requirements), Section 12 (requirements for separate goods), Section 13 (labelling of pledged goods), Section 14 (requirements for the issuance of loan certificates), Section 15 (interest rate caps), Section 17 (requirements for the maturity of loans), Section 19 (minimum maturity of loans), Section 21(2) and (3) (auction catalogue requirements), Section 22(1) and (2) (determination of outstanding accounts) and Section 23(2) (settlement of profits) shall be punishable by a fine. If the infringement has been committed by a public limited company or the like, Section 16(3) of the Act may as such impose a fine on the company.

### 3.9.2. Considerations of the Committee

In order to ensure compliance with the antique shop legislation, the Committee considers that the provisions of the Antique Shop Act and the Order on sanctions in relation to infringements of relevant parts thereof should be maintained.

In the Committee's view, the licence requirement to operate activities covered by the Act is essential in order to achieve the basic objective of the legislation, which is to ensure the control of trade in second-hand goods and to prevent the resale of stolen, falsified or illegally exported goods. The Committee therefore proposes to maintain the provision according to which infringements of the licence requirement laid down in Section 2 of the Act shall be punishable by a fine. In the Committee's view, failure to comply with the licence requirement should also mean that licences may be refused in the event of a subsequent applications for licences, cf. also point 3.3.2 above on the refusal of licences.

It is essential for the effective police supervision of the trade in second-hand goods and pawnbroking activities, including the supervision of the proper operation of activities, that the police is aware of who operates the activities covered by the Act. It is therefore proposed to maintain the provision that companies holding a licence, etc., which fail to notify new members in management or the board of directors to the police within 14 days, shall be punishable by a fine. On the conditions for licences for companies, etc., reference is also made to point 3.3 above.

In the Committee's view, it is also essential, in order for the police to be able to exercise effective supervision, that a licence holder informs the police, before commencing his activities, of the location of its business premises, stocks of goods and accounting documents. Against this background, the Committee proposes to maintain the current rule that infringements of this obligation to provide information shall be punishable by a fine. Regarding the requirement to provide information, reference is made to point 3.4.2 above.

In the Committee's view, infringements of the licence holder's obligation to immediately inform the police if there is a suspicion of illicit provenance for goods for purchase or as mortgage, shall also be punishable by a fine. Regarding this obligation, reference is also made to point 3.8.2 above.

Finally, it is proposed to maintain the provision that imposes a fine for failure to hand over a licence

The Committee proposes that the existing provisions on the criminal liability of legal persons be maintained. Furthermore, criminal liability, as in the legislation, should be imposed on legal persons in accordance with the provisions of Chapter 5 of the Criminal Code on the criminal liability of legal persons.

With a view to enforcing the requirements and obligations laid down in the Order, the Committee proposes that the penal provisions of the Order be maintained to the extent that the provisions to which reference is made are maintained, so that infringements of Section 2 (identification requirements in the case of trade in second-hand goods and pawnbroking activities), Section 3 (interest and cost ceilings for pledging), Section 4 (requirements for the length of the term of the pledging agreement), Section 7(1) (information requirements for the auctioneer's auction catalogue), Section 8(1) (requirements for the determination of outstanding accounts between pawnbrokers and pledgors within 14 days) and Section 8(4) (requirements

for the keeping of statements and auction catalogues) shall be punishable by a fine.

### 3.9.3. Considerations of the Ministry of Justice and the proposed scheme

The Ministry of Justice agrees with the Committee's considerations and proposals, and the draft Act is drafted accordingly with legislative technical adaptations.

Reference is made to Section 12 of the Draft Act and the comments thereon.

## **4. Impact on the UN Sustainable Development Goals**

The draft Act is deemed to have a positive impact on the achievement of Target 16.4 of the UN Sustainable Development Goals to, by 2030, significantly reduce illicit financial and arms flows, strengthen the recovery and return of stolen assets and combat all forms of organized crime.

This is because new and modernised rules need to help ensure control of the trade in second-hand goods and prevent the resale of stolen, falsified or illegally exported goods.

## **5. Economic and implementation impact on the public sector**

The draft Act is not deemed to have any significant financial impact on the State, nor is it deemed to have a financial impact on regions and municipalities.

The draft Act is also considered to be in line with the principles of digital-ready legislation.

## **6. Financial and administrative impact on business, etc.**

The draft Act could, as an administrative burden, impose detailed rules on the obligation for licence holders to ensure that, in an electronic register of stolen goods, searches are carried out for goods offered for purchase or as mortgage. The draft Act will also impose certain administrative and financial burdens on economic operators operating online auctions for the sale of second-hand goods, including requirements for licences from the police to operate activities.

This impact is assessed to be less than DKK 4 million, which is why it is not quantified further.

The principles of agile business-related regulation are not considered relevant to the draft Act.

## **7. Administrative impact on citizens**

The draft Act has no administrative impact on citizens.

## **8. Climate impact**

The draft Act has no climate impact.

## **9. Impact on the environment and nature**

The draft Act has no impact on the environment and nature

## **10. Relationship to EU law**

The proposed regulation of the trade in second-hand goods and pawnbroking activities updates considerations in relation to individual directives.

Directive 2000/31/EC of the European Parliament and of the Council of 8 June 2000 on certain legal aspects of information society services, in particular electronic commerce, in the Internal Market (the ‘e-Commerce Directive’) aims to ensure the free movement of information society services. Overall, the Directive has been transposed into Danish law by Act No 227 of 22 April 2022, as amended (‘the E-Commerce Act’).

‘Information society services’ mean a wide range of economic activities which take place online, such as online sales of goods, including second-hand goods, and online auction activities as such.

Article 4 of the e-Commerce Directive establishes the principle excluding prior authorisation. This means that Member States shall ensure that the taking up and pursuit of the activity of an information society service provider may not be made subject to prior authorisation or any other requirement having equivalent effect. According to the Court of Justice of the European Union, the provision of Article 4 also applies in so-called internal situations without cross-border elements, cf. Case C-62/19 Star Taxi App, paragraph 75. However, the principle excluding prior authorisation is deemed not to preclude the licence requirement laid down in the draft Act, since the requirement does not specifically and exclusively concern information society services, cf. the exemption provision in Article 4(2) of the e-Commerce Directive.

