AIR WEAPONS AND LICENSING (SCOTLAND) BILL
[AS AMENDED AT STAGE 2]

SUPPLEMENTARY DELEGATED POWERS MEMORANDUM

INTRODUCTION

1. This Memorandum has been prepared by the Scottish Government to assist the Delegated Powers and Law Reform Committee in its consideration of the Air Weapons and Licensing (Scotland) Bill. This Memorandum describes provisions in the Bill conferring power to make subordinate legislation which were either introduced to the Bill or amended at Stage 2. The Memorandum supplements the Delegated Powers Memorandum on the Bill as introduced.

PROVISIONS CONFERRING POWER TO MAKE SUBORDINATE LEGISLATION INTRODUCED OR AMENDED AT STAGE 2

2. The amended or new delegated powers provisions in the Bill are listed below, with a short explanation of what each power allows, why the power has been taken in the Bill and why the selected form of Parliamentary procedure has been considered appropriate.

PART 3

Section 65 – Power to make provision about acceptable forms of payment for metal

Power conferred on: the Scottish Ministers
Power exercisable by: regulations made by statutory instrument
Revised or new power: revised
Parliamentary procedure: affirmative procedure

Provision

3. Section 65 of the Bill provides a new section 33A in the Civic Government (Scotland) Act 1982 (“the 1982 Act”). This new section 33A of the 1982 Act provides acceptable forms of payment that may be made by a metal dealer or itinerant metal dealer. The acceptable forms of payment are a cheque or electronic transfer.

4. The new section 33A(7) that is inserted into the 1982 Act provides the Scottish Ministers the power by regulations to add, amend or remove forms of payment that are acceptable. It also enables the Scottish Ministers to make appropriate consequential modifications to the record keeping requirements specified in the new section 33B(3) of the 1982 Act.
5. Amendment at Stage 2 expands the power in the new section 33A(7) of the 1982 Act so as to make consequential amendment to the new section 33AA of the 1982 Act (also introduced at Stage 2) which provides a definition of bank and building society account for the purposes of further specifying how metal dealers can make payment for scrap metal.

Reason for Taking Power

6. The ability to make amendments to the definition in the new section 33AA of the 1982 Act is limited to a consequence of changes to the methods of payment in the new section 33A(2), inserted into the 1982 Act, which add, amends or removes methods of payment. The expanded power provides a degree of future-proofing so that if new payment methods are developed that are suitable for facilitating cashless transactions, consequential changes to new section 33AA of the 1982 Act can be made to facilitate this.

Choice of Procedure

7. The current regulation making powers in the new section 33A(7) of the 1982 Act are subject to affirmative procedure. Affirmative procedure allows for a more detailed level of Parliamentary scrutiny. It is the view of the Scottish Government that this remains appropriate for the expanded powers in section 33A(7).

Section 66 – Power to make specify particular means that can be used for the purpose of verifying a person’s name and address

Power conferred on: the Scottish Ministers
Power exercisable by: regulations made by statutory instrument
Revised or new power: revised
Parliamentary procedure: negative procedure

Provision

8. Section 66 of the Bill provides a new section 33B in the Civic Government (Scotland) Act 1982. This set out record keeping requirements for a metal dealer or itinerant metal dealer.

9. The new section 33B(6) in the 1982 Act provides the Scottish Ministers the power by regulations to require further information to be recorded about any metal acquired, processed or disposed of by metal dealers or itinerant metal dealers.

10. Amendment at Stage 2 expands the power so as to allow the Scottish Ministers to specify particular means that can be used for the purpose of verifying a person’s name and address.

Reason for Taking Power

11. The new record keeping requirements in the Bill will require dealers’ to seek evidence of a person’s name and address. The regulation making power is required to specify the particular means that might be acceptable – these may be items such as a passport or driving licence. By setting out the means in secondary legislation Ministers will be able to include any new means that may emerge in the future as suitable proofs.
Choice of Procedure

12. The current regulation making powers in the new section 33B(6) of the 1982 Act are subject to negative procedure. It is the view of the Scottish Government that this remains appropriate. It is not intended that the regulations will change the provisions of the Act. It is not anticipated that the means by which a person’s identity can be verified will be controversial. As such, it remains the view of the Scottish Government that the use of negative procedure would be appropriate here bearing in mind the balance required between scrutiny for a provision of this nature and the use of valuable parliamentary resources.

