

Report of Section Head, Entertainment Licensing

Report to Chief Officer, Elections and Regulatory

Date: 5 December 2018

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 1st November 2018.
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 Chief Officer, Elections and Regulatory considers the contents of this report and approve the scheme of charges for licensing regimes administered by Entertainment Licensing from 1st November 2018 until reviewed again.

1 Purpose of this report

- 1.1 To present to the Chief Officer, Elections and Regulatory 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 November 2018.

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 Chief Officer, Elections and Regulatory.

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 appointed a B1 Administrative Assistant who has been instrumental in improving the initial stages of the application process, pre verification. Moving this work from the licensing officers to the administrative assistant has placed the costs associated with that part of the process into overhead.
- 3.8 Temporary event notices have increasingly moved to online applications. Despite a moderate increase in the number of temporary event notices this year (from 1,866 in 2016/17 to 2,211 in 2017/18), the processing time and postal charges has been reduced, as more people accept the acknowledgement letters by email.
- 3.9 A digitisation project has seen the majority of files being scanned and archived which has led to a reduction in the cost of processing applications and enabled the section to be able to manage fluctuations in applications.
- 3.10 Overall income and expenditure have reduced in the 2017/18 financial year. This is due to a change in the way overhead costs have been accounted for – as well as

efficiency savings and savings on managed costs, such as salaries, office consumables, IT equipment and software etc. This represents a 10% decrease in the hourly rate. However a pay increase and the additional costs of the Apprenticeship Levy will reverse this in 2018/19.

- 3.11 As in previous years, any surplus achieved from the reduction in costs should be carried forward. In the case of marriage and scrap metal these should be carried forward to 2020/21 to reflect the three yearly licensing regimes, and in the case of sex establishment should be returned to the licensees the following year through the fees.

Licensing Act

- 3.12 This past year has seen a small decrease in the number of new Licensing Act premises licences from 173 in 2016/17 to 155 on 2017/18. Variations have risen from 39 to 56 but the biggest increase has been in temporary event notices with an increase of just under 400 from 1,866 to 2,211.
- 3.13 Overall this regime has made a small surplus for only the second time since the regime has been in place, however the surplus only represents 1.3% of income.
- 3.14 The fees for the Licensing Act were set by statute in 2005 and have not changed since then. A number of attempts to alter the legislation to provide for fees to be set on a cost recovery basis have been made, but unsuccessfully. Despite there being a commitment to alter the fee structure HM Government has not made that change and there is little appetite to do so now.

Gambling Premises

- 3.15 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.
- 3.16 The fee calculated for the 2017/18 financial year reflected 5.5% reduction in fees due planned enforcement activity not taking place in 2016/17.
- 3.17 The enforcement activity has now commenced and expected to remain at this level for the next 12 months.
- 3.18 In previous years small society lotteries have not been included in the figures as this fee is set by statute and there is no discretion to increase it under the gambling fee regime. However this has been included this year as it does not cover the cost of administrating the scheme and should be considered as part of the wider costs associated with gambling administration.
- 3.19 In 2018/19 expenditure will increase due to the pay increase and Apprenticeship Levy as well as the inclusion of small society lotteries. There will not be a subsequent increase in income and so it is recommended that gambling fees remain static this year, but are carefully monitored.

Sex Establishments

- 3.20 Sex establishments are subject to an annual renewal process. There are also processes to vary a licence and transfer the licence.
- 3.21 Officers have calculated the cost of the processes undertaken in 2017, which are:
- 4 sex establishments (SEV) renewals that went to hearing, and
 - 3 sex establishments (sex shop) renewals that received no objections.
- 3.22 In 2016/17 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.
- 3.23 In 2017/18 the regime showed an income of £16,890 and an expenditure of £13,918. With the deficit of £2,609 carried forward this left the regime with a balance of £363.
- 3.24 An adjustment has been made to remove the cost of the unexpected hearing, as well as other efficiency savings. The reduction of £52 has been applied to the renewal fees repay the surplus of £363 generated in 2016/17. However there is a projected increase in overhead in 2018/19 due to the pay increase and Apprenticeship levy costs and this has been reflected in the proposed fee.
- 3.25 The recommended fees are as follows. A detailed breakdown is attached at **Appendix 1**.

Sexual Entertainment Venue	Current	Proposed
New	£3,174	£2,893
Variation	£2,749	£2,400
Renewal	£3,174	£2,842
Transfer	£2,856	£2,509

Sex Shop		
New	£3,174	£2,893
Variation	£2,749	£2,400
Renewal	£1,398	£958
Transfer	£865	£1,010

Sex Cinema		
New	£3,174	£2,893
Variation	£2,749	£2,400
Renewal	£865	£958
Transfer	£865	£1,010

All types		
Change of details	£64	£75

3.26 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.

Scrap Metal

3.27 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.

3.28 In the last year the number of applications has dramatically reduced again and there have been no officer meetings. This allowed us to set the fee the same for both collectors and site licences.