Article 3(1) and (2) of the e-Commerce Directive is based on a sending country principle and has been transposed into Danish law in Sections 3 and 4 of the E-Commerce Act. It follows, inter alia, that the freedom for a service provider established in another country within the European Union to provide an information society service may not be restricted for reasons

falling within the coordinated field, even if the service is directed towards Denmark. The sending country principle is deemed to imply that, for example, online traders in second-hand goods established in another EU country will not be able to benefit from the licence requirements of the draft Act and other rules falling within the coordinated field.

Directive 2006/123/EC of the European Parliament and of the Council of 12 December 2006 on services in the internal market (the ‘Services Directive’) aims to facilitate access for service providers to establish themselves in other EU countries and to facilitate access to provide services in other EU countries without establishment on a temporary basis. Overall, the Directive has been transposed into Danish law by Act No 384 of 25 May 2009 on services in the internal market, as amended.

A ‘service’ means any self-employment activity, normally provided for remuneration. Trade in second-hand goods, whether online or not, may constitute a service within the meaning of the Directive.

As regards the regulation of the access to become established in Denmark, Articles 9–15 of the Services Directive contains detailed rules on the framework for authorisation schemes, including prohibited requirements in Article 14. This framework must also be observed in purely internal situations with no cross-border element. The licence requirements, etc. of the draft Act, including the detailed conditions for obtaining and maintaining a licence, are drafted, and are assumed to be administered, in accordance with these rules. This means, *inter alia*, that, in order to assess whether the conditions for obtaining a licence are met, account must be taken of whether those conditions overlap with similar or essentially comparable requirements and controls to which the company is already subject in any other Member State where it is established at the same time, cf. Article 10(3) of the Services Directive.

Overall, the licence requirement is deemed necessary, proportionate and justified by an overriding reason relating to the public interest in particular for the prevention of and fight against financial crime.

Council Directive 93/13/EEC of 5 April 1993 on unfair terms in consumer contracts aims to approximate the laws, regulations and administrative provisions of the Member States relating to unfair terms in contracts concluded between a seller or supplier and a consumer.

The draft Act assumes that, among other things, more detailed rules will be laid down on the exercise of pawnbroking activities, including on permit-

ted contractual terms, etc., cf. the proposed provision in Section 1(4). The empowerment is expected to be used, *inter alia*, to lay down, within the framework of that Directive, an upper limit on the level of interest (1.5 % per month) that pawnbrokers must impose or receive, that is to say, what is to be regarded as unfair terms in relation to consumers.

### **11. Consulted authorities and organisations, etc.**

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### **12. Summary table**

	Positive consequences/reduction in expenditure (If yes, please specify extent/if no, enter 'None')	Negative consequences/additional expenditure (If yes, specify extent/if no, enter 'None')
Economic consequences for the State, municipalities, and regions	None	None
Implementation consequences for the State, municipalities, and regions	None	None
Economic consequences for business	None	None

Administrative impact on business	None	The draft Act could, as an administrative burden, impose detailed rules on the obligation for licence holders to ensure that, in an electronic register of stolen goods, searches are carried out for goods offered for purchase or as mortgage. The draft Act will also impose certain administrative and financial burdens on economic operators operating online auctions for the sale of second-hand goods, including requirements for licences from the police to operate activities. The extent of this is estimated to be less than DKK 4 million, which is why it is not quantified further.
Administrative impact on citizens	None	None
Climate impact	None	None
Impact on the environment and nature	None	None
Relationship to EU law	[See point 10 above]	
Is contrary to the principles for implementing EU regulation directed at businesses/ Goes beyond minimum requirements in EU regulation	Yes	No <input checked="" type="checkbox"/>

(put an X)	
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*Comments on the individual provisions of the draft Act*

Re Section 1

It is proposed in *paragraph 1* that the Act applies to any person who, for commercial purposes, operates activities covered by Nos 1–4.

This provision means that any person established in Denmark, without prejudice to paragraph 4, who, for commercial purposes, operates activities covered by Nos 1–4 falls within the scope of the Act, even if such trade is not formally described as commercial. The provision also means that online sales of second-hand goods fall within the scope of the Act. This also applies to trade offered through mobile phone applications, etc. The purpose of the provision is to ensure that persons who commercially trade in second-hand goods will be subject to the same set of rules, irrespective of whether the trade takes place from a physical store or online.

The term ‘established’ is to be understood in accordance with EU law, cf. Section 2, No 4, of Act No 384 of 25 May on services in the internal market. This means that there must be actual exercise of economic activities for an indefinite period from a permanent place of business from which the activity of providing services is carried out.

The term ‘commercial purpose’, like the term ‘economic operator’ in, inter alia, the Marketing Practices Act, is proposed to be given a broad definition, so that the assessment of whether a person can be regarded as trading in second-hand goods for commercial purposes is based on an overall assessment of the circumstances of the person concerned. It is therefore not

decisive whether profit is intended to be made through the activities, but the activities must be of a certain size and duration.

The requirement that the activities must be of a certain size and duration means that a person that sells a few times, for example when cleaning up at home or at the home of a family member, second-hand goods by, for example, hiring shelf space in a second-hand shop, purchasing or renting a stand on a flea market, or by selling online auctions or other sales platforms online, is exempted from the scope of the Act. Such sales must therefore be regarded as occasional sales. On the other hand, anyone who purchases second-hand goods on a fixed basis or several times a year and resells them on flea markets or via sales platforms online, etc., will be subject to the rules.

It is proposed in *paragraph 1(1)* that the trade in or purchase of second-hand goods which does not take place in the ordinary course of activities involving trade in new goods or of craft or industrial activities shall be covered by the Act.

‘Second-hand goods’ mean, first of all, movable tangible property which has largely retained the functionality of the good as new, so that the good can be reused as such or after repair. Thus, a good is normally used once it has been put into service. However, a good, even if it has not been put into use, may be covered by the term ‘second-hand goods’ if, for example, the good in question was owned by a private individual who has purchased the good for final consumption or as a collectible still in the original packaging.

The definition of ‘second-hand goods’ also covers goods which have not automatically retained the functionality of the good in question as new and immediately after repair. For example, electronics are acquired for collection without the buyer having an expectation that the good can function again.