Section 66A – Power to make provision for a register of metal dealers

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<td>Revised or new power:</td>
<td>new</td>
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<td>Parliamentary procedure:</td>
<td>negative procedure (or affirmative procedure where the Regulations amends or repeals any part of an Act)</td>
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Provision


14. The new section 35A, inserted into the 1982 Act, provides new regulation making powers for the Scottish Ministers to make provisions to establish a register of metal dealers and the matters that regulations establishing the register may cover. These matters cover the maintenance of 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.

15. New section 35A(3) of the 1982 Act also provides the Scottish Ministers, when making regulations concerning the establishment of the register, to include such, incidental, supplementary, consequential, transitional, transitory or saving provision as is considered appropriate, and to modify any enactment.

Reason for Taking Power

16. The Scottish Government has responded to a recommendation from the Stage 1 report of the Local Government and Regeneration Committee to take steps to provide a register of metal dealers. This will assist local licensing authority officers and Police in enforcing licensing requirements. It will also assist members of the public who wish to ensure that a dealer is indeed licensed.

17. The regulation making powers will enable the Scottish Ministers to establish the register and set out the mechanics of how the register will work.

Choice of Procedure

18. The register for metal dealers and itinerant metal dealers will be primarily concerned with the collating and making available of information centrally. This information is itself already
available, due to the requirements for licensing authorities to publish details of licences already contained within paragraph 14 of Schedule 1 to the 1982 Act but is not held in a central and consistent format. The new arrangements therefore represent an evolution of existing procedures and the way that information is accessed.

19. As the regulations will concern principally administrative functions and the technical details of the register, the use of negative procedure is appropriate bearing in mind the balance required between scrutiny for a provision of this nature and the use of valuable parliamentary resources.

20. However, it worth noting that it is envisaged that the initial setting up of the register may require consequential amendment of the 1982 Act. As such the initial regulations are expected to be subject to affirmative procedure. (Where amendments are made to primary legislation in this manner the additional scrutiny provided by the affirmative procedure is considered appropriate.)

Section 66C – Power to create exemption from metal dealer and itinerant metal dealer licensing requirements

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Provision

21. An amendment at Stage 2 of the Bill makes provision for a new section 37A to be inserted into the 1982 Act.

22. The new section 37A, inserted into the 1982 Act provides new regulation making powers that will allow the Scottish Ministers to set out circumstances where the metal dealer and itinerant metal dealer regime does not apply. Such circumstances could perhaps relate to particular premises or activities where it is concluded that a scrap metal dealers or itinerant metal dealers regime should not apply, thereby resulting in a licence not being required.

Reason for Taking Power

23. The Scottish Government is confident that the definition of a dealer is now the right one. It provides clarity to capture those activities that should fall within licensing, but avoids licensing those peripheral activities where the metal acquired is wholly incidental. It is also flexible enough to respond to the particular facts of individual cases.

24. Nevertheless, we believe it right to enhance the flexibility to deal with circumstances that may not emerge until after the new regime is up-and-running.

25. This amendment will allow the Scottish Ministers to prescribe circumstances where the metal dealer and itinerant metal dealer regime does not apply and a licence is not required. This may be some example where it becomes apparent that a licence is being required by licensing authorities in circumstances where it was not envisaged that a licence would be necessary.
Choice of Procedure

26. It is the view of the Scottish Government that it is appropriate for the regulations to be subject to negative procedure. The provisions will provide the flexibility to provide additional exemptions to the metal dealer and itinerant metal dealer licensing regime if a need to do so is identified. It is anticipated that any exemptions from licensing which may be provided by this regulation making power are unlikely to be controversial and may well be in response to the emergence of an activity which should not fall within the regime. As such, it is considered that the use of negative procedure is appropriate here.
This document relates to the Air Weapons and Licensing (Scotland) Bill as amended at Stage 2 (SP Bill 49A)

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