Thank you for responding to the Local Government and Regeneration Committee’s Call for Evidence on the Air Weapons and Licensing (Scotland) Bill. All submissions will be examined and considered as part of the Committee’s scrutiny of the Bill.

Please be aware that questions marked with an asterisk (*) require an answer before you can submit the form.

Follow the Local Government and Regeneration Committee’s Twitter feed - all Committee tweets on this Bill will have the hashtag #aw&lbill.

*1. Please supply your name and contact details:

<table>
<thead>
<tr>
<th>Name:</th>
<th>Ian Hetherington</th>
</tr>
</thead>
<tbody>
<tr>
<td>Organisation:</td>
<td>British Metals Recycling Association (BMRA)</td>
</tr>
<tr>
<td>Address 1:</td>
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<tr>
<td>Address 2:</td>
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<tr>
<td>City/Town:</td>
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<td>Postcode:</td>
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<td>Country:</td>
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<tr>
<td>Email address (if no email leave blank):</td>
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<tr>
<td>Phone Number:</td>
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</tbody>
</table>
2. Please confirm that you have read and understood the Scottish Parliaments “Policy on the treatment of written evidence by subject and mandatory committees”:

☑ Yes

3. Please confirm whether you are content for your name to be published with your submission:

☑ Yes

☐ No

4. Which of the three categories below best describes your interest in the Bill (please tick only one)?

☐ Personal

☐ Professional

☑ Commercial

5. Do you wish your email to be added to the Committee’s distribution list for updates on progress of the Bill:

☑ Yes

☐ No
6. Invitations to give oral evidence to the Committee on the Bill will be based on the submissions received. If you wish your submission to be included amongst those considered for possible invitation to give oral evidence, please indicate here.

☑ Yes

☐ No

7. You may answer questions on the entire Bill, or on any part of the Bill. Please indicate which parts of the Bill you are responding to? (You may select as many options that apply).

☐ All of the Bill

☐ Equalities, climate change and other Scottish Government objectives

☐ Air Weapons

☑ General licensing issues

☐ Alcohol licensing

☐ Civic licensing – taxi/private hire car licensing

☑ Civic licensing – scrap metal dealers

☐ Civic licensing – theatre licensing

☐ Civic licensing – sexual entertainment venues
3. General Licensing Issues

You may respond to all questions or only those you have a specific interest in. (Text boxes have no word limit, they will increase in size accordingly).

23. Is the current Scottish licensing regime, as set out in the Civic Government (Scotland) Act 1982 and the Licensing (Scotland) Act 2005, fit for purpose?

NO

24. Should a licensing system seek to regulate individual behaviour or communities of space (eg. ‘city space’ etc.)?

BOTH INDIVIDUAL BEHAVIOUR AND THAT OF BODIES CORPORATE

25. In what way should the licensing system in Scotland interact with the support the land use planning system, community planning and regeneration?
26. How does the licensing system in Scotland assist with the delivery of sustainable development and economic balanced areas?

N/A

27. In what way does the licensing system in Scotland support health and planning, addressing health inequalities and public health wellbeing outcomes?

N/A
6. Scrap Metal Dealer Licensing

You may respond to all questions or only those you have a specific interest in. (Text boxes have no word limit, they will increase in size accordingly).

40. Taking the proposals in sections 63 to 66 of the Bill together, how will they have the desired effect of strengthening the metal dealers' licensing regime to the extent that metal theft and related criminal activity is reduced?

As currently drafted we do not think the proposals in sections 63 to 66 of the Bill will strengthen the metal dealers' licensing regime and they could increase the opportunities for criminal behaviour.

We do however support a radical overhaul of the licensing regime.

See detailed comments annexed to this response.

41. In your view, could the Bill be further strengthened in any way, for example, by including an accreditation scheme for metal dealers?

See detailed comments annexed to this response.

42. Removal of exemption warrant - do you wish to comment on the proposal to remove the exemption warrant system?
We support the removal of the exemption warrant

43. Removal of requirement to retain metal on-site - what impact will the proposal to remove the retention of metal requirement have on the enforcement of the licensing regime and prevention of criminal activities?

See detailed comments annexed to this response

44. Forms of payment - what is your view on the proposal to go 'cashless' and is there merit in considering whether metal dealers could be allowed to operate using cash for only very small transactions, which could be limited to a certain number per month?