The provision means that, *inter alia*, the acquisition of second-hand goods with a view to resale falls within the scope of the Act. In addition, commercial purchases of second-hand goods are included which are not resold but processed.

On the other hand, a trading company which markets new goods may, without a licence, trade in second-hand goods, such as second-hand goods

taken in exchange for upon the sale of new goods, if that is customary in the sector concerned, provided that the volume of that trade does not go beyond what is customary in the sector concerned, having regard to its marketing of new goods. Similarly, craft or industrial companies will be able to trade in or purchase second-hand goods without a licence, to the extent that it is customary in the sector concerned to do so in the course of the type of activities concerned.

In order to also prevent the possession of stolen goods through the sale by private individuals of (stolen) second-hand goods, it is proposed that the trade in or purchase of second-hand goods by private individuals should also be covered by the Act if the person acquires second-hand goods for commercial purposes with a view to resale, unless the trade is occasional. In addition, it may distort competition if private individuals who acquire second-hand goods for commercial purposes with a view to resale are not required to comply with the same requirements as economic operators operating activities in the trade in second-hand goods.

Thus, after an individual assessment, individuals will henceforth be covered by the Act. It is not in itself decisive whether profit is intended as a result of the trade, but whether, on the basis of an overall assessment of the circumstances of the person concerned, second-hand goods are acquired for commercial purposes with a view to resale, even though the trade is not formally described as commercial. Private individuals selling second-hand goods online from their homes with the purpose of reselling them at a higher price will, after an individual assessment, be covered by the Act.

On the other hand, the organisation or participation of private individuals in a flea market where second-hand goods of their own or of close family members or of acquaintances are sold does not in principle constitute trade for commercial purposes when the trade is only occasional.

However, as a general rule, it will constitute trade for commercial purposes if a private individual acquires goods which are resold on flea markets, antique shops, online auctions or other sales platforms online, in which case they must comply with the requirements and obligations of the Act, including licence requirements, etc.

It is proposed in *paragraph 1(2)* that the Act applies to the sale of second-hand goods through online auctions.

The aim of the provision is to ensure that economic operators operating online auction activities are regulated by the same rules as other economic operators trading in second-hand goods. The purpose of the provision is also to prevent the resale of stolen goods (possession of stolen goods) when second-hand goods are through online auctions and to ensure that the police can effectively control online auction activities.

‘Online auctions’ mean, in addition to auctions accessed via computer, auctions offered through mobile phone applications, social media, etc. Online auctions are characterised by the fact that none of the bidders is physically present, since bids are submitted from the bidders’ own computers, telephones, etc. online on a website within a period announced in advance.

The proposed provision implies that a person or company operating online auction activities involving the sale of second-hand goods will henceforth be covered by the Act and thus have to comply with the Act’s requirements for licences, requiring customers’ identification, disclosure of notification to the police if the economic operator is offered goods that may give rise to a suspicion of illicit provenance, etc. This applies regardless of whether the online auction company acts as an intermediary between the buyer and the seller, or whether the company sells goods received as commission and auctioned for a fee charged to either the seller, the buyer or both (commission sales).

It is proposed in *paragraph 1(3)* that persons who, for commercial purposes, operate activities of lending money against pledges and negotiating such loans (pawnbroking activities) are covered by the Act.

The purpose of the rules on pawnbroking activities is, in particular, to prevent the lending and sale of stolen goods and to prevent the abuse and exploitation of customers. Against this background, it is proposed that pawnbroking activities should continue to be covered by the Act.

Pledges are a pledging form in which the debtor is deprived of the opportunity to be in possession of the pledged good, typically by handing over it to the pledgee (the economic operator). In the case of mortgages, a good is thus provided as collateral for a short-term loan. The pledgor remains the owner of the good, but cannot dispose of it until the loan with interest has been repaid.

It is proposed in *paragraph 1(4)* that persons who, for commercial purposes, operate activities in the purchase of goods with a right of repurchase for the seller are also covered by the Act.

Sales with a right of repurchase are an alternative to mortgages. Sales with a right of repurchase imply that a customer sells a good to an economic operator at an estimated price determined by the economic operator. At the time of the sale, ownership is transferred to the economic operator. It follows that, unless the customer repurchases the goods at the repurchasing price fixed by the economic operator on the basis of the length of the repurchasing period within a specified period, the economic operator is free to dispose of the goods, including, for example, to sell the good to a third party. During the so-called repurchasing period, the economic operator stores the goods.

It is proposed in *paragraph 2(1)* that the Act shall not apply to trade in or purchases of motor vehicles subject to registration. It also covers the acquisition of second-hand vehicles with a view to destruction.

Motor vehicles subject to registration are already covered by a registration system as they are entered in the Vehicle Register. This register is considered appropriate to properly prevent and clarify cases concerning the marketing of stolen vehicles, which is why the trade in and purchases of motor vehicles subject to registration are proposed to be exempted from the scope of the Act.

Furthermore, according to the proposed provision of *paragraph 2(2)*, the Act shall not apply to the granting and negotiation of loans against pledges on securities or motor vehicles subject to registration or to lending activities covered by the Financial Business Act.

The granting and negotiation of pledges on securities or motor vehicles subject to registration or lending activities are subject to extensive rules in, *inter alia*, the Capital Markets Act and the Financial Business Act, which is why it is not considered necessary for the Act to cover these areas.

Charitable or non-profit associations, etc. and religious communities which, in the course of their activities, trade in second-hand goods, for example through the operation of second-hand stores or the like, in principle exercise economic activities relating to that trade. However, according to the proposed provision of *paragraph 2(3)*, the sale of second-hand goods

by charitable or non-profit associations, etc. and religious communities approved under the Assessment Act, provided that the goods are received free of charge, shall be exempted from the scope of the Act.

The charitable or non-profit associations etc. and religious communities covered by the provision must have been approved in Denmark by the Tax Administration or approved in another EU/EEA country, cf. Sections 8A and 12(2) and (3) of the Assessment Act, and Order No 1656 of 19 December 2018 on approvals, etc. under Sections 8A(2) and 12(3) of the Assessment Act, of charitable and non-profit associations, foundations, foundations, institutions, etc. and religious communities in Denmark or in another EU/EEA country.

The exemption will apply to the sale of second-hand goods in second-hand stores or the like operated by, for example, The Danish Cancer Society, Red Cross, etc.

