

OFFICER / CABINET MEMBER DECISION REPORT FORM

(NB. all decisions should comply with Article 13.2 of the constitution)

1. Decision made

1. Set the fee in relation to the grant, renewal and variation under section 2(4)(d) of a site scrap metal dealer licence at £351.00, and
2. Set the fee in relation to the grant & renewal of a collector's scrap metal dealer licence at £293.00, and
3. Set the fee in relation to the variation, other than under section 2(4)(d) of a site & collector's scrap metal dealer licence at £58.00, and
4. Set the fee in relation to obtaining a copy of a licence at £11.00.

2. Identity of the Decision Maker

Executive Director – Grahame Lewis

3. Date of Decision

Tuesday 10 September 2013

4. Reasons for Decision

The Scrap Metal Dealers Act 2013 introduces a new licensing regime for scrap metal dealers and motor salvage operators. Most of the Act's provisions are due to commence on 1 October 2013 by which time the Council must be ready to accept and determine applications.

Section 5 and paragraph 6 of Schedule 1 will commence on 1 September to enable the Council to set the appropriate fee in advance of 1 October.

5. Alternative options considered and rejected

If the Council does not set the proposed fees the Council will be unable to fully recover its costs in relation to the administration and regulation of the new licensing regime and will not be in a position to determine applications by the 1st of October 2013.

6. Background documents

1. Scrap Metal Dealers Act 2013
2. The Provision of Services Regulations 2009
3. The Scrap Metal Dealers Act 2013 (Commencement and Transitional Provisions) Order 2013
4. Cheltenham Borough Council Constitution

7. Any Consultation undertaken

Consultation was undertaken with One Legal, HR, finance and the lead Cabinet Member for Housing and Safety.

8. Results of consultation (where undertaken)

Proposed fees should be adopted and is based on cost recovery as outlined in the covering report.

9. Any Conflict of Interest declared by an Executive Member who is consulted on the decision

None.

10. Dispensation

Was a dispensation given by the Head of Paid Service (Chief Executive) to Cabinet Members to participate in consultation on officer (or Cabinet Member) executive decisions where they have a conflict of interest in respect of any declaration of interest listed at 9 ?

Yes N/A

Date of dispensation

11. Supporting Report

Final report attached ?

