

Gloucester City Council

Meeting:	Licensing and Enforcement Committee	Date	10th December 2013
Subject:	Scrap Metal Dealers Fees		
Report Of:	Gill Ragon, Public Protection Manager		
Wards Affected:	All		
Key Decision:	No	Budget/Policy Framework:	No
Contact Officer:	Lisa Jones, Food and Licensing Service Manager		
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Appendices:	1. Comparison of Fees from Local Authorities		
	2. Members Information Sheet on Scrap Metal Dealers		

FOR GENERAL RELEASE

1.0 Purpose of Report

- 1.1 For Members to review and approve the proposed fees for all new Scrap Metal Dealer licenses.

2.0 Recommendations

- 2.1 GLT is asked to **NOTE** the contents of this report and the proposed table of licensing fees associated with the licensing of scrap metal dealers.
- 2.2 Cabinet Briefing is asked to **NOTE** the content of this report for information.
- 2.3 Licensing and Enforcement Committee is asked to **RESOLVE** that the proposed table of licensing fees associated with the licensing of scrap metal dealers as set out in Paragraph 3.7 of this report is approved for implementation with immediate effect.

3.0 Background and Key Issues

- 3.1 The licensing of Scrap Metal Dealers is in accordance with the Scrap Metal Dealers Act 2013. Schedule 1 of the Act provides that an application for the grant, variation, or renewal of a scrap metal dealer's licence shall pay a reasonable fee determined by the appropriate authority.

- 3.2 There are two types of licence specified within the act, one is for a site licence and the other is for a mobile collector licence (carrying on business otherwise than at a site). The licence authorises the licensee to carry on business as a scrap metal dealer at the sites listed in it (in the case of a site licence) or within the local authority area (in the case of a mobile collector's licence).
- 3.4 The functions for the setting of scrap metal dealers licence fees are delegated to the Licensing and Enforcement Committee.
- 3.5 The 'Scrap Metal Dealers Act 2013: guidance on licence fee charges' indicates what costs local authorities can charge for under the licence. It includes:
- a) administering applications.
 - b) assessing and processing applications.
 - c) having experienced licensing officers review them.
 - d) storing application details.
 - e) consulting on the suitability of an applicant and reviewing relevant offences
 - f) time taken to make a decision on whether to issue a licence including any Committee costs.
 - g) the cost of issuing licences in a format that can be displayed.
 - h) assisting in making DBS checks.
 - i) any costs associated with contested licence applications and Committee costs.
 - j) compliance visits.
 - k) transmitting information to the Environment Agency about a licence.
- 3.6 The proposed fees are calculated on the basis of the amount of time spent on the various stages involved in processing an application for, or the annual renewal of a licence under normal circumstances. Officers have conducted a detailed cost analysis of the application stages and the average time expected to be spent with the average hourly rate (including overheads) applied, this breakdown can be shared with Members if needed.
- 3.7 Based on the calculation mentioned in paragraph 3.6 above, it is proposed that the new fees will be set as follows:

Application	Fee
New Site Licence Application	£430.00
New Collectors Application	£258.00
Site Renewal Application	£336.00
Collectors Renewal Application	£212.00
Variation to Site Application	£230.00
Variation to Collectors Application	£138.00
Replacement Vehicle Badge	£20.00
Copy of Paper Licence	£10.50
Change of Details	£47.00

