

Air Weapons and Licensing (Scotland) Act 2015 - Guidance on the provisions for Metal Dealers and Itinerant Metal Dealer

Introduction

1. The Air Weapons and Licensing (Scotland) Act 2015 (the 2015 Act) received Royal Assent on 4 August 2015. The majority of the provisions relating to metal dealers and itinerant metal dealers come into force on **1 September 2016**.
2. This guidance is intended to assist metal dealers, itinerant metal dealers, licensing authorities and other enforcement agencies.
3. It reflects the Scottish Government's interpretation of the legislation. However the views expressed do not bind licensing authorities or the courts. It is ultimately a matter for the courts to take a final view on the interpretation of legislation.

Legislative background

4. Metal dealers and itinerant metal dealers have been regulated for many years under the Civic Government (Scotland) Act 1982 (the 1982 Act). The 2015 Act has amended the 1982 Act strengthening and modernising the existing regime. The aim of which is to raise standards within the industry, and make it more difficult for metal thieves to convert the proceeds of crime into cash.
5. The 2015 Act provides new definitions for metal dealer and itinerant metal dealer, extending the scope of the regime. It tightens record keeping arrangements and requires proper identification of customers. It also increases penalties for licensing offences and creates a power that will enable the creation of a register of metal dealers and itinerant metal dealers.
6. The relevant provisions in the 2015 Act are sections 66-73. The 2015 Act can be found at: <http://www.legislation.gov.uk/asp/2015/10/content>
7. The following link shows the passage of the Air Weapons and Licensing (Scotland) Bill through the Scottish Parliament, and includes further documentation that may be of interest including the Explanatory Notes and Policy memorandum:
<http://www.scottish.parliament.uk/parliamentarybusiness/Billsn6383.aspx>
8. Further relevant secondary legislation for the metal dealers and itinerant metal dealers provisions are:
 - 'The Civic Government (Scotland) Act 1982 (Metal Dealers and Itinerant Metal Dealers) (Verification of Name and Address) Regulations 2016', which can be viewed at: <http://www.legislation.gov.uk/ssi/2016/11/3/made>
 - 'The Air Weapons and Licensing (Scotland) Act 2015 (Commencement No. 2, Transitional and Saving Provisions) Order 2016', which can be viewed at: <http://www.legislation.gov.uk/ssi/2016/85/made>

9. The Commencement Order means that from **1 September 2016** all metal dealers and itinerant metal dealers will be required to comply with the new principal requirements of the licensing regime, namely:
- Exemption warrants are withdrawn from that date;
 - cash payments for scrap metal will be prohibited; and

- new record keeping and identification of customer requirements will be in force.

Who needs a licence?

10. The licensing regime requires that metal dealers and itinerant metal dealers require a licence. The 2015 Act amends the 1982 Act to provide new definitions of 'metal dealer' and 'itinerant metal dealer'. These are:

72. Interpretation of provisions relating to metal dealers etc.

(1) Section 37 of the 1982 Act (interpretation of sections 28 to 36) is amended as follows.

(2) In subsection (1), for the definition of "itinerant metal dealer" substitute -

"itinerant metal dealer" means a person who -

(a) carries on a business which consists wholly or substantially of buying or selling for scrap -

(i) metal articles that are old, broken, worn out or defaced, or

(ii) partly manufactured articles that are made wholly or partly from metal,

(b) collects articles of the kind described in paragraph (a)(i) and (ii) by means of visits from place to place, and

(c) disposes of such articles without causing them to be kept in a metal store or other premises (including by disposing or giving custody of the articles to a person who keeps a metal store),".

(3) For subsection (2) substitute -

"(2) For the purposes of sections 28 to 36, a person carries on business as a **metal dealer** if the person -

(a) carries on a business which consists wholly or substantially of buying or selling for scrap -

(i) metal articles that are old, broken, worn out or defaced, or

(ii) partly manufactured articles that are made wholly or partly from metal, or

(b) carries on business as a motor salvage operator (so far as that does not fall within paragraph (a)).

(3) For the purposes of subsection (2)(b), a person carries on business as a motor salvage operator if the person carries on a business which consists wholly or substantially of -

- (a) recovering salvageable parts from motor vehicles for re-use or sale and selling or disposing of the rest of the vehicle for scrap,
- (b) buying significantly damaged motor vehicles and subsequently repairing and reselling them, or
- (c) buying or selling motor vehicles which are to be the subject (whether immediately or upon a subsequent resale) of any of the activities mentioned in paragraphs (a) and (b).