Yes No

12. Confidential or Exempt Information

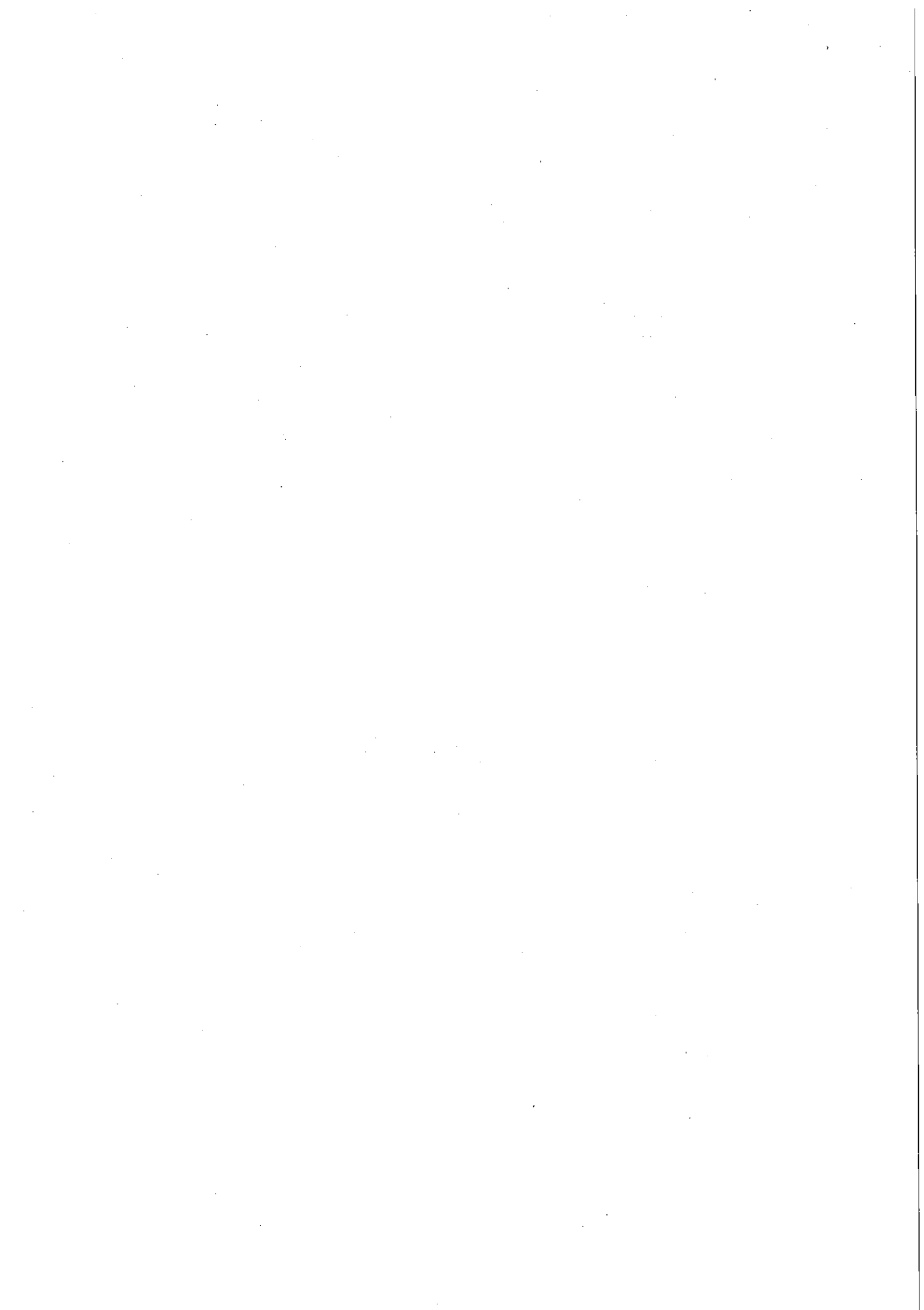
Confidential or Exempt information ?

Yes No

Name of document(s) which are confidential or exempt...

Signature..... *[Handwritten Signature]*

Date..... *10 / sept / 2013.*



Cheltenham Borough Council
Executive Director – 10 September 2013
Setting Fees for Scrap Metal Dealers Licences

Accountable member	Councillor Peter Jeffries – Cabinet Member for Housing & Safety
Accountable officer	Grahame Lewis – Executive Director
Ward(s) affected	All
Key Decision	Yes
Executive summary	<p>The Scrap Metal Dealers Act 2013 introduces a new licensing regime for scrap metal dealers and motor salvage operators. Most of the Act's provisions are due to commence on 1 October 2013 by which time the Council must be ready to accept and determine applications.</p> <p>Section 5 and paragraph 6 of Schedule 1 will commence on 1 September to enable the Council to set the appropriate fee in advance of 1 October.</p>
Recommendations	<p>Executive Director is recommended to:</p> <ol style="list-style-type: none"> 1. Note the contents of this report, 2. Set the fee in relation to the grant, renewal and variation under section 2(4)(d) of a site scrap metal dealer licence at £351.00, and 3. Set the fee in relation to the grant & renewal of a collector's scrap metal dealer licence at £293.00, and 4. Set the fee in relation to the variation, other than under section 2(4)(d) of a site & collector's scrap metal dealer licence at £58.00, and 5. Set the fee in relation to obtaining a copy of a licence at £11.00.

Financial implications	<p>The proposed fees should cover the costs of the council administering the new licensing regime as set out in the regulations.</p> <p>Contact officer: Nina Philippidis, nina.philippidis@cheltenham.gov.uk, 01242 775221</p>
Legal implications	<p>The legal implications are contained in the report.</p> <p>Contact officer: Vikki Fennel, vikki.fennel@tewkesbury.gov.uk, 01684 272015</p>
HR implications (including learning and organisational development)	<p>No direct HR implications in this report, although resource to administer new regime should be taken into consideration.</p> <p>Contact officer: Donna Sheffield, donna.sheffield@cheltenham.gov.uk, 01242 77 7249</p>

Key risks	As outlined in Appendix 1
Corporate and community plan Implications	Communities feel safe and are safe.

