





**Brighton & Hove
City Council**

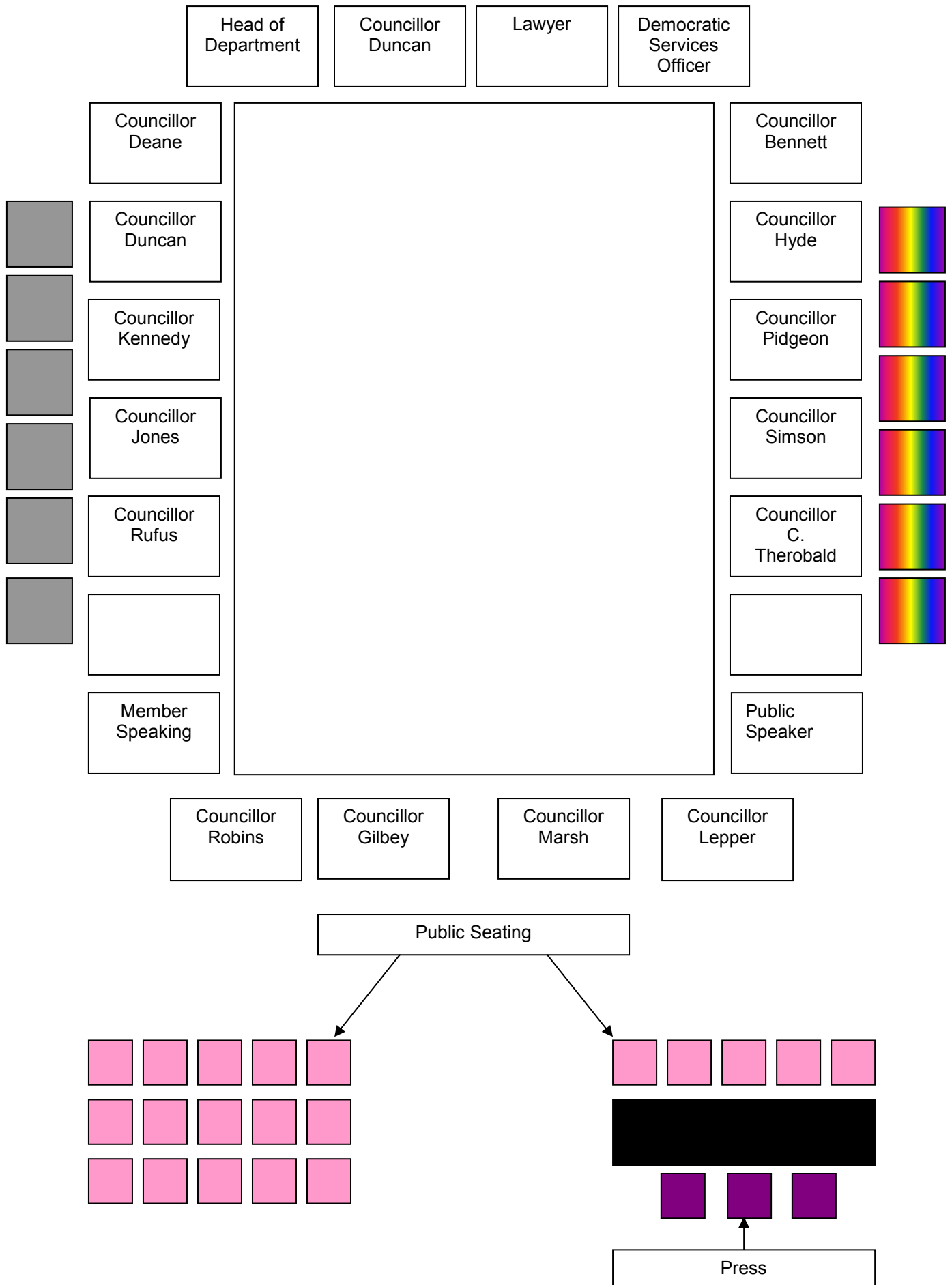
Licensing Committee

(Non-Licensing Act 2003 Functions)

Title:	Licensing Committee (Non Licensing Act 2003 Functions)
Date:	21 November 2013
Time:	3.00pm
Venue	Council Chamber, Hove Town Hall
Members:	Councillors: Powell (Chair), Deane (Deputy Chair), Simson (Opposition Spokesperson), Lepper (Group Spokesperson), Bennett, Duncan, Gilbey, Hyde, Jones, Kennedy, Marsh, Pidgeon, Robins, Rufus and C Theobald
Contact:	Penny Jennings Democratic Services Officer 01273 291065 penny.jennings@brighton-hove.gov.uk

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Democratic Services: Meeting Layout



AGENDA

14. PROCEDURAL BUSINESS

(a) Declaration of Substitutes: Where Councillors are unable to attend a meeting, a substitute Member from the same Political Group may attend, speak and vote in their place for that meeting.

