

Supplementary guidance for metal dealers relating to the *Air Weapons and Licensing (Scotland) Act 2015*.





Welcome to the BMRA's supplementary guidance for metal dealers in Scotland

“ From 1 September 2016, all metal dealers and itinerant metal dealers in Scotland will require a valid metal dealer's licence to operate legally. This has been brought about by the [Air Weapons and Licensing \(Scotland\) Act 2015](#) (the 2015 Act), which amends elements of the [Civic Government \(Scotland\) Act 1982](#) (the 1982 Act) regulating metal dealers. In addition to the new licensing regime, a cash ban and enhanced record-keeping requirements have been introduced. ”

British Metals Recycling Association

“ Since the inception of Operation Scandium, British Transport Police (BTP) has worked closely with the BMRA and other partner agencies to ensure those engaged in the scrap metal industry have received the necessary guidance and support as the new legislation has progressed through the parliamentary process. The following guidance notes have been compiled by the BMRA after consultation with the BTP to provide the industry with a set of guidelines that should ensure clarity and consistency during the transition to the new regulations. ”

British Transport Police

Disclaimer:

This supplementary guidance has been published to assist metal dealers and enforcement agencies understand some of the practical issues around compliance with the 2015 Act. It reflects the BMRA's interpretation of the legislation and, as such, the views expressed are not legally binding. It remains a matter for the courts to take a final view on the interpretation of the legislation.

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1.1 Applying for a licence

1.1.1 When to apply

Existing metal dealers and itinerant metal dealers must make a licence application to their local authority by 1 June 2016 to ensure they can trade lawfully after 1 September 2016.

As long as dealers have applied for a licence by 1 June they will not be penalised if their local authority has not processed their application by 1 September. Dealers will be deemed licensed until a decision has been taken on their application.

However, we recommend licence applications are submitted early to allow as much time as possible for an application to be processed. If a dealer's application is submitted after 1 June, they will be unable to operate lawfully after 1 September unless their licence has been issued.

Local authorities are entitled to a six-month statutory period to reach a decision on whether to grant a licence. Therefore, dealers who apply after the 1 June risk being unlicensed at the time metal dealer provisions of the 2015 Act come in to force.

1.1.2 Fees and consultation

A fee for a licence will be payable at the time of the application. This fee will vary by local authority but is based on cost recovery associated with the processing and issuing of a licence.

Once an application is received, the local authority will consult with the police and other relevant authorities. Members of the public may also submit their views on an application.

1.1.3 The right to appeal

A local authority may refuse to grant, or suspend or vary a licence. This is particularly likely if a dealer has been convicted of a relevant offence such as handling stolen

goods. A decision by a local authority to refuse, suspend or vary a licence can be challenged by an appeals process on application to the Sheriff Court. An appeal can be lodged with the Sheriff Court up to 28 days from the date of the decision.

The full appeals process is outlined in [Schedule 1 paragraph 18 of the 1982 Act](#).

1.2 Who needs a licence?

Anyone who carries on business as a metal dealer will require a licence to operate from 1 September. This includes those who currently operate under an exemption warrant. Additionally, motor salvage operators are brought within the scope of the 2015 Act and will require a licence.

Aside from metal dealers operating from a site, itinerant metal dealers and motor salvage operators, other types of business will be affected by the new law.

The 2015 Act specifies that anyone who deals '**wholly or substantially**' in buying or selling scrap metal requires a licence. BMRA considers the following additional types of business should require a licence:

1.2.1 General waste management

General waste management (GWM) companies typically provide collection and brokering services on behalf of a wide range of clients, including local authorities and private companies.

If a GWM company is buying or selling scrap metal as a part of a range of services, and is deriving a substantial income from that material, it should operate under a metal dealer's licence.

1.2.2 Demolition contractors

Demolition contractors usually value a contract on the basis of the scrap value of the metal contained in the structure or infrastructure. It is not unknown for the

value of the scrap to significantly exceed the costs of demolition. The actual value of the contract is therefore based on the value of the recyclable material that forms a substantial part of the contract value. On this basis, all demolition contractors should be licensed.

