

Report of Section Head, Entertainment Licensing

Report to Head of Elections, Licensing and Registration

Date: 14 July 2017

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. In accordance with the Council's fees and charges policy, the fees are reviewed annually and this review seeks to set revised fees for the four regimes with effect from 1st July 2017.
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 licensing regimes administered by Entertainment Licensing from 17th July 2017 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 1st July 2017.

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 state:

“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.

Changes in the last year

- 3.7 Entertainment Licensing has seen a number of changes in the past year. The biggest of which is the transfer of a face to face communications to the City Centre One Stop. This service, which is charged for as part of the council overhead, has reduced the amount of time Entertainment Licensing officers deal with face to face enquiries. It has also reduced the amount of time spent checking and discussing the completion of forms. However, the section has not seen a corresponding rise in the number of rejected applications yet, although this is expected.
- 3.8 Over the last three years extra effort has been put into checking older licences when new processes are undertaken on those business files. This has increased the accuracy of the licences being produced now and has reduced the amount of time Licensing Officer spend drafting and Principal Officers spend checking licences.
- 3.9 This past year has seen an increase in the number of new Licensing Act premises licences from 119 in 2015/16 to 173 in 2016/17.

3.10 The two main changes have reduced the average time a new premises licence takes to process by a third, and has enabled the section to handle the additional new premises licence applications within its current workforce.

Sex Establishments

3.11 Sex establishments are subject to an annual renewal process. There are also processes to vary a licence and transfer the licence.

3.12 The current fee is:

	Grant	Variation	Renewal	Transfer	Change
Sex shop	£2,570	£2,217	£725	£725	£53
Sexual entertainment venue	£2,570	£2,217	£2,570	£2,570	£53
Sex cinema	£2,570	£2,217	£725	£725	£53

3.13 In 2016 we assumed that sex shop renewals would not go to a hearing and the fee was set accordingly.

3.14 Officers have calculated the cost of the processes undertaken in 2016, which are:

- sex establishment (SEV) renewals that went to hearing
- sex establishment (sex shop) renewals that received no objections
- sex establishment (sex shop) renewal that went to a hearing

3.15 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 costs of the service and the time that each process takes. However this has been offset by a 1% pay award and an increase in legal costs/charges. This is reflected in the fee going forward.

3.16 Overall the regime showed income of £24,138 and expenditure of £26,747. The income included £6,573 which was carried forward from the previous year as a surplus. This surplus covered the projected shortfall in fees as built in from the previous year. However despite carrying forward this surplus, by the end of the 2016/17 financial year the regime showed a deficit of £2,609. This deficit was due to the unexpected cost of a subcommittee hearing.

3.17 This deficit has been carried forward to 2017/18 and an adjustment has been made to the fees to recover this cost. The recommended fees are as follows. A detailed breakdown is attached at **Appendix 1**.

	Grant	Variation	Renewal	Transfer	Change
Sex shop	£3,174	£2,749	£1,398	£865	£64
Sexual entertainment venue	£3,174	£2,749	£3,174	£2,856	£64
Sex cinema	£3,174	£2,749	£865	£865	£64

- 3.18 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.
- 3.19 The fee structure also recognises that although applications for the renewal of sex shops have not attracted objections in the past few years, this year one of the sex shop renewals did receive an objection that was not resolved and the matter was decided by a licensing subcommittee. The increase in the cost of the sex shop renewal seeks to recover this shortfall. It would be anticipated that should no further subcommittee hearings be necessary for sex shop renewals, this fee will fall in future years.

Scrap Metal

- 3.20 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.
- 3.21 In the last year the number of applications has dramatically reduced and there have been no officer meetings. This allows us to set the fee the same for both collectors and site licences.
- 3.22 The fee to produce a replacement licence and to effect a change of details has been reviewed. This fee has been reduced to take into consideration efficiencies in the way these processes are administered.
- 3.23 The grant and renewal fees have increased to take into account the increased cost of running the service including overheads.
- 3.24 The current and proposed fee is as follows. A detailed breakdown is attached at **Appendix 2**.

Application cost	Collector New/ renewal/ Variation	Site New/ renewal/ Variation	Change of details	Replacement
Current fee for 2016/17	£197	£184	£70	£32
Proposed fee for 2017/18	£207	£207	£41	£41

Marriage Act – Places of Marriage

- 3.25 Places of Marriage are subjected to a three yearly licensing regime.
- 3.26 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.

- 3.27 The fee collected to reimburse Registrars and Building Control for the review of applications and site visits have been reviewed. As a consequence the fee for a renewal has been reduced as it is recognised that site visits rarely take place for a renewal as Registrars are regularly attending the premises to perform wedding ceremonies.
- 3.28 The current and proposed fee is as follows. A detailed breakdown is attached at **Appendix 3**.

	Grant	Renewal	Review	Change of details
Current fee for 2016/17	£483	£483	£1,514	£156
Proposed fee for 2017/18	£618	£228	£1,904	£120

Gambling Premises

- 3.29 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.
- 3.30 When the fee was calculated for the 2016/17 financial year, the fees for the Gambling Act premises licences were set at 79% of the capped maximum. When reviewing the expenditure figures for 16/17 the Section has seen an overall reduction in the expenditure forecast for that year. On investigation, it was found that this is due to lower than expected enforcement activity relating to the Gambling Act premises.
- 3.34 The Section had intended to embark on a full inspection programme of local risk assessments which was factored into the enforcement costs for 2016/17. However these were not completed due to competing priorities.
- 3.35 The forecast value placed upon the planned enforcement activity equates to 5.5% of the overall income received in 2016/17. Therefore it is recommended that gambling premises licence fees are reduced by the same amount to 73.5% of the capped maximum.
- 3.36 The planned inspection of risk assessments will now take place in 2017/18 and will be reflected in the fee review at the end of the financial year.
- 3.35 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 In line with the Councils fees and charges policy, the fees for sex establishments, scrap metal dealers, places of marriage and gambling premises have been reviewed. 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 consider the contents of this report and approve the scheme of charges for licensing regimes administered by Entertainment Licensing from 17th July 2017 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.