

Report of Section Head (Entertainment Licensing)

Report to Head of Elections, Licensing and Registration

Date: 2 June 2016

Subject: Entertainment Licensing Fees and Charges

Are specific electoral Wards affected?	<input type="checkbox"/> Yes	<input checked="" type="checkbox"/> No
If relevant, name(s) of Ward(s):		
Are there implications for equality and diversity and cohesion and integration?	<input type="checkbox"/> Yes	<input checked="" type="checkbox"/> No
Is the decision eligible for Call-In?	<input type="checkbox"/> Yes	<input checked="" type="checkbox"/> No
Does the report contain confidential or exempt information?	<input type="checkbox"/> Yes	<input checked="" type="checkbox"/> No
If relevant, Access to Information Procedure Rule number:		
Appendix number:		

Summary of main issues

1. The Licensing Authority sets the fees for sex establishments (sexual entertainment venues, sex shops and sex cinemas), places of marriage and scrap metal dealers. The Licensing Authority also has the ability to set gambling fees up to a maximum cap. This review seeks to set revised fees for the four regimes with effect from 2 June 2016.
2. Under the European Services Directive and the Provision of Services Regulations 2009, the council may set a reasonable fee that only includes the costs related to the application process.
3. This report presents the fee review and a proposed scheme of charges.

Recommendations

4. That the Head of Elections, Licensing and Registration considers the contents of this report and approve the scheme of charges for gambling premises, sex establishments, places of marriage and scrap metal dealers from 2 June 2016 until reviewed again.

1 Purpose of this report

- 1.1 To present to the Head of Elections, Licensing and Registration a proposed fee scheme that reflects the cost of processing and determining applications for gambling premises, sex establishments, places of marriage and scrap metal dealers licences commencing from 2 June 2016.

2 Background information

- 2.1 Entertainment Licensing is responsible for:

- Licensing Act 2003
- Gambling Act 2003
- Sex Establishments
- Scrap Metal Dealers
- Places of Marriage
- Film classification
- Hypnotism
- Charitable Collections (street and house to house)

- 2.2 The fees relating to the Licensing Act 2003 are set by statute. There is no fee for film classification, hypnotism and charitable collections.

- 2.3 The fees for sex establishments, places of marriage and scrap metal dealers are set by the council. Authority for the setting of fees is delegated through the Officer Delegation scheme to Head of Elections, Licensing and Registration.

3 Main issues

- 3.1 The fees for the three regimes of sex establishments, scrap metal and places of marriage are caught under the European Services Directive and Provision of Services Regulations.

European Services Directive

- 3.2 The European Services Directive ensures that the fee is limited to cost recovery. It provides:

“Authorisation procedures and formalities shall not be dissuasive and shall not unduly complicate or delay the provision of the service. They shall be easily accessible and any charges which the applicants may incur from their application shall be reasonable and proportionate to the cost of the authorisation procedures in question and shall not exceed the cost of the procedures.”

- 3.3 Regulation 18 of the Provision of Services Regulations effectively replicates the provisions of the Directive. Guidance on the provisions was given in the Department for Business Innovation and Skills’ Guidance for Local Authorities on the Provision of Services Regulations. These states:

“Local Authorities must set fees that are proportionate to the effective cost of the procedure dealt with. As costs vary from region to region, central advice on the level of fees will not be appropriate. Local Authorities will need to bear in mind the threat of legal challenge should a service provider feel that the levels of fee are being used as an economic deterrent or to raise funds for Local Authorities. Enforcement costs should not be assimilated with the application fee. This is to forestall the possibility of an unsuccessful applicant seeking legal remedy due to part of his fees having been used to subsidise his successful competitors.”

- 3.4 The Department’s corresponding Guidance for Businesses on the Provision of Service Regulations states:

“Under regulation 18, fees charged in relation to authorisations must be proportionate to the effective cost of the process e.g. to cover the actual cost of the application process. Fees should not be used as an economic deterrent to certain activities or to raise funds. As now, if you believe the fee to be disproportionate you can contest it with the authority concerned.”

Hemmings Case

- 3.5 In 2012 the operators of a number of sex shops in Westminster were successful in their High Court action against Westminster City Council in challenging the level of fees set by them. The basis of the case was that the authority had not taken into account a European Directive and that the fees were in excess of what they should have been. It was argued that prosecuting persons, businesses and companies who operate sex establishments illegally could not be included in the fee structure of the council.
- 3.6 Westminster Council appealed the decision of the High Court to the Court of Appeal, which dismissed the appeal, supporting the High Court. It is clear that the Court of Appeal have determined that where there is an administrative licensing process, there is a need to be particularly careful with how the fee structure is established. This is critical if the fees are not set centrally as standard fees.