- 3.8 The process for variation applications is the same as a renewal application but with additional compliance costs excluded, the anticipated costs and proposed fees reflect this.
- 3.9 A comparison of Local Authority fees can be found in Appendix 1, this gives an indication of how we compare against other Local Authorities. It should be borne in mind that each Authority may have a different process to applications and have varying costs, therefore, fees vary significantly ranging from £170 to £375 for a new collector application within Gloucestershire, and nationwide these fees vary even further.
- 3.10 The fees have also taken into consideration the point arising from Hemming v Westminster City Council that the fees cannot be used to pay for enforcement against unlicensed dealers, to cover the cost of issuing closure notices to unlicensed dealers or applying for closure notices from the magistrates court.
- 3.11 Under the Act all previously registered Scrap Metal Dealers were required to submit an application for a new licence between 1st and 15th October 2013 to enable them to continue to carry on their business without disruption during the transitional period. From 1st December 2013, all of the enforcement provisions contained within the Act take effect; therefore the proposed fees need to be approved to allow all existing operators to make payment for their new applications to be determined.
- 3.12 To date, the Council has received eight applications for a scrap metal dealer's site licence and nine applications for mobile collectors licence. All existing scrap metal dealers and motor salvage operators that were previously registered with the Council have submitted an application in time, and Officers chased a few by telephone to ensure their activity could continue. We have also received a few additional applications for a mobile collectors licence from collectors who were previously registered outside of Gloucester City and we may receive more in the future if more collectors decide to collect within the City boundary.

4.0 Alternative Options Considered

- 4.1 The Council has to set fees in accordance with the Scrap Metal Dealers Act 2013. Although the Council could set a lower fee, it is appropriate to set a fee on a cost recovery basis to ensure Officers can adequately implement the Act.

5.0 Reasons for Recommendations

- 5.1 It has always been the view of the L&E Committee to recover, where possible, the actual cost of undertaking the various licensing functions. In addition, there is a significant amount of case law relating to various licensing functions which dictates that licensing authorities may only charge such fees as are reasonable to recover the cost of the licensing function and must not charge disproportionately high fees.

- 5.2 In setting the proposed fees, regard has been given to the requirements of the European Union Services Directive as enacted in English Law by virtue of the Provision of Services Regulations 2009 and any case law, of which the recent case in the Court of Appeal of *Hemming v Westminster City Council* is especially relevant, as it confirms licence fees cannot be used to support enforcement activity against unlicensed activities (in this case, unlicensed Scrap Metal Dealers and Collectors).
- 5.3 Additionally, the EU Services Directive which came into force on 28th December 2009 via the Regulations has implications concerning the fees that may be charged to applicants and licence holders. The Directive sets out to create significant new opportunities for UK businesses by opening up the internal market in services through the removal of unjustifiable barriers to the provision of certain services. In addition it also aims to make it easier for businesses to set up in other EU countries and to provide services across national borders on a temporary or permanent basis. Government guidance issued in accordance with the Directive reinforces that local authorities must set fees that are proportionate to the effective cost of the procedure dealt with and that local authorities need to bear in mind the threat of a legal challenge should an applicant or licence holder feel that the level of fee is being used as an economic deterrent or to raise funds for local authorities.

6.0 Future Work and Conclusions

- 6.1 The proposed fees are likely to differ from the initial grant of a licence through to the renewal of the licence three years later. The Local Government Association have suggested that as this may be the case the fees will need to be re-assessed on a regular basis and adjusted accordingly to reflect actual costs.
- 6.2 Fees will be reviewed annually by the Food and Licensing Service Manager in consultation with the Financial Services and for final approval by the Licensing and Enforcement Committee.
- 6.3 It is anticipated that to enable a clear and transparent application process including the licensing authorities consideration of an applicant's suitability, a Gloucester City Council's Scrap Metal Dealers Act Policy will be developed and brought back to the Licensing and Enforcement Committee for approval.
- 6.4 An update will be provided to Members in the New Year, indicating how many applications for scrap metal have been received and how many of those applications were granted and/or refused.
- 6.5 Following the last Licensing and Enforcement Committee in September 2013, Members requested further detail on some issues concerning scrap metal dealers. This information can be found in Appendix 2, it includes details of how

ward councillors and/or members of the public can contact us to raise any concerns about vehicles using chimes in the street to attract custom.

7.0 Financial Implications

- 7.1 There will be financial implications as there will be additional resources required to implement and run the licensing regime. The Act empowers Licensing Authorities to set their own fees to cover full cost recovery stemming from the administration and compliance with the new regime. In doing so the Council must have regard to any guidance and regulations issued by the Secretary of State.
- 7.2 Fees would need to be set in line with the European Services Directive: Guidance for Local Authorities and LACORS Guidance on the impact of the Services Directive on Councils setting and administering local licence fees within the service sector.

