

# **AIR WEAPONS AND LICENSING (SCOTLAND) ACT 2015**

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## **EXPLANATORY NOTES**

### **STRUCTURE AND SUMMARY OF THE ACT**

#### **Part 3 – Civic Licensing**

##### **Metal dealers**

##### ***Section 66 – Penalties for failure to have appropriate licence or comply with conditions***

214. **Section 66** amends section 7 of the 1982 Act to increase the penalties for the offences of operating without a metal dealer's licence or itinerant metal dealer's licence (where a licence is required) to a maximum fine of £20,000 and or six months imprisonment on summary conviction. Section 66 also increases the maximum penalties for the offence of failing to comply with a condition of a metal dealer's or itinerant metal dealer's licence to the same level i.e. a fine of £20,000 or six months imprisonment, or both.

##### ***Section 67 – Removal of exemption warrants for certain metal dealers***

215. This section amends section 28 of the 1982 Act and repeals section 29 of the 1982 Act to remove the current provisions that allow a metal dealer with an audited turnover in excess of a figure specified by Order (currently £1 million) to be exempted from licensing requirements. This will have the effect of ensuring that all dealers are subject to licensing requirements.

##### ***Section 68 – Abolition of requirement to retain metal for 48 hours***

216. This section repeals section 31 of the 1982 Act to remove the mandatory requirement that metal dealers should not process metal for 48 hours after receiving it. This would allow a dealer to process metal quickly (which may be required for the safe operation of the site).

##### ***Section 69 – Acceptable forms of payment for metal***

217. This section creates a new section 33A in the 1982 Act. This specifies acceptable forms of payment that may be accepted by a metal dealer or itinerant metal dealer. The acceptable forms of payment are a cheque or electronic transfer into a bank or building society account. Cash is not an acceptable form of payment. A dealer who makes payment in a method not specified commits an offence. The offence extends to a person with day to day management responsibilities and the person who makes the payment. The metal dealer and manager are provided with a defence that they have made arrangements to ensure that payment is made by the specified methods and have taken all reasonable steps to ensure compliance. Subsection (7) gives Scottish Ministers the power by regulation to add or remove forms of payment that are acceptable and to

make any consequential changes to section 33B or 33C(3) in consequence of changes to the acceptable form of payment.

218. **Section 69** also inserts a new section 33B into the 1982 Act which provides a definition of what constitutes an acceptable bank or building society account for the purposes of the regime. Subsection (4) in particular stipulates types of account that are not acceptable, with reference to Part 4A of the Financial Services and Markets Act 2000.

### ***Section 70 – Metal dealers and itinerant metal dealers: records***

219. This section amends the record keeping requirements for metal dealers and itinerant metal dealers. A new section 33C is inserted into the 1982 Act and provides the details that must be recorded by a dealer when metal is acquired or disposed of and supports the separate provisions stipulating acceptable forms of payment by requiring dealers to keep copies of documentation evidencing the form of payment used. Subsection (6) of section 33C provides the Scottish Ministers the power by regulation to amend the record keeping requirement and to stipulate particular means that can be used for the purpose of establishing a person's name and address.
220. The section also inserts a new section 33D into the 1982 Act to stipulate how records should be stored and a new section 33E to require records to be kept for each place of business a dealer operates from.
221. The section also creates an offence in relation to a failure to comply with the new requirements in relation to record keeping and amends the existing offence in relation to providing false or misleading information.

### ***Section 71 – Register of dealers in metal***

222. **Section 71** creates a new section 35A in the 1982 Act allowing the Scottish Ministers to make regulations establishing a register of metal dealers and itinerant metal dealers and make provision about its ongoing maintenance. The regulations may include details on such things as who is to keep and maintain the register, the duty to provide information, the information to be covered by the register, the form and publication of the register and any fees that may be relevant. Examples of information that may be included in the register might include the name (or trading names) of the person holding the licence, a contact address for the person and the person's place of business, which type (or types) of licence the person holds and the date on which the licence (or licences) will expire.

### ***Section 72 – Interpretation of provisions relating to metal dealers etc.***

223. **Section 72** amends section 37 of the 1982 Act to amend the definition of both metal dealers and itinerant metal dealers to encompass those who buy or sell metal as opposed to those who both buy and sell metal (which was the previous position). The 1982 Act is amended to provide the activities that are licensable and it is explicitly stated that a motor salvage operator, as defined in subsection (3), is carrying out the business of a metal dealer and will require a licence to do so.
224. The section provides that a licence is required for those who carry on a business that "wholly or substantially" consists of buying or selling scrap. This means that those who deal in scrap metal to a significant degree will require a licence but those whose involvement is peripheral or tangential will not. It will be a matter of fact or degree whether a licence is necessary in individual circumstances but, for example, it might well be the case that a plumber who acquires some metal piping in the course of domestic repairs would not require to be licensed. Conversely, a skip hirer who takes substantial amounts of metal from a building site, and that forms a substantial part of the hirer's business may require to be licensed.

***Section 73 – Exemptions from requirements of sections 28 to 37 of 1982 Act***

225. **Section 73** creates a new section 37A within the 1982 Act. The new section provides a regulation-making power that will allow the Scottish Ministers to set out circumstances where the metal dealer and itinerant metal dealer regime does not apply, thereby resulting in a licence not being required.