See detailed comments annexed to this response
45. Forms of identification and record keeping:

In line with the Scrap Metal Dealers Act 2013, the Bill adds additional record keeping requirements to a metal dealer’s licence including recording the means by which a seller’s name and address was verified and retaining a copy of the document, and the method of payment and a copy of the payment document. The Bill will also require a metal dealer to record information in books with serially numbered pages or by means of an electronic device, and to keep separate records at each place of business. Such information and documents are to be kept for three rather than the current two years.

How important is it that the record keeping requirements reflect those in the Scrap Metal Dealers Act 2013, and do you agree with the Scottish Government that the proposed record keeping requirements are not unduly burdensome?

See detailed comments annexed to this response
46. Mandatory and discretionary licensing requirements:

The Scottish Ministers can impose mandatory licensing requirements, such as those included in the Bill relating to record keeping and the identification of customers. In addition, local authorities can also attach discretionary requirements to licences in their areas.

Does the Bill get the balance right between mandatory and discretionary licensing requirements? Should the Bill include other mandatory conditions for obtaining a metal dealer’s licence, such as installing CCTV at metal dealers’ premises or in relation to labelling of metal and ‘forensic coding’?

See detailed comments annexed to this response
BMRA response to the Scottish Parliament Local Government and Regeneration Committee’s call for evidence on the Air Weapons and Licensing (Scotland) Bill 2014

Introduction

The British Metals Recycling Association (BMRA) is the trade association for ferrous and non-ferrous recycling companies throughout the UK and represents some 340 businesses which between them handle over 95% of the metal recycled in the UK. This £5.6 billion industry processes over 15 million tonnes of metal annually into secondary raw material, which is vital for metals manufacturing.

Within membership there are 28 companies with facilities located in Scotland (see Annex A) ranging in size from small family-owned enterprises to large multi-national companies. They operate from approximately 50 sites, processing around 1.3 million tonnes of metal-rich materials including end-of-life vehicles; waste electrical and electronic equipment; and packaging wastes, as well as household, business and industrial waste arisings. Each year the industry contributes around £500 million to the Scottish economy, and because of a decline in the UK’s production of steel and other metals, the majority of recycled metals produced in Scotland are exported; generating around £300m in foreign exchange earnings.

BMRA has previously commented on consultations by Scottish Government published November 2011 and February 2013 and on an early draft of the Bill circulated in March 2014.

We are disappointed that despite our continued engagement with Scottish Government, on seeking a robust and equitable licensing regime for all metal dealers, the Air Weapons and Licensing (Scotland) Bill (“AWLS”) published in May 2014 for scrutiny appears to do nothing to address the significant loopholes and weaknesses we identified in previous submissions.

The comments below are based on a thorough assessment of the AWLS Bill, our experience of the reforms to scrap metal dealer licensing in England and Wales and extensive consultation with all of our Scottish members. Our comments consider the content of the AWLS Bill and also the consequences of leaving certain other elements of the Civic Government (Scotland) Act 1982 (“CGSA”) un-amended.
The changes recommended by BMRA in this document are designed to cover the key issues. However, these observations are not exhaustive and we are prepared to discuss these and propose further amendments that would serve to strengthen and aid the effective implementation of the AWLS Bill.

**Major Issues**

**Cash trading**
We welcome any measures that will deter metal theft by removing opportunities for the anonymous disposal of stolen material for cash. However, this has to be on the basis that the AWLS Bill will minimise the creation of new unfair competitive opportunities for those operating on the margins of the licensing regime at the expense of compliant dealers.

The AWLS Bill seeks to ban cash payments using virtually identical text to the Scrap Metal Dealers Act 2013 (England & Wales), but contains significant weaknesses relating to the licensing regime itself that would provide readily-exploitable loopholes for unscrupulous operators.

**Date of processing**
S33B(4)(b) of the CGSA (as amended) calls for a dealer to record the date on which metal is processed, including its description and weight prior to the processing operation.

Such a requirement is wholly unrealistic in a typical metal recycling facility where material is continually received and sorted for processing in economical quantities. Compliance with the requirement would require the batching of all material through processes that are intrinsically continuous. This would require a substantial increase in the land allocated and licensed by SEPA for the purpose of metal recycling and would threaten the economic viability of many Scottish businesses.