It is proposed in *paragraph 3* that the Minister for Justice may decide that the rules in the proposed Chapter 3 on supervision shall apply, in whole or in part, to self-employment activities in connection with the trade in or purchase of second-hand goods other than those covered by the Act pursuant to paragraphs 1 and 2, and to the activities of auctioneers concerning auction sales of second-hand goods.

It is considered that in the future there may also be a need to regulate commercial activities which are not covered by the scope of the Act, for example where several cases of theft/possession of stolen goods are detected in a given sector over a short period of time. The provision is intended to ensure that, if there is a need to regulate self-employment activities involving the purchase and sale of second-hand goods, the Minister for Justice may decide that the activity in question is to be covered by Chapter 3 of the Act on supervision, etc. In that regard, it should be noted that the area in which goods are typically subject to theft may change over time.

It is assumed that the empowerment is used, in the same way as hitherto, *inter alia*, to provide that the administrative rules provided in Chapter 3 of the Act on supervision, etc., also apply to self-employment activities which are not covered by the scope of the Act, cf. Section 1, No 1, of the Act, in respect of trade in or purchase of second-hand goods by such economic operators in the form of bicycles and bicycle parts, parts of motor vehicles, gold and silver articles, jewellery, watches/clocks, furniture, mu-

sical instruments, electronic devices and their accessories. A new assumption is made that the enabling provision can also be used to introduce a catch-all clause under which the rules in Chapter 3 of the Act on supervision, etc. apply to commercial activities in connection with the trade in or purchase of other second-hand goods or batches of second-hand goods at a purchase or sales price exceeding DKK 5 000.

The provision covers only the auctioneer activities which include the organisation of traditional physical auctions, since online auction activities involving the sale of second-hand goods are covered in their entirety by the Act, cf. Section 1(1)(2) of the draft Act.

Finally, it is proposed in *paragraph 4*, which supplements the proposed provision in Section 13(1), that the Minister for Justice may, with regard to the exercise of activities referred to in paragraph 1(3) and (4), lay down more detailed rules on permissible contractual terms, etc., including with regard to the amount of interest on sums lent which may be demanded, irrespective of whether the company is established in Denmark.

It is assumed that specific administrative rules are laid down for pawnbroking activities, in particular that pawnbrokers may not impose or receive higher interest on sums lent than a fixed percentage per commenced month and may not, in addition, impose costs on the pledgor, and that the borrower may not conclude a contract under which the loan is to be repaid within 3 months.

It is also assumed that administrative rules are laid down stipulating that, in the event of a loan being settled or a mortgage being renewed, after the mortgage has been registered in an auction, a pawnbroker is entitled to a remuneration for costs incurred at a fixed percentage of the sum of the loan plus accrued interest. In addition, it is proposed that the pawnbroker may seek enforcement of the mortgage by public auction if the borrower has defaulted 30 days after its due date and a number of conditions are met.

Finally, it is assumed that administrative rules are laid down stipulating that, within 4 weeks of the enforcement of the mortgage, the pawnbroker must determine his outstanding accounts with the pledgor.

Reference is also made to points 3.1.2 and 3.7.3 of the general comments on the draft Act.

## Re Section 2

It is proposed in *paragraph 1* that persons operating activities in accordance with the Act must have a licence.

The provision contains the key provision of the draft Act that persons operating activities covered by the Act must be permitted to do so. The purpose of the provision is to ensure that the police can effectively supervise activities covered by the scope of the Act.

It is proposed in *paragraph 2* that the police shall issue the licence. The police district in which the activities are operated will be responsible for supervising the activities in question, cf. Section 10 of the draft Act.

The proposed provision does not imply that the licence is geographically demarcated and the licence holder can therefore operate activities pursuant to the Act throughout the country.

It is proposed in *paragraph 3* that a fee of DKK 300 must be paid for the issuance of licences.

It is proposed in *paragraph 4* that the Minister for Justice lays down rules on proceedings when issuing licences pursuant to the Act. Under that provision, rules will be laid down in accordance with Article 13 of the Services Directive, including on the duration of proceedings.

See also point 3.2.2 in the general comments on the Bill.

## Re § 3

It is proposed in *paragraph 1* that licences may be granted to persons who fulfil three cumulative conditions.

The condition set out in *No 1* (business address in Denmark) is proposed to be introduced in order to enable the police to supervise the licence holder effectively. ‘Business address’ means the address from which the activities are operated.

The condition set out in *No 2* (being of age/a capacitated person and not under guardianship or curatorship) is proposed to be introduced, since a licence holder has a number of obligations and responsibilities which a person without legal capacity is not deemed able to perform. However, minors/incapacitated persons who, with the approval of the Agency of Fa-

mily Law, have the permission to exercise trade or other activities under Section 43(1) of the Guardianship Act on their own, are exempt from this general principle.

The condition set out in *No 3* (not subject to restructuring proceedings or bankrupt) is intended to ensure that the licence holder is financially sound.

It is proposed in *paragraph 2* that licences may be refused to a person who has been convicted of a criminal offence, if the offence gives rise to an imminent risk of misuse of the licence, cf. Section 78(2) of the Criminal Code, or there are other reasons to believe, on the basis of the information available on the personal circumstances of the person concerned, that the person will not properly operate activities.

The assessment of when a licence may be refused under that provision is a matter of judgement.

Whether or not a specific criminal offence justifies an imminent risk of abuse of the possibility to operate activities under the Act will depend primarily on whether the offence entails a particular risk that the person concerned will not comply with the rules governing the exercise of activities. Account must be taken, *inter alia*, of the circumstances in which the offence was committed, the nature, seriousness and execution method of the offence, the time elapsed, the personal circumstances of the person concerned at the time of the offence and application, as well as the criminal record of the accused person. Repeated infringements may also be taken into account in the assessment.

Furthermore, since persons trading in second-hand goods or operating pawnbroking activities have special access to purchases for the purpose of reselling goods which may have been stolen, it is proposed that the police should continue to have the possibility to refuse a licence if the police *specifically* considers that there is a risk of misuse of the licence or the risk that the activities will not be properly operated. The provision concerns, in particular, acts which have not given rise to criminal charges but where, for example, the person concerned has been dismissed from a position for malpractice or has seriously disregarded the interests of his clients through other activities.

