

<b>Item No.</b>	<b>Classification:</b> Open	<b>Date:</b> 27 September 2013	<b>Meeting Name:</b> Leader of the Council
<b>Report title:</b>		Scrap Metal Dealers Act 2013 – Fees & Charges	
<b>Ward(s) or groups affected:</b>		All	
<b>From:</b>		Strategic Director for Environment & Leisure	

## RECOMMENDATION

1. That the schedule of fees and charges in respect of applications for licences under the Scrap Metal Dealers Act 2013, set out in Appendix A to this report, be approved with effect from 1 October 2013.

## BACKGROUND INFORMATION

2. The Scrap Metal Dealers Act 2013 comes into effect on 1 October 2013. The Act introduces a new licensing regime for scrap metal dealers and motor salvage operators to be administered by the local licensing authority. This new regime is introduced to assist in dealing with the rise in metal thefts.
3. The Act makes provision for applications for:
  - New site operators licences;
  - New collectors licences;
  - Renewals; and
  - Variations.
4. Paragraph 6 of Schedule 1 to the Act states:

“(1) An application (for a licence or variation of a licence) must be accompanied by a fee set by the Authority.

(2) In setting a fee under this paragraph, the authority must have regard to any guidance issued from time to time by the Secretary of State with the approval of the Treasury.”
5. Guidance on the position has been released by both the Home Office and the Local Government Association (LGA).
6. This report seeks approval to a proposed schedule of fees and charges in respect of applications made under the Act. A copy of the proposed schedule is provided at Appendix A to this report. The schedule has been prepared with regard had to both the Secretary of State and the LGA guidance; the principles contained within the EU Services Directive; and also recent relevant case law.
7. While fees and charges would normally be considered by the cabinet, approval is sought on this occasion under IDM (by agreement under a general exception), in order that fees to be levied may be confirmed before the implementation date of 1 October 2013.

## **KEY ISSUES FOR CONSIDERATION**

### **Home Office Guidance on Fees and Charges**

8. The Home Office published guidance on licence fee charges under the Scrap Metal Dealers Act 2013 in August 2013. A copy is attached at Appendix B.
9. The guidance states:

“The power to set fees has been passed to individual local authorities, so that any fees levied in each local authority area are set by reference to the actual costs to each authority. The EU Services Directive states that a licence fee can only be used to pay for the costs associated with the licensing process. In effect, each local authority must ensure that the income from fees charged for each service does not exceed the costs of providing the service.

Local Authorities should specify fees for each category of application. Specifically, we would expect a fee to be specified for the assessment of an application for a licence; the assessment of an application to vary a licence, and the assessment of an application for licence renewal.

Local authorities should specify fees which are payable by licence applicants for the assessment and administration activity within the new licensing regime brought about by the 2013 Act. They should do this by identifying what they need to do to assess the type of licence in question and calculating their best estimate of the cost to be incurred by the LA. The authority will then be able to calculate a best estimate of unit cost for each case.

In effect, the costs of a licence should reflect the time spent assessing and administering applications, processing them, having experienced licensing officers reviewing them, storing them, consulting on the suitability of an applicant, reviewing relevant offences, the decision on whether to issue a licence, as well as the cost of issuing licences in a format that can be displayed. Consulting the local authority's enforcement records in order to determine the suitability of the applicant is chargeable within the licence fee costs as are cost associated with contested applications.

10. The guidance goes on to state that “The licence fee cannot be used to support enforcement activity against unlicensed scrap metal dealers. Any activity taken against unlicensed operators must be funded through existing funds.”

### **Hemming V WCC (2013)**

11. This position was established by the case of Hemming V Westminster City Council. In May 2013, Appeal Court judges found that sex establishment licence fees charged by Westminster City Council since the introduction of the EU Services Directive had been incorrectly charged as they had sought to recover costs of actions against illegal operators. The Directive provides only for the recovery of proportionate and reasonable costs incurred in administering the process.