1. Background

- 1.1 The Scrap Metal Dealers Act 2013 ("2013 Act") introduces a new licensing regime for scrap metal dealers and motor salvage operators. The 2013 Act will repeal the current Scrap Metal Dealers Act 1964 and sections of the Vehicles (Crime) Act 2001 that regulate motor salvage operators. The 2013 Act will consolidate the separate regimes for scrap metal dealers and motor salvage operators into one single licence.
- 1.2 The majority of the 2013 Act's provisions are due to commence on 1 October 2013 by which time the Council must be ready to accept and determine applications.
- 1.3 However, section 5 and paragraph 6 of schedule 1 will commence on 1 September to enable the Council to set the appropriate fee in advance of 1 October.

2. Fees

- 2.1 At the moment scrap metal dealers and motor salvage operators are only required to register with the Council which is a straight forward and simple process that is valid for 3 years.
- 2.2 Section 3(1)(b) of the Vehicles (Crime) Act 2001 empowers the Council to charge a fee for registering a motor salvage operator but the same does not currently apply for scrap metal dealers. Section 8 of the Scrap Metal Dealers Act 1964 states that any administration costs associated with the administration of registering a scrap metal dealer must be recovered from the Council's general revenue support grant.
- 2.3 Paragraph 6 of schedule 1 of the 2013 Act empowers the Council to determine a fee that it must charge in respect of issuing scrap metal dealer licences. Subparagraph 2 states that the Council must, when determining the appropriate fee, have regard to any guidance issued from time to time by the Secretary of State. For the information of Members, a copy of the guidance is attached at **Appendix 2** of this report.
- 2.4 The 2013 Act falls within the scope of The Provision of Services Regulations 2009. The regulations prescribe that fees cannot be used to pay for enforcement action against unlicensed dealers, as an economic deterrent or to raise funds. For example, the council cannot recover the cost of issuing closure notices to unlicensed dealers and applying for closure orders from the magistrates' court.
- 2.5 The proposed fees have been calculated in accordance with the statutory guidance and based on cost recovery. Accordingly, the proposed fees for the issue, variation and/or renewal of a scrap metal dealer licence has been calculated in accordance with the table below;

Site Licence		
	Grant, Variation (s.2(4)(d)) & Renewal	Vary (not s.2(4)(d))
Administration	£115 (Estimated at 2 hours administration work required.)	£58 (Estimated at 1 hour administration work required.)
Determination	£50 (20% surcharge on each application to cover cost of determination assuming 1 in 5 is referred.)	N/a (No suitability test required for variations (other than s.2(4)(d)) because the licence is not transferable.)
Training	£12 (20% surcharge on each application to cover cost of training.)	N/a (Already accounted for in initial grant.)
Inspections	£174 (Based on 1 p.a. over the 3 years the licence is valid.)	N/a (Already accounted for in initial grant.)
Total	£351.00	£58.00

Collector's Licence		
	Grant & Renewal	Vary (not s.2(4)(d))
Administration	£115 (Estimated at 2 hours administration work required.)	£58 (Estimated at 1 hour administration work required.)
Determination	£50 (20% surcharge on each application to cover cost of determination assuming 1 in 5 is referred.)	N/a (No suitability test required for variations (other than s.2(4)(d)) because the licence is not transferable.)
Training	£12 (20% surcharge on each application to cover cost of training.)	N/a (Already accounted for in initial grant.)
Inspections	£116 (Anticipate less "compliance" costs for collector's licences due to the itinerant nature of operation.)	N/a (Already accounted for in initial grant.)
Total	£293.00	£58.00

3.6 In addition, the proposed fee for the re-issue of a licence is determined at £11.00.

3. Transitional Arrangements

3.1 Whilst licence fees are normally set with the Council's budget in February each year, it is necessary for licence fees in respect of scrap metal dealers to be set partway through the financial year due to the transitional arrangements of the 2013 Act, which are briefly outlined below:

- Commencement Order has been made in August.
- Local Authorities to set a licence fee from 1 September.
- The main provisions of the 2013 Act commence on 1 October including the offence of buying scrap metal for cash.
- Scrap metal dealers and motor salvage operators registered immediately before 1 October will be deemed to have a licence under the 2013 Act from 1 October.
- Provided currently registered dealers submit an application for a licence on or before 15 October their deemed licence will last until the council either issues them with a licence or gives them notice of the decision to refuse them a licence, although they will be able to continue trading pending an appeal against the decision not to grant a licence.
- Where a currently registered dealer submits an application on or before 15 October but does not supply all the required information with the application form, then the deemed licence remains in effect after 15 October.
- Where a dealer with a deemed licence fails to submit an application on or before 15 October the deemed licence will lapse on 16 October.
- Other scrap metal dealers, not previously registered, will be able to apply for a licence from 1 October but will have to wait until a licence is granted before they can legally trade.
- Local authorities will complete suitability checks on applicants and decide whether to issue licences. We recommend that decisions on whether to grant or refuse a licence to previously registered dealers are made before 1 December.

- All other enforcement provisions within the Act commence on 1 December.

3.2 From the transitional arrangements described above, the Council must be in a position to determine applications from September including the required fee.

3.3 There has been a significant delay by the Government in issuing the statutory guidance, which the council must have regard to when determining fees, and as a result it has not been possible to submit a report sooner.

4. Resource Implications

4.1 There are currently 5 registered scrap metal dealers and motor salvage operators in Cheltenham.

4.2 There is also currently no budget allocated to scrap metal dealers but the proposed fee is set at a level where the Council should be able to recover its costs fully.

5. Reasons for recommendations

5.1 The Executive Director is recommended to adopt the licence fee to ensure that it complies with its duty to charge the appropriate licence fee and to ensure that the costs it incurs in determining applications are fully recovered.

Report author	Contact officer: Louis Krog, louis.krog@cheltenham.gov.uk, 01242 77 5004
Appendices	<ol style="list-style-type: none"> 1. Risk Assessment 2. Scrap Metal Dealer Act 2013: guidance on licence fee charges
Background information	<ol style="list-style-type: none"> 1. Scrap Metal Dealers Act 2013 2. The Provision of Services Regulations 2009 3. The Scrap Metal Dealers Act 2013 (Commencement and Transitional Provisions) Order 2013 4. Cheltenham Borough Council Constitution

The risk		Original risk score (Impact x likelihood)			Managing risk						
Risk ref.	Risk description	Risk Owner	Date raised	Impact 1-5	Likelihood 1-6	Score	Control	Action	Deadline	Responsible officer	Transferred to risk register
	If the Council does not set the proposed fees the Council will be unable to fully recover its costs in relation to the administration and regulation of the new licensing regime.	Licensing & Business Support Team Leader		2	4	8	Accept.	Adopt proposed fees.	n/a	Licensing & Business Support Team Leader	
	If the Council does not set the proposed fees the Council will not be in a position to determine applications by the 1 st of October 2013.	Licensing & Business Support Team Leader		3	4	12	Accept.	Adopt proposed fees.	n/a	Licensing & Business Support Team Leader	
Explanatory notes											
Impact – an assessment of the impact if the risk occurs on a scale of 1-5 (1 being least impact and 5 being major or critical)											
Likelihood – how likely is it that the risk will occur on a scale of 1-6 (1 being almost impossible, 2 is very low, 3 is low, 4 significant, 5 high and 6 a very high probability)											
Control - Either: Reduce / Accept / Transfer to 3rd party / Close											

Scrap Metal Dealer Act 2013: guidance on licence fee charges

Context

The Scrap Metal Dealers Act 2013 (referred to in this guidance as the 2013 Act) received Royal Assent on the 28 February 2013, delivering much needed reform of the scrap metal sector. The 2013 Act will provide effective and proportionate regulation of the sector, creating a more robust, local authority run, licensing regime that will support legitimate dealers yet provide the powers to effectively tackle unscrupulous operators. It will raise trading standards across the whole sector.

