

## **METAL DEALER CONDITIONS**

“Metal” means any metal (including any precious metal) and any alloy of any metals, whether old or new and includes manufactured articles, whether old or new, made wholly or partly of metal, of any of the materials commonly known as hard metal or of cemented or sintered metallic carbides.

“Metal Dealer” means a person carrying on a business which consists wholly or partly of buying or selling for scrap old, broken worn out, defaced or partly manufactured articles made wholly or partly of metal (whether the metal sold is in the form in which it was bought or otherwise), other than a business in the course of which metal is not bought except as materials for the manufacture of other articles and is not sold except as a by-product of such manufacture or as surplus materials bought but not required for such manufacture.

“Processing” in relation to metal includes melting down and any process whereby the composition or form of the metal or of any article which is made of metal is altered so as to make it substantially less identifiable than before the process and “process” and “processed” shall be construed accordingly.

1. The licenceholder shall comply with the provisions of the Civic Government (Scotland) Act 1982 and any amendments thereto insofar as relevant to his/her business as a metal dealer.
2. For the purposes of paragraph 9 of Schedule 1 to the Civic Government (Scotland) Act, 1982 any change of address affecting the licenceholder is deemed to be a material change of circumstances and must therefore be notified to the licensing authority as soon as reasonably practicable after the change of address has taken place.
3. The licenceholder shall comply with all legislative provisions (including planning, building standards, health and safety at work and fire safety) affecting the premises or the processing of metal which he may carry out or have carried out on his behalf. In particular and without prejudice to the foregoing generality the licenceholder shall comply with and observe the provisions of Sections 33A (Acceptable forms of payment for metal), 33B ( Acceptable forms of payment: meaning of “bank or building society account”), 33C (Requirement to keep records), 33D ( Form of records), 33E ( Metal Dealers to keep records for each place of business) and 34 (Offences relating to Metal Dealing) of the Civic Government (Scotland) Act 1982 as detailed in the attached Appendix.
4. The licenceholder is responsible in terms of Part 3 of the Fire (Scotland) Act 2005 and the Fire Safety (Scotland) Regulations 2006 for ensuring that a suitable and sufficient Fire Risk Assessment is carried out and that the fire safety provisions are adequate for the risk involved.

**33A Acceptable forms of payment for metal**

- (1) A metal dealer or an itinerant metal dealer may pay for metal only by a method of payment specified in subsection (2).
- (2) The methods of payment are:
  - a. by means of a cheque which under section 81A of the Bills of Exchange Act 1882 is not transferable, or
  - b. by electronic transfer of funds to a bank or building society account in the name of the payee.
- (3) If a metal dealer or an itinerant metal dealer pays for metal otherwise than in accordance with subsection (1), the dealer and each of the persons listed in subsection (4) (if any) commit an offence.
- (4) The persons are:
  - a. in a case of payment being made by a metal dealer at a place of business of the dealer, the person with day to day management of the place,
  - b. in any case, any person who, acting on behalf of the metal dealer or the itinerant metal dealer, makes the payment.
- (5) It is a defence for a metal dealer, an itinerant metal dealer or a person described in subsection (4)(a) who is charged with an offence under this section to prove that the dealer or, as the case may be, person:
  - a. made arrangements to ensure that the payment was to be made only in accordance with subsection (1), and
  - b. took all reasonable steps to ensure that those arrangements were complied with.
- (6) A person who commits an offence under this section is liable, on summary conviction, to a fine not exceeding level 5 on the standard scale.
- (7) The Scottish Ministers may by regulations:
  - a. amend subsection (2) so as to add, amend or remove methods of payment, and
  - b. make such consequential modification of section 33B or 33C(3) as they consider appropriate.
- (8) Regulations under subsection (7) are subject to the affirmative procedure.
- (9) In this section, “place of business” means a place of business operated by a metal dealer in the ordinary course of that dealer’s business as a metal dealer.

**33B Acceptable forms of payment: meaning of “bank or building society account”**

- (1) In section 33A(2)(b), “bank or building society account” means an account held with a bank or a building society.
- (2) For the purposes of subsections (1) and (4):
  - a. “bank” means an authorised deposit-taker that has its head office or a branch in the United Kingdom, and
  - b. “building society” has the same meaning as in the Building Societies Act 1986.
- (3) In subsection (2)(a), “authorised deposit-taker” means:
  - a. a person who has permission to accept deposits under Part 4A of the Financial Services and Markets Act 2000 (but see subsection (4) for exclusions),

- b. an EEA firm of the kind mentioned in paragraph 5(b) of Schedule 3 to that Act that has permission under paragraph 15 of that Schedule (as a result of qualifying for authorisation under paragraph 12(1) of that Schedule).