Sex Establishments

- 3.7 Sex establishments are subject to an annual renewal process. There are also processes to vary a licence and transfer the licence.
- 3.8 Officers have calculated the cost of the processes undertaken in 2015, which are:
- sex establishment (SEV) renewals that went to hearing
 - sex establishment (sex shops) renewals that received no objections
- 3.9 Officers reviewed the administrative process undertaken within the section to ensure that it is as streamlined as possible. There have been significant changes made in the past five years to streamline services, improve IT provision, utilise email and other digital processes, scanning of files and digital archiving. These changes have led to a reduction in the overhead costs of the service and the time that each process takes.

3.10 The proposed fee structure recognises that all applications for sexual entertainment venues are heard at a licensing subcommittee and attract the subsequent costs associated with this process. The fee structure also recognises that applications for the renewal of sex shops have not attracted objections in the past few years. The current fee is:

	Grant	Variation	Renewal	Transfer	Change
Sex shop	£4,159	£3,567	£776	£776	-
Sexual entertainment venue	£4,159	£3,567	£4159	£776	-
Sex cinema	£4,159	£3,567	£776	£776	-

3.11 In 2015 we included a cost for legal services based on the costs incurred during 2014. Officers have reviewed all the costs as part of the annual review. The cost for the legal support was much lower than expected at c. £500 per hearing. The review shows that, other than the cost for legal support, the current fee for sex establishments is an accurate reflection of the costs to the council of administering these applications.

3.12 The judgements for Hemmings provided clarity on the ability to charge for enforcement activity and policy development, which would be refunded in the case that the licence application is refused or withdrawn.

3.13 With some adjustments where efficiencies have been made in the application process, plus the addition of costs for enforcement and policy development the proposed fees are as follows. A detailed breakdown is attached at **Appendix 1**.

Sex Shop	Grant	Variation	Renewal	Transfer	Change
Process application	£563	£347	£431	£431	£31
Sub Committee Hearing	£1,713	£1,713	£0	£0	£0
Policy Development	£135	£135	£135	£135	£0
General Enquiries	£22	£22	£22	£22	£22
Compliance Costs	£137	£0	£137	£137	£0
Total	£2,570	£2,217	£725	£725	£53

Sexual Entertainment Venue	Grant	Variation	Renewal	Transfer	Change
Process application	£563	£347	£563	£5631	£31
Sub Committee Hearing	£1,713	£1,713	£1,713	£1,713	£0
Policy Development	£135	£135	£135	£135	£0
General Enquiries	£22	£22	£22	£22	£22
Compliance Costs	£137	£0	£137	£137	£0
Total	£2,570	£2,217	£2,570	£2,570	£53

Sex Cinema	Grant	Variation	Renewal	Transfer	Change
Process application	£563	£347	£431	£431	£31
Sub Committee Hearing	£1,713	£1,713	£0	£0	£0
Policy Development	£135	£135	£135	£135	£0
General Enquiries	£22	£22	£22	£22	£22
Compliance Costs	£137	£0	£137	£137	£0
Total	£2,570	£2,217	£725	£725	£53

Scrap Metal

- 3.14 The Scrap Metal Dealers Act 2013 was a replacement regime for the Scrap Metal Dealers Act 1964 and the Motor Salvage Operators Act 2009. Scrap Metal Dealers licences last for three years.
- 3.15 In the last year the number of applications has dramatically reduced, leading to only 4 Officer Meetings.
- 3.16 The current fee is as follows. A detailed breakdown is attached at **Appendix 2**.

Site	New Application	Renewal	Vary licence	Change of name or address	Replacement licence
Collector	£359	£359	£327	£46	£10.50
Site	£502	£502	£167	£46	£10.50

The proposed fee is:

Application cost	Collector New/ renewal/ variation	Site New/ renewal/ variation	Change of details	Replacement
Process application	£107	£107	£61	£23
Meeting with officers	£13	£0	£0	£0
General Enquiries x 3	£9	£9	£9	£9
Compliance	£68	£68	£0	£0
Total	£197	£184	£70	£32

- 3.17 £68 would be refunded in the event of the licence being refused.