11. It is for any individual to satisfy themselves over whether they do, or do not, fall within one of these definitions and should therefore seek a metal dealer or itinerant metal dealer licence. It will be dependent on the specific facts of an individual's business whether a licence will be necessary.
12. If a business does not wholly or substantially consist of buying or selling scrap then a licence may not be required. Examples are given below:
 - It is unlikely that a plumber who acquires metal (e.g. copper piping offcuts, used heating tanks, electrical wiring) as an incidental part of a plumbing business would require a licence even if they sell those metals to a metal dealer or itinerant metal dealer.
 - A skip hire business or demolition contractor that acquires a significant amount of metal through the supplying of skips to a customer or by providing site clearance services may well need a licence.
13. Any person who acquires or disposes of metal in the course of their business will need to think carefully about whether a licence is necessary. Such classes of persons might include demolition contractors and skip hirers amongst others.
14. There are three obvious classes of people who will need to consider what to do under the new arrangements:
 - those who are currently licensed;
 - those who currently operate under exemption warrants; and
 - those who are now covered by the definition of metal dealer or itinerant metal dealer and will require a licence.
15. Those who hold a current licence do not have to re-apply for a new licence ahead of 1 September 2016. However, these licence holders will, from 1 September 2016, also be subject to the new set of conditions brought into the licensing regime i.e. the mandatory requirements provided in the 2015 Act such as not trading in cash.
16. Those who are operating under exemption warrants will need to apply for a licence. The exemption warrant will cease to have effect from 1 September 2016.

17. Those who now find that the new definitions provided in the 2015 Act mean that their activities now fall into the licensing regime must also apply for a licence.

Penalties

18. The 2015 Act has raised the penalties for failure to have to have an appropriate metal dealer or itinerant metal dealer licence or failure to comply with licence conditions. The maximum penalty on summary conviction for operating without a licence without reasonable excuse, or for operating in breach of a condition of a licence is increased to a fine not exceeding £20,000 and/or imprisonment of no longer than six months.

The application process

19. Metal dealers or itinerant metal dealers who require a licence have until **1 June 2016** to submit an application to their licensing authority if they want to ensure that they will not be committing the offence of unlicensed trading if the licensing authority has not determined the application for a licence by 1 September 2016.
20. The licensing authority for metal dealers will be their local council. Itinerant metal collectors can apply to any licensing authority for their itinerant metal dealers licence.
21. This is limited to those who do not currently need a licence or are in possession of an exemption warrant under the existing licensing system. It would however, be beneficial to submit an application as early as possible in order to ensure that licences are issued in good time ahead of 1 September 2016.
- 22.A** licensing fee will be payable to the local licensing authority. The fee is set by the authority itself, having regard to the need to recover the costs of the licensing process. It is entirely a matter for the authority to set fees they consider appropriate.

Dealing with an application

23. Licensing authorities follow a well-established procedure for considering applications. The procedure is applicable to a large number of other civic licences such as street traders, public entertainment events, late night caterers and window cleaners amongst others and is laid out in the 1982 Act.
24. The authority will, on receipt of an application, send a copy to the Police to seek their comments, and if premises based also to the relevant Fire Authority. They will also allow opportunity for members of the public to submit their **views** on application.
25. After having considered the representations the licensing authority will decide to either grant the application, refuse it or grant it subject to conditions. A granted application will have to comply with the mandatory requirements of the licensing regime such as not trading incash.

26. The Police may have suggested conditions that they would like to see attached to licences, but it will be a matter for each licensing authority to decide whether they are appropriate for individual applications. Applicants will also have an opportunity to comment on such conditions before a final decision is made.
27. The licensing authority can at any time decide to vary or suspend a licence. A decision to suspend might follow a conviction for criminality involving the metal dealer or itinerant metal dealers business.
28. A decision not to grant a licence or to suspend a licence would be subject to appeal. An appeal would be to a Sheriff in the first instance and could be on the grounds that the authority erred in law, based their decision on an incorrect fact or was otherwise contrary to natural justice or unreasonable.
29. A licence may be granted for three years or a lesser period if the authority deems it appropriate.

Acceptable forms of payment

30. The 2015 Act amends the 1982 Act to provide acceptable forms of payment that may be accepted by a metal dealer or itinerant metal dealer. The only acceptable ways in which payment can be made are bank transfer or cheque. Cash is **not** an acceptable method of payment.
31. A cheque should be non-transferable. An electronic transfer should be into a bank or building society account in the name of the payee. Cash substitutes" such as pre-payment cards are not acceptable. Similarly, foreign currency, postal orders, vouchers, gift cards or virtual currencies are unacceptable.
32. The 2015 Act further amends the 1982 Act to provide that a bank or building society account must be based in the United Kingdom and does not include friendly societies, credit unions or insurance companies.
33. An offence is committed by a metal dealer or itinerant metal dealer when a payment is made otherwise than that described above. The offence is also committed by any other individual who has day to day management of site and by any other person, acting on behalf of the metal dealer or itinerant metal dealer who makes payment. Offences are punishable by a fine not exceeding level 5 on the standard scale.