(4) The reference in subsection (3)(a) to a person who has permission to accept deposits under Part 4A of the Financial Services and Markets Act 2000 does not include:

- a. a building society,
- b. a society registered as a credit union under the Co-operative and Community Benefit Societies Act 2014 or the Credit Unions (Northern Ireland) Order 1985 (S.I. 1985/1205 (N.I. 12)),
- c. a friendly society within the meaning given by section 116 of the Friendly Societies Act 1992, or
- d. an insurance company within the meaning of section 275 of the Finance Act 2004.”.

### **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.
- (6) The Scottish Ministers may by regulations:
- a. specify the means by which a person's name and address may be verified for the purposes of this section,
  - b. require further information to be recorded about any metal acquired, processed or disposed of by metal dealers or itinerant metal dealers.
- (7) Regulations under subsection (6):
- a. may make different provision for different purposes, and
  - b. are subject to the negative procedure

### **33D Form of records**

- (1) A metal dealer or an itinerant metal dealer ("a dealer") must record the required information:
- a. in books with serially numbered pages, or
  - b. by means of a device for storing and processing information.
- (2) Where a dealer records the required information in books, the dealer must use separate books for recording the required information about:
- a. metal acquired, and
  - b. metal processed or disposed of.
- (3) Where a dealer uses a device for storing and processing information, the dealer must, by means of the device or otherwise, keep details of all modifications made in the records kept by the device.
- (4) Where a dealer is required to keep a copy of a document under section 33C, it is sufficient for the dealer:
- a. to keep an electronic copy of the document, and
  - b. in relation to a document verifying a person's name or address, keep only one copy of the document.
- (5) In this section, "required information" means the information about metal acquired, processed or disposed of that a dealer is required to record under or by virtue of section 33C(2), (4) or (6).

### **33E Metal dealer to keep records for each place of business**

- (1) A metal dealer must keep separate records of the required information in relation to:
- a. each place of business operated by the dealer, and
  - b. any metal acquired, processed or disposed of otherwise than at such a place of business.

(2) Where a metal dealer records the required information in books, the dealer must not, at any time at a place of business, use more than:

- a. one book for recording the required information about metal acquired, and
- b. one book for recording the required information about metal processed or disposed of.

(3) In this section:

- a. "place of business" means a place of business operated by a metal dealer in the ordinary course of that dealer's business as a metal dealer,
- b. "required information" means the information about metal acquired, processed or disposed of that a dealer is required to record under or by virtue of section 33C(2), (4) or (6).".

(4) In section 34 (offences relating to metal dealing):

- a. after subsection (2) insert:
  - i. "(2A) Any metal dealer or itinerant metal dealer who fails to comply with a requirement of section 33C, 33D or 33E commits an offence and is liable, on summary conviction, to a fine not exceeding level 3 on the standard scale."
- b. in subsection (3), for the words from "furnishes" to "keep" substitute " produces any information or document which the dealer is required to record or keep under section 33C which is false or misleading in a material particular".

#### **34 OFFENCES RELATING TO METAL DEALING**

1. Any metal dealer who disposes of metal to a person apparently under the age of 16 or who acquires metal from such a person, whether that person is acting on his/her own behalf or on behalf of another person, shall be guilty of an offence and liable, on summary conviction, to a fine not exceeding level 3 on the standard scale.
2. In any proceedings for an offence under subsection (1) above, it shall be a defence to prove that the persons to whom it is alleged the metal was disposed of or from whom it is alleged it was acquired was 16 years of age or over at the time.
- 2A. Any metal dealer or itinerant metal dealer who fails to comply with a requirement of Section 33C, 33D or 33E commits an offence and is liable on summary conviction to a fine not exceeding level 3 on the standard scale..
3. Any metal dealer who knowingly or recklessly produces any information or document which the dealer is required to record or keep under Section 33C which is false or misleading in a material particular shall be guilty of an offence and liable, on summary conviction, to a fine not exceeding level 4 on the standard scale.
4. Any person who, when selling metal to or purchasing metal from a metal dealer, gives the dealer a false name or address shall be guilty of an offence and liable, on summary conviction, to a fine not exceeding level 3 on the standard scale.