

Licensing Committee

5 March 2019

Is the final decision on the recommendations in this report to be made at this meeting?

Yes

SCRAP METAL DEALER LICENCE FEES 2019/2020

Final Decision-Maker	Licensing Committee
Portfolio Holder(s)	Councillor Dr Ronen Basu, Sustainability Portfolio Holder
Lead Director	Paul Taylor, Director of Change and Communities
Head of Service	Gary Stevenson, Head of Housing, Health & Environment.
Lead Officer/Report Author	Sharon Degiorgio, Senior Licensing Officer
Classification	Non-exempt
Wards affected	All

This report makes the following recommendations to the final decision-maker:

1. That the Licensing Committee approve fee levels as set out in Appendix A of the report for implementation on 1 April 2019.

This report relates to the following Five Year Plan Key Objectives:

- A Prosperous Borough.

It is proposed to set fees which enable the authority to be self-financing with respect to this service.

Timetable

Meeting	Date
Licensing Committee	5 March 2019

SCRAP METAL DEALER LICENCE FEES 2019/2020

1. PURPOSE OF REPORT AND EXECUTIVE SUMMARY

- 1.1 The authority is required to review the fees set for the administration of the Scrap Metal Dealers Act 2013. This ensures the Council complies with its statutory duty and that the licensing of Scrap Metal Dealers is self financing, in accordance with the Council's Medium Term Financial Strategy.
 - 1.2 A fees model, similar to the one used to first set the Gambling Act fees in 2007, was used to determine the proposed fees for 2019/20.
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2. INTRODUCTION AND BACKGROUND

- 2.1 The Scrap Metal Dealers Act 2013 (The Act) repeals the Scrap Metal Dealers Act 1964 (and related legislation) and Part 1 of the Vehicles (Crime) Act 2001, creating a revised regulatory regime for the scrap metal recycling and vehicle dismantling industries. The Act maintains local authorities as the principal regulator, but gives them the power to better regulate these industries by allowing them to refuse to grant a licence to 'unsuitable' applicants and a power to revoke licences if the dealer becomes 'unsuitable'.
- 2.2 The licensing regime introduced by the Act is very similar to the licensing of taxi drivers and the issuing of Personal Licences under the Licensing Act. The suitability of applicants is based on a number of factors as outlined in the Act, including any unspent relevant criminal convictions. Whilst it is expected that straight forward applications will be decided under delegation to Officers, any applications with objections where the applicant wishes to make representations would need to be heard at a hearing, with an option to appeal their decision to the Magistrates' Court.

Licences

- 2.3 Under the Act there are two types of licence; a site licence and a collector's licence, both of which will be administered by the local authority. Site managers are named on site licences. Collectors need a licence in each local authority area in which they collect. Both types of licence last for three years.
- 2.4 There are currently 8 Site Licences and 2 Collectors licences operating in the Borough.
- 2.5 The local authority must be satisfied that the applicant is a suitable person to hold a licence before it can grant a licence. The scope of this requirement will include applicants, site managers, directors, secretaries and shadow directors of companies.

- 2.6 The Council requires a photograph to accompany the application for a Collector's Licence. The photograph forms part of the licence document and enables Officers to identify licensed collectors.

Determining Applications

- 2.7 Section 3 of the Act states that a Council must not issue a licence unless it is satisfied the applicant is a suitable person to carry on a business as a scrap metal dealer, identified via a 'suitability test'. In the case of a partnership, the suitability of each partner will be assessed. In the case of a company, it means assessing the suitability of any directors, company secretaries, or shadow directors.
- 2.8 In assessing an applicant's suitability, the Council can consider any information considered relevant. The Council will be in a stronger position to defend any challenges to a decision to refuse a licence where the decision is based on the factors specifically listed in legislation, which includes whether:
- a) The applicant or site manager has been convicted of a relevant offence or subject to any relevant enforcement action (Statutory Guidance has been published see Appendix C);
 - b) The applicant has previously been refused a scrap metal dealer's licence or an application to renew a licence has been refused.
- 2.9 The applicant is required to complete an application form and declare that the information provided is correct. The applicant commits an offence under the Act should they make a false statement, or recklessly make a statement which is false in a material way.
- 2.10 The authority will want to satisfy itself that an applicant is suitable by checking they do not have a previous relevant conviction, have not been the subject of enforcement action, or have been refused a licence. There is no requirement under the Act for applicants to provide a Basic Disclosure Certificate (BDC). However, this authority requires applicants to submit a Basic Disclosure Certificate provided by Basic Disclosure Scotland as part of the application process.
- 2.11 Should an applicant refuse to supply a BDC this would be grounds for the Council to consider what further information would be needed to judge whether the applicant was suitable to hold a licence. Refusal to submit a BDC would be grounds for the Council to decline to proceed with the application.
- 2.12 The Council requires an applicant to provide a BDC (including standard and enhanced disclosures) that are no more than one month old at the time the application is submitted. The authority recognises that a BDC will reveal only any unspent convictions on the Police national computer. The Certificate will not provide details of convictions for relevant offences secured by the Environment Agency or equivalent, or other local authorities. For any new applications, the authority will consult with the Environment Agency or equivalent and the Police. The authority will reserve the right to also contact

any other local authority it feels necessary to determine the suitability of an applicant(s).

- 2.13 In the case where a BDC highlights a relevant conviction, the authority will seek further information from the Police to enable the authority to better assess the applicant(s) suitability. The authority will also check public records held by the Environment Agency or equivalent to assess if any enforcement action has been taken against an individual. In certain circumstances it may be necessary to make direct contact with the above to assess if any on-going enforcement action is pending, which may not be held on a public register at the time of application.
- 2.14 If the Council should receive information that an applicant(s) has been convicted of a relevant offence, a judgement will be made whether to refuse or grant the licence. The Council will take into account any information received by an applicant or other bodies. The Council will consider the nature of the offence or enforcement action, the gravity of the offence or enforcement action, when the enforcement action was taken, or any other relevant information as defined by the Act.