Introduction

The 2013 Act will allow local authorities to decide who should and should not be licensed, allowing them to refuse a licence upon application or to revoke a licence at any time if they are not satisfied that the applicant is a suitable person to carry on business as a Scrap Metal Dealer. The act also creates closure powers for unscrupulous dealers who operate without a licence. It extends the record keeping requirements placed upon scrap metal dealers and requires the verification of the people Scrap Metal Dealers are transacting with. The act will integrate the separate regulation for motor salvage operators with the scrap metal sector and bring to an end the cash exemption given to some collectors under the 1964 Act.

Finally, the 2013 Act creates a fee raising power, to allow local authorities to recover the costs stemming from administering and seeking compliance with the regime. This element of the legislation will be the focus of this guidance.

The intention is for the act to be implemented in October 2013.

Licensing requirements placed upon scrap metal dealers

Section one of the 2013 Act requires a scrap metal dealer to obtain a licence in order to carry on business as a scrap metal dealer¹. 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 with a fine not exceeding level 5 on the standard scale. In addition, Schedule 1(6) of the 2013 Act provides that an application must be accompanied by a fee set by the authority.

Aim and scope

Local authorities will be responsible for administration and compliance activity in relation to the 2013 Act. This guidance is provided to local authorities in relation to the carrying out of their fee raising function. It also provides information for the benefit of those who will be applying for a scrap metal dealer's licence and the general public. This guidance applies to local authorities in England and Wales and is produced in accordance with the 2013 Act.

Legal status

Schedule 1(6) of the 2013 Act provides that an application must be accompanied by a fee set by the local authority. 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. This Guidance is therefore binding on all licensing authorities to that extent.

What costs can local authorities charge for when issuing a licence?

The 2013 Act provides that an application for a licence must be accompanied by a fee set by the local authority. This fee raising power is an essential component of the legislation as it will provide local authorities with the funding they need to administer the regime and ensure compliance.

The power to set fees has been passed to individual local authorities, so that any fees levied in each local area is 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 cost 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.

LAs 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 review 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 costs associated with contested licence applications.

Registering authorities should review fees regularly to check whether they remain appropriate.

Can a local authority charge for enforcement activity?

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. Such activity against unlicensed operators includes issuing closure notices; with applications for closure orders subsequently made to a magistrates court. The cost of applying to the Magistrates Court for a warrant (Section 16(5)(6) and (7) of the 2013 Act) for entry to unlicensed premises, by force if necessary, will incur legal costs to be borne by the local authority and police.

What are the different types of licences?

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).

Site licences

A site licence requires all of the sites at which the licensee carries on the business as a scrap metal dealer within the local authority area to be identified and a site manager to be named for each site. In doing so, they will be permitted to operate from those sites as a scrap metal dealer, including transporting scrap metal to and from those sites from any local authority area.

Collectors licences

A collector's licence authorises the licensee to operate as a mobile collector in the area of the issuing local authority, permitting them to collect any scrap metal as appropriate. This includes commercial as well as domestic scrap metal.

The licence does not permit the collector to collect from any other local authority area. A separate licence should be obtained from each local authority from which the individual wishes to collect in. A collector's licence does not authorise the licensee to carry on a business at a site within any area. Should a collector wish to use a fixed site, they will need to obtain a site licence from the relevant local authority.

The Act 2013 also specifies that a licence will be issued by the local authority in whose area a scrap metal site is situated, or (in respect of a mobile collector) in the area that the collector operates.

Do different fees apply?

Yes. Fees charged for a site licence would reflect the extra work involved in processing these licences and will vary from a collector's licence.

Display of licences

The form in which a licence is issued must enable it to be displayed in accordance with section ten of the 2013 Act. All licensees are therefore required to display a copy of their licence. For site operators the licence must be displayed in a prominent place in an area accessible to the public. For mobile collectors, it must be in a manner which enables the licence to be easily read by a person outside the vehicle. A criminal offence is committed by any scrap metal dealer who fails to fulfil this requirement. This offence is punishable on summary conviction with a fine not exceeding level 3 on the standard scale.

The cost of providing a licence in a form which can be displayed should be included in the local authority licence fee charges.