1.2.3 Skip hire businesses

Skip hire businesses work for a wide range of clients. Their services may include brokering in addition to waste collection services from a site.

Skip hire businesses typically price a job based on the value of recyclable material derived. If a skip hire business is buying or selling scrap metal as part of its business and deriving a substantial income from that material, it should operate under a metal dealer's licence.

1.2.4 Precious metal dealers ('cash for gold')

The 2015 Act does not specifically exclude precious metals such as silver, gold and platinum from the definition of scrap metal.

Therefore, precious metal dealers such as high street 'cash for gold' businesses who derive a substantial part of their income from buying or selling scrap precious metal should be required to obtain a metal dealer's licence.

1.2.5 Foundries and smelters

Foundries that buy scrap metal as a raw material within the meaning of the 2015 Act and derive a substantial part of their income from scrap material should consider whether they require a metal dealer's licence.

1.3 Exemptions

If a business falls into one of the categories in sections 1.2.1 to 1.2.5, inclusive, or derives a substantial part of its income from

the buying or selling of scrap material, it will be required to have a metal dealer's licence from 1 September.

However, there are certain types of business such as plumbers and electricians that may not normally require a licence.

Further advice on whether a particular business or business type may require a metal dealer's licence can be obtained from local authorities' licensing officers.

2.1 Paying for scrap under the cash ban

The 2015 Act introduces a ban on cash payments for scrap metal. This section outlines the acceptable forms of payment for scrap metal.

Payments can only be made by electronic transfer into a bank account in the name of the payee or by non-transferable cheque.

2.1.1 Electronic transfer

Electronic payments provide full traceability from the metal dealer to the person or organisation receiving that payment. Therefore, non-paper payments such as bank-to-bank transfer by direct debits or credit and payments made by telephone or online are all acceptable methods of payment. These methods provide the requisite traceability from the payer's to payee's bank account.

Electronic money products attached to a bank or building society account in the name of the payee are likely to be acceptable. However, many different products exist so caution should be exercised when deciding to invest in any electronic money systems.

The electronic payments industry is evolving quickly and it is therefore essential dealers refer to the law before making any significant investment.

2.1.2 Payment by cheque

Dealers can also pay by cheque. However, payment is limited to non-transferable crossed cheques. Cheques made out to 'cash' are not acceptable.

Additionally, non-transferable crossed cheques can only be paid to the intended beneficiary of the cheque.

On-site cheque-cashing systems are considered acceptable and provide an additional layer of due diligence checks and ultimate traceability to the payee. However,

Scottish Government has suggested that metal dealers using such systems may attract particular attention from the enforcement authorities.

2.1.3 Unacceptable methods of payment

Payments which do not fall within one of the above categories are not acceptable from 1 September and will be treated as a criminal offence. Examples of unacceptable payment methods include:

- Vouchers
- Postal orders
- Foreign and virtual currencies
- Mobile phone airtime
- Credit and supermarket gift cards.

Broadly speaking, dealers cannot make anonymous payments or payment in kind.

3.1 Identification and verification requirements

From 1 September, metal dealers will be required to take and record the identity of those they buy scrap metal from. Suitable types of documentation required when taking someone's identity are provided in [The Civic Government \(Scotland\) Act 1982 \(Metal Dealers and Itinerant Metal Dealers\) \(Verification of Name and Address\) Regulations 2016](#), which accompanies the 2015 Act.

Dealers will need to verify a person's identity by reference to documents bearing the person's name, photograph and residential address. Examples of suitable photograph-bearing documents are:

- British passport
- Driving licence
- Passport issued by an European Economic Area state.

Where the residential address of the individual is not apparent from the photographic ID, additional secondary documentation will need to be taken and recorded. Examples include:

- Utility bill
- Bank statement
- Credit or debit card statement.

Mobile telephone bills are specifically excluded from suitable documentation and must not be accepted by metal dealers.

3.1.1 Non-corporate and private individuals

The 2015 Act, and accompanying regulation, deals with the limited situation where a seller presents as a private individual or small (non-account) business. In this instance, dealers should verify the name and residential address of the seller by reference to documents bearing the person's name, photograph and residential address. It is essential in these circumstances that all relevant

documentation is taken and recorded.