(b) Declarations of Interest:

- (a) Disclosable pecuniary interests not registered on the register of interests;
- (b) Any other interests required to be registered under the local code;
- (c) Any other general interest as a result of which a decision on the matter might reasonably be regarded as affecting you or a partner more than a majority of other people or businesses in the ward/s affected by the decision.

In each case, you need to declare

- (i) the item on the agenda the interest relates to;
- (ii) the nature of the interest; and
- (iii) whether it is a disclosable pecuniary interest or some other interest.

If unsure, Members should seek advice from the committee lawyer or administrator preferably before the meeting.

(c) Exclusion of Press and Public: To consider whether, in view of the nature of the business to be transacted, or the nature of the proceedings, the press and public should be excluded from the meeting when any of the following items are under consideration.

NOTE: Any item appearing in Part 2 of the Agenda states in its heading either that it is confidential or the category under which the information disclosed in the report is exempt from disclosure and therefore not available to the public.

A list and description of the categories of exempt information is available for public inspection at Brighton and Hove Town Halls.

15. MINUTES OF THE PREVIOUS MEETING

1 - 10

Minutes of the meeting on 27 June 2013 (copy attached)

16. CHAIR'S COMMUNICATIONS

17. CALLOVER

LICENSING COMMITTEE (NON LICENSING ACT 2003 FUNCTIONS)

NOTE: Public Questions will be reserved automatically.

18. PUBLIC INVOLVEMENT

To consider the following matters raised by members of the public:

- (a) **Petitions:** to receive any petitions presented by members of the public to the full Council or at the meeting itself.
- (b) **Written Questions:** to receive any questions submitted by the due date of 12 noon on 14 November 2013.
- (c) **Deputations:** to receive any deputations submitted by the due date of 12 noon on 14 November 2013.

19. MEMBER INVOLVEMENT

To consider the following matters raised by Members:

- (a) **Petitions:** to receive any petitions submitted to the full Council or at the meeting itself;
- (b) **Written Questions:** to consider any written questions;
- (c) **Letters:** to consider any letters;
- (d) **Notices of Motion:** to consider any Notices of Motion.

20. STREET TRADING DESIGNATION (POST CONSULTATION) 11 - 18

Report of the Head of Regulatory Services (copy attached)

Contact Officer: Jean Cranford Tel: 29-2550
Ward Affected: All Wards

21. SETTING LICENCE FEES: SCRAP METAL DEALERS ACT 2013 19 - 50

Report of the Head of Regulatory Services (copy attached)

Contact Officer: Mark Savage-Brookes Tel: 01273 292100
Ward Affected: All Wards

22. LICENCE FEES 2014/15 51 - 68

Report of the Head of Regulatory Services (copy attached)

Contact Officer: Jean Cranford Tel: 29-2550
Ward Affected: All Wards

23. ITEMS TO GO FORWARD TO COUNCIL

To consider items to be submitted to the 12 December 2013 Council meeting for information.

LICENSING COMMITTEE (NON LICENSING ACT 2003 FUNCTIONS)

In accordance with Procedure Rule 24.3a, the Committee may determine that any item is to be included in its report to Council. In addition, any Group may specify one further item to be included by notifying the Chief Executive no later than 10am on the eighth working day before the Council meeting at which the report is to be made, or if the Committee meeting take place after this deadline, immediately at the conclusion of the Committee meeting

The City Council actively welcomes members of the public and the press to attend its meetings and holds as many of its meetings as possible in public. Provision is also made on the agendas for public questions to committees and details of how questions can be raised can be found on the website and/or on agendas for the meetings.

The closing date for receipt of public questions and deputations for the next meeting is 12 noon on the fifth working day before the meeting.

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Meeting papers can be provided, on request, in large print, in Braille, on audio tape or on disc, or translated into any other language as requested.