It is proposed with *paragraph 3* that the licences may also be refused to those who have significant overdue debts to the public sector. ‘Significant overdue debts’ mean debts of the order of DKK 50 000 or more.

Similar provisions can be found in a number of other laws, including the Administration of Justice Act with regard to lawyer appointments, the Collection Act with regard to authorisations for debt collection and the Guard Activity Act with regard to authorisations as a guard, etc.

In view of the fact that the activities are exercised on the basis of a licence and the accumulation of arrears to the public sector should be minimised as far as possible, it is proposed that a corresponding legal basis be included in the Act on trade in second-hand goods and pawnbroking activities.

In particular, debts in the form of tax and VAT arrears could justify the refusal of a licence on grounds of significant overdue debts to the public sector.

In order to refuse appointments under the proposed provision, it is necessary that the debt has arisen in connection with the operation of similar activities.

The aim of the provision is to address the lack of willingness to pay and to prevent the creation of significant debts to the public sector. In this context, it is assumed that each applicant’s situation must be assessed individually. A person who has concluded an instalment or payment agreement is therefore not precluded from obtaining a licence.

Reference is also made to point 3.3.2 of the general comments on the draft Act.

#### Re Section 4

It is proposed in *paragraph 1* that licences may be granted to public limited companies or private limited companies registered with the Danish Business Authority if the members of the company’s management and board of directors meet the conditions laid down in Section 3(1)(2) and (3). It is also proposed that, under the same conditions, licences may be granted to other companies, associations, foundations and the like established in Denmark.

In order to ensure that legal persons also properly operate activities, it is proposed that *members* of the board of directors and management of the legal person must satisfy the conditions for obtaining a licence laid down by the Act. For these legal persons, the police will decide whether the conditions for obtaining a licence have been met.

The provision thus implies that the company must have a business address in Denmark, that the members of the company's board of directors or management may not be minors/incapacitated persons, without prejudice to Section 43(1) of the Guardianship Act, may not be under guardianship or curatorship and may not be subject to restructuring proceedings or bankrupt. Reference is also made to the comments on Section 3 of the draft Act.

It is also proposed that foreign companies, etc. of the type referred to in Section 4(1), first and third sentences, may be granted a licence if this is provided for in an international agreement or by provisions laid down by the Minister for Justice. This takes account of the fact that foreign companies, etc. which, under EU law, may have opened a secondary establishment in Denmark in a manner which falls outside the cases otherwise listed in Section 4, must not be precluded from obtaining a licence.

It is proposed in *paragraph 2* that the company must, when there are new members in management or the board of directors and within 14 days, notify the change to the police, and any new members must at all times satisfy the conditions for obtaining a licence.

The proposed provision aims to ensure that the members of the board of directors and management of the legal person meet at all times the conditions for obtaining a licence to trade in second-hand goods and operate pawnbroking activities.

The report must be notified to the police in the police district from which the activities are operated. The police then decides whether the licence can be maintained. If notification is not made in a timely manner, it is proposed that the licence be terminated.

It is proposed in *paragraph 3* that licences may be refused to a company, etc., if a member of the company's management or board of directors has been convicted of a criminal offence, if the offence gives rise to an imminent risk of misuse of the licence or there are other reasons to believe, on the basis of the information available on the personal circumstances of the

person concerned, that the person will not properly operate the activities. The same applies if a member of management or the board of directors has significant overdue debts to the public sector of the order of DKK 50 000 or more. The police district from which the activities are operated carries out an individual assessment of whether licences should be refused on the basis of the facts of the case. Reference is also made to the comments on Section 3 of the draft Act.

Reference is also made to point 3.3.2 of the general comments on the draft Act.

#### Re Section 5

It is proposed in *paragraph 1* that a licence shall be terminated when the licence holder dies or if the licence holder ceases to fulfil one or more of the conditions laid down in Section 3(1) or Section 4(1), cf. Section 3(1). The same shall apply if notification under Section 4(2) is not made in a timely manner.

The conditions set out in Section 3(1) of the draft Act must be regarded as essential in order to counter the trade in stolen second-hand goods, and it is therefore proposed that the conditions should be met on a continuous basis.

The provision means that the existing law on terminations of licences is maintained, so that a licence shall also be terminated in the future when the licence holder dies or if the licence holder ceases to fulfil the conditions for obtaining a licence (business address in Denmark, not a minor/incapacitated person or under guardianship, and not subject to restructuring proceedings or bankrupt). It is proposed that the same applies if the licence holder is a company, etc. and a member of the company's management or board of directors ceases to fulfil the said conditions.

Furthermore, in order to ensure that the conditions for licences to trade in second-hand goods as well as operate pawnbroking activities continue to be met, it is proposed to maintain to apply the existing law to the effect that companies' etc. licences should be terminated if there are new members in management or the board of directors, and notification thereof is not made in a timely manner.

It is proposed in *paragraph 2* that, by way of derogation from Section 5(1) of the draft Act, in the event of the death, bankruptcy, etc. of the licence

holder, it is possible to continue the operations without a licence for a shorter period with a view to liquidation, sale or the like of the company.

Thus, the estate of a deceased licence holder, a spouse in undivided estate, a licence holder who is subject to restructuring proceedings, the bankruptcy estate of a licence holder or a guardian of a licence holder who is under guardianship under Sections 5, 6 or 7 of the Guardianship Act, may be allowed to continue the operations with a view to liquidation, sale or the like of the company.

The purpose of the provision is to ensure the orderly liquidation of activities and to avoid unnecessary losses to, for example, survivors or creditors.

The continuation of the activities must be notified to the police district from which the activities are operated within 4 weeks of the death, commencement of the restructuring, decree of bankruptcy or implementation of the guardianship.

It is also proposed that this possibility shall apply for a period of 1 year after the event giving rise to the termination of the licence. However, in exceptional cases, the police may allow the deadline to be extended. For example, the police may allow the deadline to be extended in cases where negotiations on a business transfer are ongoing and where the business transfer is imminent. If, on the other hand, steps are taken to sell the company only towards the end of the 1-year deadline, the requirement cannot in principle be considered as satisfied.

Finally, it is proposed in *paragraph 3* that the Minister for Justice may provide for an exemption from paragraph 1 of the provision.