## Local Government Association Guidance

12. The LGA guidance also recognizes that “In setting fees local authorities will, of course, have to have regard to the requirements of the EU Services Directive and any licensing case law, of which the recent case in the Court of Appeal *Hemming V WCC*, is especially relevant”.
13. However, in setting out the elements that a local authority “will want to take into account” when setting fees, the LGA suggests:
  - All the activity required with processing and granting a licence such as considering applications and assessing the suitability of the applicant;
  - The costs of staff associated with supporting the service, including senior staff with managerial responsibility for the service;
  - Support provided by other parts of the council to the licensing team such as legal services and any recharges there might be for rooms, heating and lighting from the centre of the authority;
  - The cost of providing advice and guidance to the applicants on what will be a new process;
  - Carrying out inspections and ensuring compliance with the law;
  - Training for staff and councilors in the requirements of the new legislation;
  - Costs associated with consulting other agencies and bodies when considering if an applicant is a suitable person;
  - Working with any partners in ensuring compliance;
  - Making and reviewing any policies in relation to the operation of the new licensing regime;
  - Issuing the licence; and
  - Any officer time spent providing information for inclusion in the register of dealers.
14. The guidance also notes “not mentioned in the list above but a potentially significant cost will be holding hearings to consider whether to grant a licence or whether to revoke or vary a licence. As the cost for these will be spread across licence fees as a whole, an estimate will have to be made when setting the fees of how many potential hearings there may be ..”.
15. “In assessing the costs of any hearings where the applicant makes oral representations to the local authority, councils will want to have regard to:
  - The cost of communicating with the applicant and any representatives they have;
  - How much it costs to prepare and issue the notice setting out what the council proposes to do as required by paragraph 7(1) in Schedule 1;
  - What costs are incurred in preparing the report to the licensing committee;
  - Any costs incurred by members associated with the hearing such as travel expenses;
  - Hire of rooms for the meeting;
  - The cost of printing and sending out the agendas, legal service costs and any legal advice the committee needs; and
  - Officer costs associated with actually running the hearing.”

## **The schedule of fees and charges**

16. A full list of the proposed fees and charges to be approved is shown in Appendix A.
17. In calculating the fees, the following costs have been incorporated:
  - The costs of administering each individual process from receipt of application through consultation, criminal and other records checks, and determination of application;
  - Hearing of representations by the Licensing Committee based on an initial estimate that 20% of applications will go in front of the committee;
  - A contribution toward startup and management costs;
  - The costs of an initial induction meeting with the operator following grant of licence plus annual compliance inspections / audits from year two onward, with reducing expectation of revisits / reaudit year on year (Note: This element to be refunded in the event that a new licence application is refused);

## **Policy implications**

18. The following principles have been applied in establishing this schedule of fees and charges:
  - That the costs of administering the licensing process should be borne by those operators who benefit from it;
  - That our charging regime should be fair, equitable and transparent;
  - That all applicants for licences shall receive a responsive and effective service; and
  - That all applicants shall be entitled to a fair hearing of their application.

## **Community impact statement**

### **General guidance**

19. The new licensing regime established under the Scrap Metal Dealers Act 2013 provides a legal framework for ensuring that the lawful business of scrap metal and motor salvage operators is conducted in accordance with all legal requirements.
20. The framework provides opportunity for anyone involved within the trade to apply for a licence and have that application considered in a fair, open and consistent manner.
21. Where the framework provides that applications for licences or variations may be refused, or licences granted to be revoked, then the opportunity is afforded in every case for the individuals concerned to make representations and receive a fair hearing of those representations. The Act also contains a right of appeal to the courts where decisions to refuse applications or revoke licences are taken.
22. Any enforcement actions taken by this Authority will be appropriate, consistent and transparent and in accordance with the Council's Enforcement Policy.
23. The licensing regime intends to establish a proper legal framework within which

lawful compliant operators may thrive, while enabling illegal operators and issues of non-compliance to be properly addressed.

24. Ultimately, the licensing regime should also make a significant contribution to the reduction in theft of metals and offer additional protections from theft and the consequences of theft to the Southwark business and resident community.
25. Having considered the statutory licensing regime it is considered that all opportunities are taken so as to ensure that there is equality of opportunity without potential for discrimination.