For further details and general enquiries about this meeting contact Penny Jennings, (01273) 291065, email penny.jennings@brighton-hove.gov.uk or email democratic.services@brighton-hove.gov.uk

LICENSING COMMITTEE (NON-LICENSING ACT FUNCTIONS)	Agenda Item 15 Brighton & Hove City Council
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BRIGHTON & HOVE CITY COUNCIL

LICENSING COMMITTEE (NON LICENSING ACT 2003 FUNCTIONS)

3.00PM 27 JUNE 2013

COUNCIL CHAMBER, HOVE TOWN HALL

MINUTES

Present: Councillors Powell (Chair), Deane (Deputy Chair), Simson (Opposition Spokesperson), Lepper (Opposition Spokesperson), Bennett, Gilbey, Hyde, Jones, Kennedy, Marsh, Phillips, Pidgeon, Robins, Rufus, Sykes and C Theobald

PART ONE

1. PROCEDURAL BUSINESS

1a Declaration of Substitutes

1.1 Councillor Sykes declared that he was present in substitution for Councillor Duncan. Councillor Phillips declared that she was present in substitution for Councillor Kennedy.

1b Declarations of Interest

1.2 There were none.

1c Exclusion of the Press and Public

1.3 In accordance with section 100A of the Local Government Act 1972 ('the Act'), the Committee considered whether the press and public should be excluded from the meeting during an item of business on the grounds that it was likely, in view of the nature of the business to be transacted or the nature of the proceedings, that if members of the press or public were present during that item, there would be disclosure to them of confidential information (as defined in section 100A(3) of the Act) or exempt information (as defined in section 100I of the Act).

1.4 **RESOLVED** - That the press and public be not excluded from the meeting during consideration of any item on the agenda.

2. MINUTES OF THE PREVIOUS MEETING

- 2.1 **RESOLVED** – That the minutes of the Licensing Committee (Non Licensing Act 2003 Functions) Meeting held on 14 March 2013 be agreed and signed as a correct record.

3. CHAIR'S COMMUNICATIONS

Suspensions and Revocations

- 3.1 The Chair explained that since the last meeting of the Committee, officers of the Hackney Carriage Office had:

Suspended one driver on medical grounds;

One private hire driver had received a simple caution for carrying passengers without a prior booking;

Refused one application for a licence due to a conviction indecent assault on a female;

Refused one application on medical grounds; and

In addition 8 drivers had received formal warnings.

Disclosure and Barring Service

- 3.2 The Chair went on also explained that from 17 June the arrangements for DBS (formally CRB) checks were set to change, the Council would no longer receive a copy of driver checks.

To enable officers to consider if a driver was a fit and proper to hold a licence from 1 October drivers would be required to produce a valid DBS certificate before a licence could be issued.

Where a DBS check was required prior to 1 October officers could at their discretion issue an 8 week licence pending the issue of the DBS certificate.

- 3.3 **RESOLVED** – That the position be noted.

4. PUBLIC INVOLVEMENT

4a Petitions

- 4.1 There were none.

4b Written Questions

- 4.2 There were none.

4c Deputations

- 4.3 There were none.

5. MEMBER INVOLVEMENT**5a Petitions**

5.1 There were none.

5b Written Questions

5.2 There were none.

5c Letters

5.3 There were none.

5d Notices of Motion

5.4 There were none.

6. PASTON PLACE TAXI RANK

6.1 The Committee considered a report of the Head of Planning and Public Protection reporting on taxi driver behaviour at Paston Place following monitoring in response to the Committees' resolution in response to the Deputation which had been presented to the Committee at its meeting in March.

6.2 The Head of Regulatory explained that following the Deputation to the last meeting of the Committee a warning notice had been sent to all Hackney Carriage Drivers and proprietors and specific warnings to some drivers where it had been established that they had been over ranking or not returning to the nearest rank. 38 complaints had been logged from a complainant alleging contravention of the byelaws and poor behaviour by drivers. In response to the complaints received and in order to investigate the matter further following an initial visit on 30 January 2013 a further 19 visits had been made between 6 March and 9 May. These visits had taken place at varying times and on various days of the week between 09.00 and 23.00. This had included a visit by the Head Regulatory services and directors of Streamline on 15 April 2013. The Head of Regulatory Services was interrupted several times from the public gallery whilst making his presentation and the Chair had to request that this cease in order to enable him to continue.

6.3 Since the deputation to committee, a warning notice had been sent to all Hackney Carriage Drivers and proprietors, and specific warnings to some drivers where it has been established that they were over ranking or not returning to the nearest rank. Officers had logged 38 complaints from a complainant alleging contravention of the byelaws and poor behaviour of drivers. Since the initial complaint this year, officers received one other complaint from a resident of Paston Place in relation to this matter. As part of the investigation, officers made an initial visit on 30 January 2013, and 19 further visits between 06 March and 09 May. These visits occurred on various days of the week and at varying times between 09:00 and 23:00, including a visit made by the Head of Regulatory Services and the directors of Streamline on 15 April 2013.