The proposed provision implies that the Minister for Justice may decide that a licence holder may, despite non-compliance with the conditions for obtaining a licence, for example if the licence holder is subject to restructuring proceedings, nonetheless maintain his licence.

There may therefore be situations in which the conditions for obtaining a licence for a short and clearly defined period alone are not met and, in spite of that, it is not considered that there is a risk that the activities will not be properly operated.

Consideration of the trader's ability to maintain his activities and thus to avoid suffering financial damage during such a shorter limited period dur-

ing which the conditions for licences are not met will therefore, depending on the circumstances of the case, prevail. The consideration will be based on an individual assessment of the facts of each individual case.

Reference is also made to point 3.5.2 of the general comments on the draft Act.

#### Re Section 6

It is proposed in *paragraph 1* that a licence issued by the police may be revoked if the licence holder is guilty of serious or repeated failure to comply with the obligations incumbent on the licence holder under the Act or the regulations pursuant to the Act and there is reason to believe, on the basis of the facts established, that the person will not properly operate the activities in future.

The provision on revocations of licences is proposed in order to ensure the control of trade in second-hand goods and to prevent the resale of stolen, falsified or illegally exported goods. The decision to revoke a licence is taken by the police district from which the activities are operated. It will depend on an individual assessment whether there is reason to believe that the person concerned will not properly operate the activities.

The licence may be revoked, for example, if the licence holder repeatedly fails to fulfil his obligation in relation to a suspicion of illicit provenance, or if he is suspected of possessing stolen goods and there is reason to believe that the person will not properly operate the activities in future.

The rule supplements Section 79(1) of the Criminal Code, according to which a person convicted of a criminal offence giving rise to an imminent risk of abuse of position or office may, by judgment, be deprived of the right to continue to exercise the activities in question or to exercise them in certain forms, provided that the facts established give rise to an imminent risk of abuse.

However, the proposed provision provides for a *wider* right of revocation other than that provided for in Section 79(1) of the Criminal Code. The proposed provision thus provides for the possibility of revoking a licence even if the licence holder has not been convicted of a criminal offence.

It is also proposed in paragraph 1 that a licence may be revoked if the conditions for refusing the licence in question are met, cf. Section 3(2) or Section 4(3), cf. Section 3(2).

This means that licences may be revoked if the licence holder has been convicted of a criminal offence, if the offence gives rise to an imminent risk of misuse of the licence, cf. Section 78(2) of the Criminal Code, or there are other reasons to believe, on the basis of the information available on the personal circumstances of the person concerned, that the person will not properly operate the activities.

The provision is also proposed to apply in cases where the licence holder is a company, etc. This means that licences may be revoked if there is information that a member of the company's management or board of directors has been convicted of a criminal offence, if the offence gives rise to an imminent risk of misuse of the licence, cf. Section 78(2) of the Criminal Code, or there are other reasons to believe, on the basis of the information available on the personal circumstances of the person concerned, that the person will not properly operate the activities.

Considering that debts to the public sector should be minimised as far as possible, it is proposed in *paragraph 2* that a licence may be revoked if the licence holder accumulate significant debts to the public sector, meaning overdue debts of DKK 100 000 or more. The decision on revocation is taken by the police district from which the activities are operated.

Similar provisions on revocation are contained in a number of other laws, including the Administration of Justice Act with regard to lawyer appointments, the Collection Act with regard to authorisations for debt collection and the Guard Activity Act with regard to authorisations as a guard, etc.

It is assumed that the revocation of a licence on grounds of significant overdue debts to the public sector is preceded by a specific and individual assessment of the circumstances in which the arrears arose and developed, including the extent to which the licence holder has shown his willingness to have the debt reduced. The assessment of this should include whether the debt has suddenly arisen, for example as a result of temporary liquidity problems, or whether it has been growing for a long time, and whether effective debt reduction measures have been taken by the licence holder within a reasonable period of time. In addition, it is assumed that the licence holder is informed, prior to any revocation due to significant over-

due debts to the public sector, of the consequences (revocation) of having significant arrears, so that the licence holder is able to settle arrears within a reasonable period of time.

Thus, in relation to the requirements for refusing licences, cf. Section 3(2) of the draft Act, there are stricter requirements for revoking a licence already granted on the basis of accumulated public arrears. The stricter requirement must be seen in the light of the fact that a revocation must be regarded as more restrictive for the person concerned than a refusal of an application for licence.

The provision is also proposed to apply in cases where the licence holder is a company, etc. This means that a licence may be revoked if there is information that a member of the company's management or board of directors has overdue debts to the public sector of DKK 100 000 or more. In these situations, there will also be reason to believe that the licence holder will not continue to properly operate the activities. In these situations, the person concerned in the company's management or board of directors should be allowed to settle arrears within a reasonable period of time.

Since the nature of the reason(s) justifying the revocation a licence may vary, it is proposed in *paragraph 3* that the revocation of a licence should be possible for a period of 1 to 5 years or so far.

Thus, it may be necessary in some cases to revoke a licence for a clearly defined period, whereas in other cases, depending on the seriousness of the reason justifying the revocation, it may be necessary to revoke the licence until further notice. This would be the case, for example, if an investigation is ongoing as a result of a suspicion of possessing stolen goods, which can only be confirmed or ruled out once the investigation has been completed or the revocation is justified by significant overdue debts to the public sector.

Finally, it is proposed in *paragraph 4* that the police's decision to revoke a licence must contain information on the possibility to apply for judicial review and the deadline for doing so.

Reference is also made to point 3.5.2 of the general comments on the draft Act.

#### Re Section 7

It is proposed in *paragraph 1* that within 4 weeks of notification of the decision, the police's decision on revocation under Section 6(1) (for serious or repeated failure to comply with the obligations incumbent on the licence holder) may be required to be referred to the courts by the addressee of the decision. It is proposed that such cases be brought by the Prosecution Service and dealt with in the form of criminal procedure.

For the economic operator, it is a restrictive decision to have his licence to operate activities withdrawn. It is therefore proposed that a decision to withdraw licences for trading in second-hand goods should be subject to judicial review.

The judicial review of an administrative decision to withdraw licences for failure to comply with obligations includes criminal matters, including the failure by the licence holder to comply with the obligations that, under the Act or regulations pursuant to the Act, are incumbent on the person concerned, which infringements may entail financial penalties, cf. Section 13 of the draft Act. As a consequence, it is proposed that these cases should, as hitherto, be dealt with in the form of criminal procedure.