**Register of licences**
It appears that responsibility to maintain registers of metal dealers remains with each licensing authority (CGSA Schedule 1, para 14 refers), although an itinerant’s licence will remain valid for collections anywhere in Scotland (CGSA S 32(2) refers).

Local registers may be appropriate for the other activities regulated by the CGSA. However, metal trading, particularly by itinerant metal dealers, frequently involves collections and transportation throughout multiple local authority jurisdictions. That means enforcement agencies may have to access and consult registers for distant local authorities in order to establish whether an individual or a business is licensed.

Failure to set up a national register of metal dealers, potentially managed by SEPA who already maintain registers of all these businesses in one form or other, would constitute a lost opportunity to assist enforcement agencies in the detection and prosecution of metal theft and breaches of the CGSA.
Production of licences
We can find no requirement for a metal dealer or itinerant metal dealer to display a copy of a licence.

CGSA S5(4) allows a person who may be carrying on an activity which requires licensing five days to produce the licence. We consider that placing an obligation on metal dealers to display copies of their licence on their premises, and for itinerant metal collectors to display their licence/s on their collection vehicles, would be a useful measure to assist enforcement agencies in identifying illegal dealers.

Verification of identity
CGSA (as amended) S33B(5)(c) says that a dealer must "keep a copy of any document produced by a person to verify that person's name and address".

However, we cannot find any requirement placed on a dealer to verify the identity of a person supplying or receiving metal for recycling (‡ see below under “Methods of payment”). If such a requirement is introduced it is essential that the person whose identity is to be verified, and the form of acceptable documents, is set out clearly and unambiguously.

Methods of payment
Electronic transfer definitions and associated record-keeping requirements are very poorly defined in the AWLS Bill. ‘Payment in kind’ is not addressed.

A notable weakness of the regime in England and Wales is a poor definition of acceptable payment methods. The payment mechanisms that would be permitted under the CGSA (as amended) S33A are equally unclear. For example, in S33A(2)(a) there is no restriction on the person to whom a non-transferrable cheque may be made out; it does not have to be the seller or any person whose identity has been verified (if indeed there is any requirement for verification of any person’s identity - ‡ see above under "Verification of identity"). Furthermore, S33A(2)(b) not only fails to link the seller and payee for electronic transfers, it also does not define “account”, nor does it set any parameters for traceability of transfer between an account and the seller.

Metal definition
S33A of the Act as amended defines acceptable forms of payment for metal by a person who falls within the definition of a “metal dealer” or an “itinerant metal dealer” (S37 refers), but does not restrict that to metal for recycling, indeed the nature of the metal is neither defined in the CGSA, nor mentioned in the AWLS Bill.

That might be seen to be a useful means of avoiding ambiguity over when an item might qualify as scrap. However, banning anyone who fits the definition of “metal dealer” or “itinerant metal dealer” from buying any metallic item for cash seems to be a draconian measure and is unlikely to have been the intention of the drafter. The absences of a
definition of metal, or of any reference to licensing regimes or restrictions on methods of trading relating to metal, are serious weaknesses in the legislation.

It would be appropriate to re-work the AWLS Bill to make it clear that the ban on cash payment relates to metal traded in the course of a metal dealer’s/itinerant metal dealer’s business, and not (for example) to consumer goods he might buy. A natural consequence is that a clear definition of metal, including when an end of life vehicle may be considered scrap, is essential.

**Metal dealer definition**
The Bill’s definitions of a metal dealer and an itinerant metal dealer in the CGSA S37 are not changed by the AWLS Bill and require a person both to buy and to sell metal before they qualify.

One significant implication is that a typical itinerant who collects from households without making payment for the items or materials he collects would not require a licence, and would thus remain outside the scope of the AWLS Bill. Furthermore, there is scope for a person collecting general waste and other materials, but actually earning a substantial proportion of his income from separating out and selling scrap metal, to escape the licensing regime. Similarly, skip hire operators and demolition contractors generating a substantial amount of their revenue from sale of scrap metal could escape the definition and need for licensing. Furthermore car breakers are not covered by the definition, a situation exacerbated by the absence of a definition of scrap.