- 6.4 Following further investigation it had been considered that there was no justification for removal of the main taxi rank which had been in existence for more than 10 years on air quality or other grounds, however, the feasibility of removing and relocating the 7th and 8th feeder spaces outside nos 9 and 10 Paston Place. It should be noted however that this matter fell outside the responsibilities of the Licensing Committees', this matter fell within the responsibility of the Environment, Transport and Sustainability Committee. It was also understood that the Council's air quality action plan which included this area was in the process of being developed and would also form the subject of a report to the Environment, Transport and Sustainability Committee. The air quality action plan might inform taxi licensing policy in due course.
- 6.5 Councillor Simson stated that she had occasion to visit the hospital on several occasions recently and whilst she had not witnessed any of the offences referred to she did not doubt that they did occur, considering therefore that it was important to continue to monitor the situation and to take enforcement action as appropriate. Councillor Simson was interrupted several times whilst attempting to speak and the Chair intervened telling those in the public gallery to conduct themselves in a proper and respectful manner. She reminded them that they could have taken the opportunity to engage in the process by asking questions or by the other means of public involvement in the meeting that were available to them, but had chosen not to do so.
- 6.6 Councillor Jones stated that he worked in the area and knew the location of the rank well. He had sympathy with the concerns of residents and was aware that problems arose from time to time. He considered that thought should be given to removal of the two feeder spaces which were located immediately in front of residential properties as this could alleviate some of the problems experienced.
- 6.7 Councillor Councillor Simson concurred with Councillor Jones stating as these two spaces in particular had been cited as giving rise to problems that their removal would address residents concerns, at least in part. It was noted that this matter did not however, fall within the responsibilities Licensing Committee.
- 6.8 Councillor Deane stated notwithstanding that those sitting the public gallery were doing themselves a disservice by behaving as they were Members had read the report carefully and had noted their concerns, these had not been ignored but proportionate action needed to be taken. Both of the relevant Committees had looked at and were assessing potential action that could be taken, issues relating to air quality and potential reconfiguration (removal of two feeder spaces) were being examined by the appropriate Committee.
- 6.9 Councillor C Theobald stated that she considered that enforcement action should be taken in any instances where that was appropriate.
- 6.10 At this point, having requested on several occasions that those in the public gallery, cease their interruptions and aggressive outbursts in relation to this item, several members had been shouted down whilst speaking as had the Head of Regulatory Services, there had also been exchanges with the Chair, there had been a brief delay to the Committees business whilst the gallery was cleared, the Committee then continued their consideration of the item.

6.11 Councillor Simson commended the work that had been carried out by officers to date suggesting that it would however be appropriate for monitoring to continue and for officers to take enforcement action as/if appropriate and to update the Committee as necessary

6.12 RESOLVED – That the Committee notes the content of the report. Officers are requested to continue to monitor the situation in respect of the Paston Place taxi rank, taking enforcement action and reporting further to Committee as appropriate.

7. HACKNEY CARRIAGE AND PRIVATE HIRE DRIVER FEES ADDITIONAL MEDICAL ADVICE

7.1 The Committee considered a report of the Head of Planning and Public Protection setting out the proposed increase in licence fees for Hackney Carriage and Private Hire Drivers that had become necessary to fund additional time spent by the Council's Medical Advisor to consider medicals and medical exemption requests.

7.2 The Hackney Carriage Officer, Mr Seymour explained that it was recommended by the Department of Transport that medical checks were made on all drivers at initial application and renewal. In common with other licensing authorities, the Council applied Group 2 medical standards, as applied by the DVLA to bus and lorry drivers, this was considered to be a necessary check to protect public safety.

7.3 The Head of Regulatory Services, Mr Nichols further explained that the general principle was that the Council was entitled to recover the full costs of administering the grant and renewal of licences through the licensing fees it received and that it should not knowingly set fees above those costs. It was anticipated that the proposed increases would cover costs for 2013-14 and that if the fees payable were by that level that there would be a budget deficit.

7.4 **RESOLVED** - That the Committee approves the following variation to licence fees: Hackney Carriage Driver fee from £51 to £57; and Private Hire Driver fee from £49 to £55 with effect from 1 July 2013.