Marriage Act – Places of Marriage

- 3.18 Places of Marriage are subjected to a three yearly licensing regime.
- 3.19 This fee was reviewed in 2015 to bring it in line with the other fee regimes. The review has shown that the current fee is broadly the same as the proposed fees but with some adjustments for efficiencies made within the processing of applications. An adjustment has been made to reduce the estimated legal costs for taking a review to a hearing.
- 3.20 The council has the ability to move from a three yearly licensing regime to a five yearly licensing regime. As these fees are set on a cost recovery basis the impact on the service is minimal. Entertainment Licensing handle around 20 applications for renewal a year which will drop to around 12 under a five yearly licensing regime. The benefit to the businesses would be a net decrease in fees from £172 to £109 per year pro rata. Entertainment Licensing will see a decrease in fees of around £3,500 per year but as the regime seeks to recover costs only, there would be a matching reduction in costs.

3.21 The current fee is:

	Grant	Renewal	Review	Change of details
Current fee	£516	£516	£3,599	-

3.22 The reviewed fee is as follows. A detailed breakdown is attached at **Appendix 3**.

Application cost	Grant	Renewal	Review	Change of details
Process application	£459	£459	£291	£132
Sub Committee Hearing	£0	£0	£1,199	£0
General Enquiries x 5	£24	£24	£24	£24
General legal advice	£0	£0	£0	£0
Compliance	£0	£0	£0	£0
Total	£483	£483	£1,514	£156

Gambling Premises

3.23 Under the Gambling Act 2005, fees are set by statute. However Licensing Authorities have the ability to set premises licence fees up to a maximum cap. Many licensing authorities set the fee in 2007 at the maximum level as it was difficult to predict at that time what interest there would be from the public in gambling applications.

3.24 Since 2012/13 the council has made significant efficiency savings. These include:

- Reduction in support services
- Reduction in management
- Centralisation of business support
- Group purchasing contracts
- Review and replacement of copying and postage facilities
- Greater online and digital services
- Mobile working (through Change the Workplace)

3.25 The efficiencies put in place between 2012/13 have led to an overall reduction in the cost of services. By the 2016/17 financial year this reduction can be reflected in the fees for Gambling Act premises licences of 21%.

3.26 In addition to an overall decrease in the fee, officers have reviewed the fees for the Large Casino. Ongoing enforcement and future licensing process are estimated to take no more time or effort than a converted casino licence and therefore it is proposed that other than for a grant or provisional statement which will follow the prescribed procedure for a Large Casino, the fee for the remaining processes should be set at the same level as that for a converted casino.

3.27 A full list of fees is attached at **Appendix 4**.

4 Corporate Considerations

4.1 Consultation and Engagement

4.1.1 There is no statutory requirement to consult with licence holders before reviewing the fee for these three regimes. Taking into consideration the three yearly licence renewal period for Scrap Metal and Marriage, and the number of licensees affected it is recommended that a formal consultation process would not be good value for money in this instance.

4.2 Equality and Diversity / Cohesion and Integration

4.2.1 There are no implications for equality and diversity/cohesion and integration in setting a fee structure.

4.3 Council policies and City Priorities

4.3.1 The licensing regime contributes to the following Best Council Plan 2013-17 outcomes:

- Improve the quality of life for our residents, particularly for those who are vulnerable or in poverty;
- Make it easier for people to do business with us.

4.3.2 The licensing regime contributes to our best council objective:

- Ensuring high quality public services – improving quality, efficiency and involving people in shaping their city.

4.4 Resources and value for money

4.4.1 The licensing of sex establishments, places of marriage and scrap metal dealers attracts a fee which can only be used to pay for the costs associated with the licence application and cannot be used to cover the cost of the investigation of unlicensed activity.

4.5 Legal Implications, Access to Information and Call In

4.5.1 The recent case has highlighted the need for councils to ensure that fees only include the costs of processing applications.

4.6 Risk Management

4.6.1 Following the result of the Hemmings case there is a risk of the licensees challenging the fees set by the authority, if they consider that the fee is not reasonable or that the council is making a charge for matters that are not relevant to the applications process.

5 Conclusions

- 5.1 Recent cost efficiency savings, centrally and locally, have necessitated a review of the fees for sex establishments, scrap metal dealers, places of marriage and gambling premises. New fees have been proposed which are based on cost recovery and the hourly rates used to calculate the processing fees include the reduction in costs the council has achieved.

6 Recommendations

- 6.1 That the Head of Elections, Licensing and Registration considers the contents of this report and approve the scheme of charges for gambling premises, sex establishments, places of marriage and scrap metal dealers from 2 June 2016 until reviewed again.

7 Background documents¹

- 7.1 There are no unpublished background documents that relate to this matter.

8 Appendices

- Appendix 1 Sex establishments
- Appendix 2 Scrap metal dealers
- Appendix 3 Places of marriage
- Appendix 4 Gambling premises

¹ The background documents listed in this section are available to download from the Council's website, unless they contain confidential or exempt information. The list of background documents does not include published works.