Record keeping

34. The 2015 Act amends the 1982 Act to require a metal dealer or itinerant metal dealer to keep records of metal acquired and processed or disposed of. These new record keeping requirements include recording the details of the person the metal was acquired from or disposed of by sale or exchange and documents used to verify the name and address of that person. Records must be kept for 3 years.

35. The new record keeping requirements are:

"33C Requirement to keep records

(1) This section applies where a metal dealer or an itinerant metal dealer (the dealer"), in the course of the dealer's business -

- (a) acquires any metal (whether or not for value), or
- (b) processes or disposes of any metal (by any means).

(2) In respect of any metal acquired, the dealer must record the following information -

- (a) the description and weight of the metal, _____
- (b) the date and time of the acquisition of the metal,
- (c) if the metal is acquired from another person -
 - (i) the name and address of the person,
 - (ii) the means by which the person's name and address was verified,
- (d) the price, if any, payable in respect of the acquisition of the metal, if that price has been ascertained at the time when the entry in the record relating to that metal is to be made,
- (e) the method of payment of the price (if applicable),
- (f) where no price is payable for the metal, the value of the metal at the time when the entry is to be made as estimated by the dealer,
- (g) in the case of metal delivered to the dealer by means of a vehicle, the registration mark (within the meaning of section 23 of the Vehicle Excise and Registration Act 1994) borne by the vehicle.

(3) Where the dealer has paid for metal, the dealer must keep a copy of -

- (a) the cheque, or
- (b) the document evidencing the electronic transfer of funds.

(4) In respect of any metal processed or disposed of, the dealer must record the following information -

- (a) the description and weight of the metal immediately before its processing or disposal,
- (b) in the case of metal which is processed, the process applied,

(c) in the case of metal disposed of by sale or exchange -

(i) the consideration for which it is sold or exchanged,

(ii) the name and address of the person to whom the metal is sold or with whom it is exchanged, and

(iii) the means by which the person's name and address was verified,

{d} in the case of metal disposed of otherwise than by sale or exchange, its value immediately before its disposal as estimated by the dealer.

(5) The dealer must-

(a) keep separate records in relation to -

{i} metal acquired, and

{ii} metal processed or disposed of,

(b) record the information immediately after the metal is acquired, processed or disposed of,

(c) keep a copy of any document produced by a person to verify that person's name or address, and

{d} retain information recorded or documents kept under this section for a period of not less than 3 years beginning with the date on which the information was recorded or document obtained.

Acceptable forms of identification for proving a person's name and address

36. The Civic Government (Scotland) Act 1982 (Metal Dealers and Itinerant Metal Dealers) (Verification of Name and Address) Regulations 2016, set out the acceptable forms of identification for proving a person's name and address. These are:

Means of verification

2.-(1) For the purposes of section 33C of the Civic Government (Scotland) Act 1982 the means by which a person's name and address may be verified is for the metal dealer or itinerant metal dealer ("the dealer") to refer to -

- (a) a document listed in paragraph (2) which bears the person's name, photograph and residential address; or
- (b)(i) a document listed in paragraph (2) which bears the person's full name, photograph and date of birth; and
- (ii) a document listed in paragraph (3) which bears the person's full name and residential address.

(2) The documents for the purposes of paragraph (1)(a) or (b)(i) are-

- (a) a valid United Kingdom passport;
- (b) a valid passport issued by an EEA state;
- (c) a valid Great Britain or Northern Ireland photo-card driving licence; and
- (d) a valid biometric immigration document.

(3) The documents for the purposes of paragraph (1)(b)(ii) are-

- (a) a bank or building society statement;
- (b) a credit or debit card statement;
- (c) a council tax bill or statement where the person's address is in England, Wales or Scotland;
- (d) a rate bill or statement where the person's address is in Northern Ireland; and
- (e) a utility bill, but not a mobile telephone bill,

provided that the date on which the document was issued is not more than three months before the date the metal is acquired by the dealer or not more than three months before the date the metal is disposed of by sale or exchange by the dealer.

Other issues

Register

37. The 2015 Act further amends the 1982 Act to provide Scottish Ministers the power to establish a national register of metal dealers and itinerant metal dealers via secondary legislation. It may be specified by regulations who will keep the register, the form it will take, what information it will provide, what fees may be charged and what duties there may be to provide information to the keeper of the register.
38. The Scottish Government is holding discussions about the establishment of a register but is not yet in a position to provide further details.

Retention of metal

39. The requirements in the 1982 Act that insisted that metal dealers should retain metal for 48 hours before disposing of it are repealed.