(Financial Services have been consulted in the preparation of this report.)

8.0 Legal Implications

- 8.1 The licensing of scrap metal dealers is in accordance with Section 1 of the Scrap Metal Dealers Act 2013. Schedule 1(6) of the 2013 Act provides that an application for the grant, variation, or renewal of a scrap metal dealers licence must be accompanied by a fee set by the authority.
- 8.2 Under the Act it will be an offence to carry on a business as a scrap metal dealer in breach of the requirement to hold a licence. This offence is punishable on summary conviction (Magistrates' Court only) with a fine not exceeding level 5 (currently £5,000) on the standard scale.
- 8.3 The Provision of Services Regulations 2009, Regulation 18 (4) provides "Any charges provided for by a competent Authority which applicants may incur under an authorisation scheme must be reasonable and proportionate to the cost of the procedures and formalities under the scheme and must not exceed the cost of those procedures and formalities."

(Legal Services have been consulted in the preparation this report.)

9.0 Risk & Opportunity Management Implications

- 9.1 The review of fees relating to the licensing of scrap metal dealers is necessary to avoid a formal legal challenge from the trade. The report seeks to justify a new fee level against the specific costs of providing a service in this respect.

9.2 As noted above, recent legislative changes and case law relating to fee levels in various licensing areas has agreed a general principle that licensing fees should not be used as a method of creating revenue and so setting a fee level that would result in an excess of revenue would leave the authority open to challenge. The proposed fee therefore should not expose the Council to challenge and risk.

10.0 People Impact Assessment (PIA):

10.1 A full predictive impact assessment has not been conducted for this because this is primary legislation and applies nationally and there are no implications locally as enforcement work in respect of scrap metal dealers will be carried out consistently on the basis of risk for all premises and operators across the County.

10.2 A full predictive impact assessment will be conducted at the time of preparing a suitable policy to consider applications, following receipt of the Regulations and Guidance from Government.

11.0 Other Corporate Implications

Community Safety

11.1 Licensing scrap metal dealers in accordance with the Act will ensure only genuine sites and collectors can obtain a licence and legally operate in scrap metal, enhancing public safety and the prevention of metal theft.

Sustainability

11.2 The new licensing regime will encourage better intelligence sharing and joint working to drive out illegal and rogue traders. This approach will deal with environmental crime as well as theft.

Staffing & Trade Union

11.3 The impact on human resources will be minimal.

Background Documents:

The Scrap Metal Dealers Act 2013

Scrap Metal Dealer Act 2013: guidance on licence fee charges

LGA Guide to the Scrap Metal Dealer Act 2013: Applications

Home Office short guide 'Get in on the Act: Scrap Metal Dealers act 2013'

Comparison Scrap Metal Fees - 2013

Licence Type	Stroud	Forest	Cotswold	Tewkes	Cheltenham	Worcester	Coventry
site New	£ 350.00	£ 439.00	£ 400.00	£ 350.00	£ 350.00	£ 290.00	£ 300.00
Site Renewal	£ 200.00			£ 300.00	£ 350.00		£ 300.00
Collector New	£ 230.00	£ 375.00	£ 280.00	£ 170.00	£ 293.00	£ 145.00	£ 200.00
Collector Renewal	£ 145.00			£ 140.00	£ 293.00		£ 200.00
Variation Site to Collector	£ 60.00	£ 63.00	£ 60.00	£ 70.00	£ 58.00	£ 65.00	£ 200.00
Variation Collector to site	£ 140.00	£ 63.00	£ 60.00	£ 70.00	£ 58.00		£ 300.00
Change of name on licence	£ 16.00					£ 25.00	£ 30.00
Copy of Licence				£ 25.00		£ 10.50	