3.1.2 Corporate/business 'account' suppliers

There are some circumstances where it may be inappropriate to record the identity of the seller in the way prescribed by the 2015 Act, for example, where a supplier is a corporate or business customer. This is because the ultimate customer/payee is a business and not an individual.

In this circumstance, due diligence should have already been carried out in line with good business practice. There is likely to be documented audit trail providing traceability that exceeds the requirements of the 2015 Act.

3.1.3 Identification of hauliers

Where metal has been collected and returned to a dealer's yard by its own driver (i.e. second party), it is entirely inappropriate to verify the identity of the driver given he is likely to be an employee of the dealer. Where a third party haulier is involved in the delivery of material, it is considered inappropriate to take the identity of the driver. This is because the driver is not the ultimate beneficiary of the transaction.

Dealers must keep in mind that the overarching principal of the law is to provide traceability for a transaction. Identifying the driver from a third party haulier will not achieve this goal. However, dealers will take the name of the driver and the vehicle registration mark as required by the 2015 Act.

3.1.4 Other situations

There may be circumstances where dealers are faced with a supplier that does not fall into any of the above categories. In these situations, it is essential to keep in mind that the transaction must be traceable to an individual or company bank account in the name of the payee. Additionally, there may be situations where a common sense business decision may need to be taken as to whether ID is taken.

4.1 Record keeping

Dealers are required to keep separate records for the acquisition and disposal, or processing, of metal. In addition, separate records should be kept at each place of business.

In practice, this will usually be done by way of a computerised record keeping system and this is perfectly in accordance with the law providing the same requirements are met.

Compliant systems can be achieved by using paper records held in separate log books for acquisition and disposal or processing. Additionally, separate records should be kept for each site if applicable.

4.1.1 Receiving metal

When metal is received, dealers should record a description of the metal, the weight, and the date and time it was acquired. Furthermore, if the metal was acquired from another person dealers must record the name and address of the person it was acquired from, and how their name and address was verified, including copies of the identification documents taken.

Dealers are additionally required to record the price of the metal at the time the record is made, if known. If a dealer did not pay for the metal, they should estimate the value and record the estimate.

It is also a requirement for dealers to record the method by which payment was made for the metal (electronic transfer or cheque) and to keep a copy of the cheque or evidence of the transfer. Moreover, if the metal was delivered by vehicle, the dealer should record the vehicle registration mark.

4.1.2 Processing or disposing of metal

The revised record keeping provisions require dealers to create a separate record, including a description of the metal as it was, immediately prior to processing

or disposal. The BMRA considers that 'processing' may begin on, or shortly after, acquisition. 'Processing' may cover a variety of activities, including inspection, sorting, grading and bulking-up.

It may also cover mechanical or physico-chemical treatment such as baling, shearing, shredding or melting. In the case of end-of-life vehicles, and for administrative ease, 'processing' is assumed to take place once a certificate of destruction (CoD) or notification of destruction (NoD) is issued. Therefore, a record, including the description, should therefore be made immediately after the material is acquired.

Disposal occurs when metal leaves the dealer's site following sale. When metal is disposed of, dealers should record the value it was exchanged for by way of a monetary sum.

Additionally, dealers should record the name and address of the person it was sold to and, if applicable, the means by which the person's name and address was verified (see section 3 on identification). Furthermore, if the metal is disposed of other than by sale, dealers should record an estimated value of the material immediately before its disposal.

Civic Government (Scotland) Act 1982

<http://www.legislation.gov.uk/ukpga/1982/45/contents>

Air Weapons and Licensing (Scotland) Act 2015

<http://www.legislation.gov.uk/asp/2015/10/contents/enacted>

Civic Government (Scotland) Act 1982 (Metal Dealers and Itinerant Metal Dealers)
(Verification of Name and Address) Regulations 2016

<http://www.legislation.gov.uk/ssi/2016/73/body/made>

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Join the British Metals Recycling Association and help us to secure a brighter future
for Scottish Metal Recyclers.



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