3.29 There was a 20% underspend on this regime in 2017/18 due to less enforcement activity taking place than expected, as well as the 10% reduction in overhead costs. However there is a projected increase in overhead due to the pay increase and Apprenticeship levy costs and this has been reflected in the proposed fee. In 2015/16 this regime generated a surplus of £1647 from 42 applications. A reduction of £11 has been applied to the renewal fee, to redress this.

3.30 The current and proposed fee is as follows. A detailed breakdown is attached at **Appendix 2**.

Site & Collector	Current	Proposed
New application	£207	£184
Variation	£207	£184
Renewal	£207	£173
Change of details (site manager etc)	£41	£41
Replacement licence	£41	£41

Marriage Act – Places of Marriage

3.31 Places of Marriage are subjected to a three yearly licensing regime.

3.32 In 2017/18, expenditure was approximately 10% lower than expected due to efficiency savings, as is the case across the board this year. However again, the projected pay increase and Apprenticeship Levy has led to a slight overall increase.

3.33 In 2015/16 the regime showed a deficit of £1,015 from 16 licence applications. An additional £63 has been added to the fee to redress this. However there is a projected increase in overhead in 2018/19 due to the pay increase and Apprenticeship levy costs and this has been reflected in the proposed fee.

3.34 The current and proposed fee is as follows. A detailed breakdown is attached at **Appendix 3**.

Places of Marriage	Current	Proposed
New application	£618	£649
Variation	£228	£187
Review	£1,904	£1940
Change of details (responsible person, rooms etc)	£120	£121

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.

4.1.2 Consultation has taken place with Cllr Lewis, Deputy Leader and Executive Member for Resources and Sustainability, and Cllr Harland, Chair of Licensing Committee.

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 2015-20 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 is linked to the Best Council Plan objectives:

- Supporting communities and tackling poverty, and
- Becoming a more efficient and enterprising council

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 scheme of charges for gambling premises, sex establishments, places of marriage and scrap metal dealers are approved from 1st November 2018 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

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.

Sex Establishments Breakdown of Costs

Sex Shops

Application Cost	Grant	Variation	Renewal	Transfer	Change
Processing of applications	£750.35	£463.22	£571.86	£571.86	£41.43
Sub Committee Hearings	£1,705.03	£1,705.03	£0.00	£0.00	£0.00
Policy Development	£199.00	£199.00	£199.00	£199.00	£0.00
General Enquiries	£33.15	£33.15	£33.15	£33.15	£33.15
Enforcement Costs	£205.87	£0.00	£205.87	£205.87	£0.00
Reduction for 2017/18 surplus			-£51.85		
Actual cost for 2018/19	£2,893.41	£2,400.40	£958.03	£1,009.88	£74.58

Sexual Entertainment Venues

Application Cost	Grant	Variation	Renewal	Transfer	Change
Processing of applications	£750.35	£463.22	£750.35	£571.86	£41.43
Sub Committee Hearings	£1,705.03	£1,705.03	£1,705.03	£1,705.03	£0.00
Policy Development	£199.00	£199.00	£199.00	£199.00	£0.00
General Enquiries	£33.15	£33.15	£33.15	£33.15	£33.15
Enforcement Costs	£205.87	£0.00	£205.87	£0.00	£0.00
Reduction for 2017/18 surplus			-£51.85		
Actual cost for 2018/19	£2,893.41	£2,400.40	£2,841.56	£2,509.05	£74.58

Sex Cinemas

Application Cost	Grant	Variation	Renewal	Transfer	Change
Processing of applications	£750.35	£463.22	£571.86	£571.86	£41.43
Sub Committee Hearings	£1,705.03	£1,705.03	£0.00	£0.00	£0.00
Policy Development	£199.00	£199.00	£199.00	£199.00	£0.00
General Enquiries	£33.15	£33.15	£33.15	£33.15	£33.15
Enforcement Costs	£205.87	£0.00	£205.87	£205.87	£0.00
Reduction for 2017/18 surplus			-£51.85		
Actual cost for 2018/19	£2,893.41	£2,400.40	£958.03	£1,009.88	£74.58

Scrap Metal Dealers

	Collector Grant/Renewal	Site Grant/Renewal	Change of details	Copy licence
Application cost				
Processing of applications	£142.12	£142.12	£29.39	£29.39
Meeting with officers	£0.00	£0.00	£0.00	£0.00
General Enquiries	£11.77	£11.77	£11.77	£11.77
Enforcement	£29.78	£29.78	£0.00	£0.00
Adjustment for 2015/16	-£11	-£11		
Total	£172.67	£172.67	£41.16	£41.16

Places of Marriage

	New	Renewal	Review	Change of details
Application cost				
Processing of applications	£616.74	£221.66	£625.74	£89.25
Sub Committee Hearings	£0.00	£0.00	£1,281.54	£0.00
General Enquiries	£32.23	£32.23	£32.23	£32.23
General legal advice	£0.00	£0.00	£0.00	£0.00
Enforcement	£0.00	£0.00	£0.00	£0.00
Adjustment for 2015/16		£63.00		
Total	£648.96	£316.89	£1,939.50	£121.47