Licence Type	Bristol	Oxford	Slough	Leicester	Birmingham	Ipswich	Gloucester
site New	£585*	£ 1,200.00	£ 465.00	£ 520.00	£ 1,236.00	£ 310.00	£ 430.00
Site Renewal		£ 1,200.00	£ 330.00		£ 1,236.00	£ 200.00	£ 336.00
Collector New	£ 545.00	£ 900.00	£ 285.00	£ 319.00	£ 298.00	£ 310.00	£ 258.00
Collector Renewal		£ 900.00	£ 210.00		£ 298.00	£ 200.00	£ 212.00
Variation Site to Collector		£ 100.00	£ 135.00	£ 132.00	£70**	£ 38.00	£ 138.00
Variation Collector to site		£ 100.00	£ 202.50	£ 132.00	£ 1,008.00	£ 38.00	£ 230.00
Change of name on licence				£ 25.00	£ 200.00	£ 10.50	£ 47.00
Copy of Licence	* £85 per additional site				£ 30.00		£ 10.50

** applications made in year 3

MEMBERS' BRIEFING

November 2013

Councillor Lise Noakes – Chair of Licensing and Enforcement Committee

Scrap Metal Dealers Act 2013

Following the Licensing and Enforcement Committee held on 10th September 2013, Members requested further detail on the following issues relating to this new Act:

1. Authentication and records required to be maintained by mobile scrap collectors:

Upon receipt of any scrap metal in the course of the dealer's business, the dealer must record the following information:

- a) the description of the metal, type and form, condition, weight and any marks identifying previous owners or other distinguishing features;
- b) The date and time of its receipt;
- c) If the metal is delivered in or on a vehicle, the registration mark of the vehicle;
- d) If the metal is received from a person, the full name and address of that person;
- e) If the dealer pays for the metal, the full name of the person who makes the payment acting for the dealer

Where the metal is received from a person, the dealer must keep a copy of the document used to verify that name and address. If cheques are used copies must be kept, if electronic transfers are used to pay, a receipt must be kept or a record of particulars identifying the transfer.

Upon disposal of any scrap metal under a site licence, the dealer must record the following:

- a) the description of the metal, type and form, condition, weight;
- b) The date and time of its disposal;
- c) If the metal is disposed to another person, the full name and address of that person;
- d) If the dealer receives payment, the price or other consideration received.

Upon disposal of any scrap metal under a collectors licence, the dealer must record the following:

- a) The date and time of its disposal;
- b) If the metal is disposed to another person, the full name and address of that person.

2. Hours of Operation for scrap metal dealers:

There are no stipulated hours of operation for scrap metal dealers within the Act, however, the Licensing Authority can include one or both of the following conditions on the licence, where the applicant or any site manager has been convicted of a relevant offence, or where the Council is considering revoking a licence (in this case conditions would take immediate effect until revocation takes effect):

- a) that the dealer must not receive scrap metal except between 9am and 5pm on any day
- b) that all scrap metal received must be kept in the form in which it is received for a specified period, not exceeding 72 hours, beginning with the time when it is received.

3. **How long can scrap metal collectors sound their vehicle chimes within the law:**
Never! Scrap metal dealers cannot chime their vehicle at any time. It is an offence under the Control of Pollution Act 1974 to use a loudspeaker in the street. Ice-cream vans have an exemption under their own code of practice, but even this restricts how they can chime.

If anyone has concerns about mobile scrap metal collectors using chimes in the street, they should note down as much information as possible including:
Location, date and time seen, vehicle registration number, description of the sound and report it to heretohelp@gloucester.gov.uk or call 01452 396396.

4. **Design and style of the licence (and can a photograph be incorporated?):**
Site licences must be displayed at each site identified on the licence in a prominent place accessible to the public. This will take the form of a paper licence.

The licence for mobile collectors must be displayed on any vehicle that is being used in the course of the dealers business, in a position that can be easily read by persons outside the vehicle. We will be using window pouches and an example can be seen in the attachment below:



Members also queried whether the use of photographs can be used on the licence, and Officers have considered this. It seems that within the law, only the person carrying on the business of a scrap metal dealer requires a licence, so any persons working for them in that business would not be issued a licence too. The use of Identification badges with photos attached may therefore cause confusion for members of the public, if they expect each individual working for the business to hold their own licence badge. Therefore, Officers do not think that licence identification badges should be issued in addition to the window pouch displayed on the vehicle.