In order for the licence holder to be allowed a reasonable period to react to a decision to revoke a licence, it is proposed that the deadline for initiating court proceedings be set at 4 weeks.

It is proposed in *paragraph 2, first sentence*, that a request for referring the decision to the court pursuant to paragraph 1 has suspensory effect, but that the court may order, in the course of proceedings, that the person concerned may not exercise activities under the licence

The proposed provision implies that, when requesting the decision taken to be referred to the court, the licence holder may continue to exercise his activities under the licence until a final decision has been issued in the case, unless the court orders that the person concerned may not exercise his activities. In assessing whether it is appropriate to decide that the activities may not continue, the seriousness of the failure to comply with the obligation must be taken into account or whether the licence holder has repeatedly failed to fulfil his obligations.

It is also proposed in *paragraph 2, second sentence*, that if the decision is upheld by judgment, the judgment may provide that an appeal does not have suspensory effect. In assessing whether the judgment should provide

that an appeal does not have suspensory effect, it is necessary to consider the seriousness of the failure to comply with the obligation or whether the licence holder has repeatedly failed to fulfil his obligations.

It is proposed in *paragraph 3, first sentence*, that a decision on revocation under Section 6(2) (overdue debts to the public sector amounting to DKK 100 000 or more) may be required to be referred to the courts by the addressee of the decision.

It is also proposed in *paragraph 3, second and third sentences*, that a request for judicial review must be made to the police within 4 weeks of the decision being notified to the person concerned; and that the Prosecution Service then brings proceedings against the person concerned in the form of civil procedure.

The judicial review of cases on withdrawals of licences on grounds of significant overdue debts to the public sector does not include criminal matters. Instead, it is necessary to verify whether the person concerned actually has significant overdue debts to the public sector of the order laid down by the Act. Against this background, it is proposed that these cases should, as hitherto, be dealt with in the form of civil procedure.

It is proposed in *paragraph 4, first sentence*, that a request for referring the decision to the court pursuant to paragraph 3 does not have suspensory effect, but that the court may order, in the course of proceedings, that the person concerned may be allowed to exercise activities under the licence.

That provision implies that, in principle, the person concerned must comply with the police's decision until the appeal has been examined by the court and, where appropriate, a different decision is taken, unless the court orders, in the course of proceedings, that the person concerned must nonetheless be allowed to exercise activities under the licence.

In the event of an appeal against a judgment which does not uphold a revocation, it is proposed in *paragraph 4, second sentence*, that the court which delivered the judgment or the court seised may order that activities under the licence may not be operated in the course of appeal proceedings.

Reference is also made to point 3.6.2 of the general comments on the draft Act.

## Re Section 8

It is proposed in *paragraph 1* that a licence which is terminated in accordance with Section 5 of the Act, revoked under Section 6 or withdrawn under Section 79 of the Criminal Code, must be immediately handed over to the police.

Licences must be handed over to the police district where the licence was issued and from which the activities have been operated.

The proposed provision aims to ensure that the police can effectively supervise the persons that have a licence to trade in second-hand goods as well as operate pawnbroking activities.

It is proposed in *paragraph 2* that the licence must, in addition, be immediately handed over to the police when the licence holder voluntarily or otherwise ceases to conduct business.

Reference is also made to point 3.5.2 of the general comments on the draft Act.

#### Re Section 9

It is proposed in *paragraph 1* that before commencing activities covered by the Act, the economic operator must notify the police of the location of accounting documents and any business premises.

It is also proposed that the economic operator should notify the police of any subsequent changes thereto, as well as any subsequent change to the business address.

This information must be provided in connection with an application for a licence to trade in second-hand goods.

The proposed provision aims to ensure that the police receives the information necessary to exercise the necessary supervision and to enable the police to intervene in the event of suspicion of trade in stolen goods, whether the activities are operated from an actual store or online.

In order to ensure that the police has relevant and up-to-date information, which is necessary for police supervision, the economic operator must inform the police accordingly in the event of subsequent changes in the facts.

It is proposed in *paragraph 2* that the licence holder must inform the police, upon request, of the location of the company's stock of goods.

If the licence holder stores his goods in different locations, this must be notified to the police if the police requests to receive information on the location of the stock of goods. If the licence holder shares stocks of goods with others, it must be possible to identify unambiguously the stock of goods to which a given good belongs.

Online auction companies in possession of goods whose sale is carried out by the company must also notify the police, upon request, of the location of the goods.

Reference is also made to point 3.8.2 of the general comments on the draft Act.

#### Re Section 10

It is proposed in *Section 10* that the police must, at any time, without a court order and upon providing proper identification, have access to the licence holder's accounting documents, potential business premise and stock of goods in order to exercise the necessary supervision of the activities.

Each police district supervises, within its area, that persons covered by the Act comply with the rules, including checking that the licence holder's goods correspond to the goods listed in the accounting documents.

In this context, it is assumed that the police is able to have access to a company's accounting documents at any time and without a court order, for example via a PC or USB stick. It is also assumed that the police will also be able, without a court order, to have access to any of the company's business premises and stocks of goods.

It must therefore be possible for the police to see the licence holder's goods at any time and obtain details of their location. If the licence holder's activities are operated from his private address, it is assumed that the her keeps his goods in a physical location separate from the private dwelling, including, for example, in a garage, storage room or the like, which the police is entitled to supervise without a court order.

It follows from the proposed provision and from the general principles of administrative law that an individual assessment must be made as to

whether the interference is necessary and whether the purpose of the examination is proportionate to the restrictive nature of the examination. The scope of the supervision thus depends on what is deemed necessary by the police, taking into account the type, activities and circumstances of the specific company. The supervision is limited to the premises which are relevant for police checks and thus does not cover buildings or parts of buildings used exclusively for private residential purposes.

Furthermore, intervention under the proposed provision would have to be carried out in compliance with the rules of the Act on legal certainty in the use of coercive measures and obligations to provide information by the administration. In particular, it should be pointed out that Section 9 of the Act provides, *inter alia*, that where there are reasonable grounds to believe that an individual or legal person has committed a criminal offence, coercive measures against the suspect in order to obtain information on the suspicious circumstance(s) may be carried out only in accordance with the rules laid down in the Administration of Justice Act. However, this shall not apply where the coercive measure is implemented in order to provide information for the purpose of dealing with matters other than the determination of penalties.