Representations

- 2.15 In the case where the authority rejects an application(s), or revokes, or varies a licence, the Council will notify the applicant or licence holder by way of a written Notice. The Council will advise the applicant(s) or licence holder what the authority proposes to do and the reasons behind the action. The Notice will stipulate that the applicant/licence holder has the opportunity to make a representation, or let the authority know that they wish to. The applicant/licence holder has up to 14 days from the date of the Notice to respond.
- 2.16 If the applicant/licence holder does not make a representation, or does not say that they wish to in that time period, then the Council can refuse the application, or revoke, or vary the licence. Where the applicant states they want to make representations, the authority will provide a further reasonable period in which to do so. If the applicant fails to provide a representation within the agreed period then the authority will refuse the application, or revoke, or vary the licence.

Hearings

- 2.17 Where the applicant makes representations, the authority has to consider them in accordance with the Act. If the applicant wishes to make oral representations the authority will arrange a hearing. It is anticipated that these hearings will follow the procedures for hearings under the Licensing Act 2003.
- 2.18 Should the Council refuse an application, or revoke or vary a licence, the applicant/licence holder will receive a Notice of Decision, which will set out the Council's reasons for its decision. The Notice will inform the applicant, or licence holder, of their right to appeal to the Magistrates' Court and, where the licence has been revoked or varied, the date under which that comes into effect.

Conditions

- 2.19 In cases where the applicant or any site manager has been convicted of a relevant offence, or where the authority is revoking a licence, the authority can impose conditions on the licence, which specify that:
- the dealer can receive scrap metal only between 9.00am and 5.00pm on any day, in effect limiting the dealer's operating hours; and/or
 - any scrap metal received has to be kept in the form the dealer received it for a set period of time, which cannot be more than 72 hours.
- 2.20 There is no equivalent set of conditions for collectors.

Fees

- 2.21 The Act provides that an application for a licence must be accompanied by a fee. The fee will be set locally by each local authority on a cost recovery basis. Local authorities will have a duty to have regard to guidance issued by the Secretary of State, which outlines the issues that should be considered when setting the fee and what activities the fee can cover. This fee will be an essential component as it will provide local authorities with the funding they need to administer the legislation and ensure compliance.
- 2.22 In setting a fee, the authority must have regard to any guidance issued by the Secretary of State. The fees have been calculated using that Guidance and the fees model, which is similar to the one used to first set the Gambling Act fees in 2007.
- 2.23 The fees have been calculated by examining the time it takes to carry out the various tasks in processing the application and who in the authority is likely to carry them out. The hourly rates of staff are fed in to a spread sheet to calculate costs for each type of activity.
- 2.24 The approach taken this year has been to limit any increase to an inflationary increase (2.5%).

3. AVAILABLE OPTIONS

- 3.1 Members may approve the inflationary increase fees as set at in Appendix A.
- 3.2 Members may decide not to apply an inflationary increase and leave the fee unchanged.

4. PREFERRED OPTION AND REASONS FOR RECOMMENDATIONS

- 4.1 Members are asked to approve the proposed fees set out in Appendix A of the report.
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5. NEXT STEPS: COMMUNICATION AND IMPLEMENTATION OF THE DECISION

- 5.1 The fees will be charged with respect to new, existing and renewal applications from 1 April 2019 and published on our website.

6. CROSS-CUTTING ISSUES AND IMPLICATIONS

Issue	Implications	Sign-off (name of officer and date)
Legal including Human Rights Act	Should parts of industry believe the authority's fees are at a level which is greater than the costs of the statutory functions then it would be open to them to undertake judicial review proceedings. Should this arise, the authority would need to evidence how it arrived at the fee levels to demonstrate that they have been calculated on a cost recovery basis only.	Robin Harris, Senior Lawyer (Contentious) 13.02.19
Finance and other resources	It is necessary for the Council to deliver a balanced budget and cover the costs of providing this service.	Head of Finance and Procurement Jane Fineman 13.02.19
Staffing establishment	No issues identified.	Sharon Degiorgio, Senior Licensing Officer 12.02.19
Risk management	No issues identified.	Sharon Degiorgio, Senior Licensing Officer 12.02.19
Environment and sustainability	No issues identified.	Sharon Degiorgio, Senior Licensing Officer 12.02.19
Data Protection	No issues identified. This report is limited to reviewing and setting of fees to contribute towards the recovery of costs of the service.	Sharon Degiorgio, Senior Licensing Officer 12.02.19
Community safety	No issues identified.	Sharon Degiorgio, Senior Licensing Officer 12.02.19
Health and Safety	No issues identified.	Sharon Degiorgio, Senior Licensing

		Officer 12.02.19
Health and wellbeing	No issues identified.	Sharon Degiorgio, Senior Licensing Officer 12.02.19
Equalities	No issues identified.	Sharon Degiorgio, Senior Licensing Officer 12.02.19

7. REPORT APPENDICES

The following documents are to be published with this report and form part of the report:

- Appendix A: Current and Proposed Fees table
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8. BACKGROUND PAPERS

- Home Office: Scrap Metal Dealers Act 2013: guidance on licence fee charges 1 April 2016 – 31 March 2017 <https://www.gov.uk/government/publications/scrap-metal-dealer-act-2013-licence-fee-charges>
- Home Office: Scrap Metal Dealers Act 2013 Determining suitability to hold a scrap metal dealer's licence https://assets.publishing.service.gov.uk/government/uploads/system/uploads/attachment_data/file/312485/ScrapMetalDealersSuitability.pdf