We note that CGSA S37(2) excludes manufacturers’ buying of scrap for manufacture of other articles from the definition of metal dealer, providing scope for creative interpretation of both “manufacture” and “other articles” to evade licensing. For example, a metal dealer who has a small furnace for the manufacture of aluminium ingot would fall outside the scope of the AWLS Bill. We believe that the AWLS Bill should be amended to capture “all persons carrying out a business consisting of buying or selling scrap metal”, with some specific exemptions for manufacturers disposing of their own surplus materials or offcuts. A clear and comprehensive definition of metal dealer, to include vehicle dismantlers and other businesses generating a significant proportion of their income from sale of scrap metal is essential.

**Powers of Search and Seizure**
We consider the existing powers vested in police officers under Section 60(1)(c) of the Civic Government (Scotland) Act 1982 to enter and search premises occupied by a metal dealer without warrant to be draconian, particularly in the light of the levelling of playing field for regulation of all metal dealers through the removal of the exemption warrant system. The AWLS Bill provides an opportunity to regularize the situation by removing specific additional powers in respect of metal dealers’ premises and vehicles.

British Metals Recycling Association
### Annex A – BMRA member companies with operations in Scotland

<table>
<thead>
<tr>
<th>COMPANY NAME</th>
<th>MAIN OFFICE LOCATION</th>
</tr>
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<tbody>
<tr>
<td>Angus Braidwood &amp; Son Ltd</td>
<td>Stirlingshire</td>
</tr>
<tr>
<td>Bernard Hunter Ltd</td>
<td>Edinburgh</td>
</tr>
<tr>
<td>Binn Skips Ltd</td>
<td>Perthshire</td>
</tr>
<tr>
<td>Christie &amp; Son (Metal Merchants) Ltd</td>
<td>Renfrewshire</td>
</tr>
<tr>
<td>Concorde Metals Recycling Ltd</td>
<td>North Lanarkshire</td>
</tr>
<tr>
<td>D Shaw Metals</td>
<td>South Lanarkshire</td>
</tr>
<tr>
<td>Dalton Demolition</td>
<td>City of Edinburgh</td>
</tr>
<tr>
<td>Dalton Metal Recycling</td>
<td>West Lothian</td>
</tr>
<tr>
<td>David Band (Metals) Ltd</td>
<td>Perthshire</td>
</tr>
<tr>
<td>ELG Haniel Metals Ltd</td>
<td>North Ayrshire</td>
</tr>
<tr>
<td>European Metal Recycling Ltd</td>
<td>North Lanarkshire</td>
</tr>
<tr>
<td>Foundry Steels Ltd</td>
<td>Stirlingshire</td>
</tr>
<tr>
<td>Frank Kelbie Ltd</td>
<td>Tayside</td>
</tr>
<tr>
<td>GRC Recycling Ltd</td>
<td>City of Dundee</td>
</tr>
<tr>
<td>John Graham (Metals) Ltd</td>
<td>Stirlingshire</td>
</tr>
<tr>
<td>John Lawrie (Aberdeen) Ltd</td>
<td>Aberdeenshire</td>
</tr>
<tr>
<td>John R Adam &amp; Sons Ltd</td>
<td>City of Glasgow</td>
</tr>
<tr>
<td>Panda Rosa Metals</td>
<td>Aberdeenshire</td>
</tr>
<tr>
<td>R G S Hutchison &amp; Sons (Metals)</td>
<td>Aberdeenshire</td>
</tr>
<tr>
<td>R M Easdale &amp; Co Ltd</td>
<td>City of Glasgow</td>
</tr>
<tr>
<td>Robertson Metal Recycling Ltd</td>
<td>Fife</td>
</tr>
<tr>
<td>Rosefield Salvage Ltd</td>
<td>Dumfries and Galloway</td>
</tr>
<tr>
<td>Sims Metal Management</td>
<td>Dumfries and Galloway</td>
</tr>
<tr>
<td>Thomas Muir (Metals) Ltd</td>
<td>Fife</td>
</tr>
<tr>
<td>William Tracey Ltd</td>
<td>Renfrewshire</td>
</tr>
<tr>
<td>William Waugh (Edinburgh) Ltd</td>
<td>City of Edinburgh</td>
</tr>
</tbody>
</table>