Police objections to licence applications

The police may object to a licence application where they believe that the applicant is not a suitable person as defined within the act. The police can object where, for example, the applicant has been convicted of a relevant offence. LAs should also consider representations from other organisations or individuals in considering the applicant's suitability

Where the police do object, the local authority should take this into consideration but must use their own judgement and discretion when taking a licence decision. The local authority must allow for the person whose licence is about to be refused or revoked to be afforded the right to make representations. The local authority considering the matter must restrict its consideration to the issue of suitability of applicant and provide comprehensive reasons for

its decision.

Costs associated with considering oral and written representations should be included in licence fee charges.

Appeals

There is a right of appeal to the Magistrates' Court against a decision to refuse a licence application, to include a condition within the licence, to revoke the licence or to vary the licence. The costs associated with appeals and the costs of defending an appeal in the Magistrate Court should not be included in licence fee charges.

The costs associated with defending a Judicial Review into whether the local authority has failed to have regard to the guidance on fees is not chargeable under the licence regime.

Revocation of a licence and formulating and imposing licence conditions

If a licence has been granted, it may be revoked or licence conditions imposed on a scrap metal dealer if the subsections within Clause 4 of the Scrap Metal Dealers Act are triggered. A local authority may impose conditions pending an appeal against revocation (section 4 (7)) or if the applicant or site manager has been convicted of a relevant offence (section 3 (8)).

Variation of licence

Schedule 1 paragraph 3(1) indicates that a local authority may, on an application, vary a licence by changing it from one type to another and (2) if there is a change in any of the matters mentioned in section 2(4)(a), (c) or (d) or (6)(a).

These changes should be recorded by the local authority. The applicant is also under a duty to notify any convictions for relevant offences to the local authority. These measures ensure that a single record will be held of the licence holder's history in terms of licensing matters.

National Register of Scrap Metal Dealers

Whilst a local authority can recover any costs incurred in transmitting information about a licence, the costs which the Environment Agency incurs are not chargeable under the licence regime.

How long will a licence be valid for?

Schedule 1 paragraph 1 of the 2013 Act specifies the terms of a licence. It indicates that a licence expires at the end of the period of 3 years beginning with the day on which it is issued.

Additional regulations and guidance

The Home Office will be publishing regulations in relation to relevant offences and the identification required to sell scrap metal over the summer of 2013. These regulations will be published on www.gov.uk. We will also be working with the Local Government Association, the British Metal Recycling Association and British Transport Police to produce additional guidance on the requirements of the new act.

The Local Government Association guidance will include a breakdown of reasonable timescales for each of the activities associated with setting a fee.

Annex A - Definitions

What is a local authority?

'Local authority' means —

- (a) in relation to England, the council of a district, the Common Council of the City of London or the council of a London borough;
- (b) in relation to Wales, the council of a county or a county borough.

What is a scrap metal dealer?

21 'Carrying on business as a scrap metal dealer' and 'scrap metal'

(2) A person carries on business as a scrap metal dealer if the person—

- (a) carries on a business which consists wholly or partly in buying or selling scrap metal, whether or not the metal is sold in the form in which it was bought, or
- (b) carries on business as a motor salvage operator (so far as that does not fall within paragraph (a)).

What is a mobile collector?

'Mobile collector' means a person who—

- (a) carries on business as a scrap metal dealer otherwise than at a site, and
- (b) regularly engages, in the course of that business, in collecting waste materials and old, broken, worn out or defaced articles by means of visits from door to door.

What is a motor salvage operator?

(4) For the purposes of subsection (2)(b), a person carries on business as a motor salvage operator if the person carries on a business which consists —

- (a) wholly or partly in recovering salvageable parts from motor vehicles for re-use or sale and subsequently selling or otherwise disposing of the rest of the vehicle for scrap,
 - (b) wholly or mainly in buying written-off vehicles and subsequently repairing and reselling them,
 - (c) wholly or mainly in buying or selling motor vehicles which are to be the subject (whether immediately or on a subsequent re-sale) of any of the activities mentioned in paragraphs (a) and (b), or
 - (d) wholly or mainly in activities falling within paragraphs (b) and (c).
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