In addition, a number of rules of the Public Administration Act apply to the implementation of coercive measures covered by the Act, including the rules on ineligibility, party access to documents, statement of reasons and available remedies. In addition, there is an obligation, in certain circumstances, to make a note of the content of information received by an authority in proceedings for the adoption of a coercive measure.

Reference is also made to point 3.8.2 of the general comments on the draft Act.

#### Re Section 11

It is proposed in *paragraph 1, first sentence*, that if the licence holder is offered goods for purchase or as mortgage in circumstances which may give rise to a suspicion of illicit provenance, the licence holder must immediately inform the police thereof and retain the goods until the arrival of the police.

It is also proposed in *paragraph 1, second sentence*, that the same must apply if, after the conclusion of the contract, the licence holder obtains information which may give rise to a suspicion of illicit provenance.

The proposed provision aims to ensure that no goods are traded or pledged where there are reasonable grounds to believe that the person in possession of the good cannot prove its licit provenance. The provision must also be seen in the context of, *inter alia*, the general principles of Danish law on restitution, according to which a person who has lost a good may, in some cases, demand its return, also from an acquirer of the contract in good faith (for example, in the case of theft).

The licence holder's obligation to react in the event of suspicion of impossibility to possess a good is primarily based on any suspicion based on the specific circumstances of each individual case. In doing so, the licence holder is presumed to pay particular attention in the case of valuable and/or rare goods, for which there may be a particular reason for the licence holder to require details on provenance, for example when requesting the submission of relevant proof in the form of a receipt or equivalent.

It is proposed in *paragraph 2* that the Minister for Justice may lay down more detailed rules on the licence holder's examination of goods offered to the licence holder for purchase or as mortgage.

The proposal should be seen in the context of the Committee's recommendation for the creation of an electronic searchable register of stolen goods.

It is assumed that, once such a register has been established, it will be possible to lay down detailed rules requiring the licence holder to ensure that relevant goods are searched for in the register.

Reference is also made to point 3.8.2 of the general comments on the draft Act.

#### Re Section 12

It is proposed in *paragraph 1* that infringements of Sections 2(1), 4(2), first sentence, 8, 9 and 11, of the Act shall be punishable by a fine.

The licence requirement to operate covered by the Act is essential in order to achieve the basic objective of the legislation of ensuring the control of trade in second-hand goods and preventing the resale of stolen, falsified or

illegally exported goods. It is therefore proposed that infringements of the licence requirement, cf. Section 2(1) of the draft Act, be punishable by a fine. In addition, failure to comply with the licence requirement would mean that the licence may be refused in the event of subsequent applications for licences.

It is essential for the effective police supervision of the trade in second-hand goods and pawnbroking activities, including the supervision of the proper operation of activities, that the police is aware of who operates the activities covered by the Act. It is therefore proposed that companies holding a licence, etc. which fail to notify new members in management or the board of directors to the police within 14 days, cf. Section 4(2), first sentence, of the draft Act, be punishable by a fine.

It is also proposed that failure to hand over a licence, cf. Section 8 of the draft Act, be punishable by a fine.

It is also essential for the police to exercise effective supervision that a licence holder informs the police, before commencing his activities, of the location of the company's accounting documents, potential business premise and stock of goods, cf. Section 9 of the draft Act. Infringements of this obligation are therefore also proposed to be punishable by criminal sanctions.

Finally, it is proposed that infringements of the licence holder's obligation to immediately notify the police in case there is a suspicion of illicit provenance for goods for purchase or as mortgage, cf. Section 11 of the draft Act, be punishable by a fine.

It is proposed in *paragraph 2* that regulations issued pursuant to the Act may provide for fines for infringements of these provisions.

Finally, it is proposed in *paragraph 3* that legal persons, etc. may also be held criminally liable for infringements of the rules of the Act.

For legal persons, criminal liability is imposed in accordance with the provisions of Chapter 5 of the Criminal Code on criminal liability of legal persons.

This means, *inter alia*, that legal persons can (only) be punished where there is a specific legal basis for doing so, cf. Section 25 of the Criminal Code. Under Chapter 5 of the Criminal Code, the criminal liability of a le-

gal person presupposes the commission of an infringement during the course of his activities attributable to one or more persons associated with the legal person or to the legal person as such.

Reference is also made to point 3.9.2 of the general comments on the draft Act.

#### Re Section 13

It is proposed with *paragraph 1* that the Minister for Justice may lay down more detailed rules on the exercise of activities pursuant to the Act.

It is assumed that, on the basis of the proposed empowerment, administrative rules are laid down stipulating that licence holders should require the person who wishes to conclude a contract on the sale of a good whose value exceeds a certain amount to provide identification via 'MitID' or through valid photo identification, as well as rules on how long the economic operator must keep the proof. It is assumed that the threshold can be adjusted on a regular basis in line with developments in society. This applies both downwards and upwards.

It is proposed in *paragraph 2* that the Minister for Justice may lay down rules on which authority within the police carries out police tasks under this Act.

The provision allows the Minister for Justice to lay down more detailed rules according to which police tasks in the area may be assigned to a community of tasks anchored in a police district.

Reference is also made to point 3.7.2 of the general comments on the draft Act.

#### Re Section 14

The provision concerns the entry into force of the Act.

It is proposed in *paragraph 1* that the Act shall enter into force on 1 July 2023.

It is proposed in *paragraph 2* that the Act on trade in second-hand goods and pawnbroking activities, cf. Consolidation Act No 1042 of 4 September 2015, shall be repealed.

Licences issued in accordance with the rules previously in force will remain valid.

#### Re Section 15

The provision concerns the territorial validity of the Act.

It is proposed that the Act should not apply to the Faroe Islands and Greenland, but that it shall be possible to implement the Act in whole or in part by Royal Decree for Greenland, subject to the changes required by Greenlandic circumstances.

The Faroe Islands have taken over property law with effect from 1 January 2010. The Act shall therefore not apply to the Faroe Islands and it shall not be possible to implement it by Royal Decree for the Faroe Islands.