### **Financial Implications**

26. The Scrap Metal Dealers Act 2013 creates a fee raising power, to allow local authorities to recover the costs arising from administering and ensuring compliance with the regime. This report seeks to ensure that the relevant fees can be charged on the commencement date which is 1 October, 2013.
27. Section 5 of the Scrap Metal Dealers Act 2013 (the Act) provides the statutory power for the Council to set a fee for applications received under the Act. Schedule 1 paragraph 6 states:
  - An application must be accompanied by a fee set by the authority: and
  - In setting a fee under this paragraph, the authority must have regard to any guidance issued from time to time by the Secretary of State with the approval of the Treasury.
28. The Licensing unit has therefore proposed a set of fees as per Appendix A which has been set by reference to the actual costs associated with the licensing process. The business unit will ensure that the income from fees charged for each service does not exceed the costs of providing the service.
29. The Income and Expenditure budgets will be amended as appropriate to accommodate any significant changes resulting from the introduction of these fees and charges. These changes will form part of the 2014/15 budget setting process.
30. The fees will be reviewed on an annual basis to ensure that they remain current and relevant.
31. It is anticipated that the additional demand made upon the licensing service by the introduction of this new responsibility may be absorbed by current resources.

### **Consultation**

32. No formal public consultation has taken place in preparation of this report. Involved services have liaised on establishing process and practice and the affected trades are being provided with advice and guidance on complying with legal requirements.

## SUPPLEMENTARY ADVICE FROM OTHER OFFICERS

### Director of Legal Services

33. As identified in paragraph 9 (above), schedule 1(6) of the Scrap Metal Dealers Act 2013 Act provides that an application must be accompanied by a fee set by the local authority on a cost recovery basis. In setting a fee, the authority must have regard to any guidance issued from time to time by the Secretary of State with the approval of the Treasury. The Guidance is binding on all licensing authorities.
34. Under Directive 2006/123 art.13(2) and the Provision of Services Regulations 2009 reg.18(4), the costs of enforcing a licensing system against unlicensed operators can not be reflected in licence fees charged by a local authority, since such costs were not costs of "authorisation procedures and formalities". The "cost of authorisation procedures and formalities" could not include the cost of prosecuting unlicensed operators. This was reaffirmed in the case of Hemming V WCC (2013) [2013] EWCA Civ 591.
35. There are no other legal implications.

### Strategic Director of Finance and Corporate Services (E&L/13/026)

36. This report seeks approval from the cabinet member for finance, resources & community safety to the schedule of fees and charges in respect of applications for licences under the Scrap Metal Dealers Act 2013, as set out in Appendix A.
37. The strategic director of finance and corporate services notes financial implications set out in paragraphs 26 to 31 and that any additional this will form part of 2014/15 budget setting
38. These changes are in accordance with the council's guidance on fees and charges, contained within the Medium Term Resources Strategy. This will need to be reviewed annually to ensure continued compliance with council and treasury guidance.

## BACKGROUND DOCUMENTS

Background Papers	Held At	Contact
The Scrap Metal Dealers Act 2013	Office of Health Safety Licensing & Environmental Protection Unit, Hub C, 3 <sup>rd</sup> Floor, 160 Tooley Street, London, SE1	Name: Mrs Kirty Read Phone number: 020 7525 5748
The Scrap Metal Dealers Commencement Order	As above	As above
Home Office Guidance	As above	As above
LGA Guidance	As above	As above

## APPENDICES

No.	Title
Appendix A	Schedule of fees and charges
Appendix B	Home Office Guidance

## AUDIT TRAIL

<b>Lead Officer</b>	Deborah Collins, Strategic Director of Environment & Leisure	
<b>Report Author</b>	Richard Parkins, Health Safety Licensing & Environmental Protection Unit Manager	
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<b>Dated</b>	26 September 2013	
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<b>CONSULTATION WITH OTHER OFFICERS / DIRECTORATES / CABINET MEMBER</b>		
<b>Officer Title</b>	<b>Comments Sought</b>	<b>Comments Included</b>
Director of Legal Services	Yes	Yes
Strategic Director of Finance and Corporate Services	Yes	Yes
<b>Cabinet Member</b>	Yes	Yes
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