8. HACKNEY CARRIAGE ACCESSIBILITY POLICY (JUNE 2013)

8.1 Before proceeding to consideration of this item a presentation was given by Colin Glinsman and John Streeter of Brighton and Hove Streamline accompanied by Rob Macchi of Croydon Accessible Transport. They explained that since they had become aware of the requirements in relation to the provision of wheelchair accessible vehicles (WAV's), they had sought to roll out appropriate training for all of their drivers in recognition of how important it was to provide a sensitive and comprehensive service to customers with varying needs and disabilities. As a condition of employment all of their drivers were required to undergo training which comprised a number of modules both classroom based and practical. Mr Macchi explained that had been approached by the Company and had given advice and assistance in setting up the accredited course based on his wide ranging experience with the Croydon Accessible Transport Scheme.

8.2 Members had the opportunity to ask questions prior to consideration of the report providing an update on the Accessibility Policy for Hackney Carriage and Private Hire

Drivers. Councillor Hyde sought confirmation of the numbers of drivers involved and explained that this was mandatory for all Streamline drivers who were going to be driving WAV's. The Head of Regulatory Services, Mr Nichols drew Members attention to a correction which needed to be made to the circulated report, the policy only applied to hackney carriages, not to private hire vehicles.

- 8.3 Councillor Lepper referred to arrangements being made to ensure that independent and other "harder to reach" drivers received training, The Head of Regulatory Services explained that Streamline had indicated a willingness to share their training although other drivers/companies were not compelled to take that up and indications were that other companies had put their drivers through relevant BTEC modules. In the medium to longer term it was hoped that all drivers could be encouraged to attend an appropriate B Tech course.
- 8.4 Councillor Marsh stated that in her view it would be appropriate for different types of vehicle to be available to those with different disabilities as WAV's were not suitable for all. It was recognised however that would need to be a far longer term objective.
- 8.5 The Committee then went on to consider a report of the Head of Planning and Public Protection reporting and updating on the Accessibility Policy for Hackney Carriage and Private Hire Drivers, Vehicles and operators and the associated equalities impact review.
- 8.6 In answer to further questions in relation to driver training, the Head of Regulatory Services, Mr Nichols explained that means of delivering on-going training were being looked at, drivers seemed to be receptive to that.
- 8.7 Councillor Mrs Theobald stated that the information provided was positive, she understood however that it sometimes difficult closing the doors of bigger vehicles and that drivers could be embarrassed about doing the "wrong" thing. Mr Glinsman explained that it was important for drivers to feel confident in asking their customers whether and what assistance they needed. It was important to note that the training they delivered had a properly certificated exam attached to it which could be passed or failed, it was not just a certificate of attendance.
- 8.8 Councillor Pidgeon stated that his wife was blind and had been for a number of years. WAV's were not ideal for her, she had significant difficulties in getting into and out of such vehicles. Mr Streeter responded that all drivers were now receiving or had received training, it was important that if customers had specific requirements these were notified at the time they made their booking.
- 8.9 The Head of Regulatory Services explained in answer to questions that new Hackney Carriage proprietors had the discretion to choose either side or rear loading wheelchair accessible vehicles and that the Committee had already made the decision to approve side loading WAVs as licensable vehicles at a special meeting of the Committee held on 10 September 2010.
- 8.10 Councillor Gilbey stated that it was important to note that WAV's were not suitable for use by all disabled people and that a range of training and provision needed to be available to cater to all customer needs.

8.11 **RESOLVED** - (1) That the Committee endorses the proposed Accessibility Policy for Hackney Carriages and Vehicles set out in appendix D to the report.

9. HACKNEY CARRIAGE FARE TARIFF

9.1 The Committee considered a report of the Head of Planning and Public Protection seeking agreement and authorisation to advertise the proposed fare increases following the hackney carriage trade's request for an increase in fares.

9.2 Councillor Lepper asked what the rise would mean in terms of the increase payable for example on a fare of £10.00. It was explained that a £10.00 fare would now rise from £10.00 to £10.20.

9.3 Councillor Deane stated that she had attended meetings with the trade and that given the current pressures on the trade in consequence of the recession they have given careful thought to the level of increases proposed.

9.4 Councillor Robins asked for confirmation regarding the way in which the number of additional seconds was applied as this seemed somewhat arbitrary. It was explained that this was due to the way in which the metres inside vehicles were calibrated. These on board machines would be re-calibrated to take account of the fare increases if agreed.

9.5 Councillor C Theobald asked if it was possible to pay a fixed fee when hiring a vehicle. It was explained that this was possible for short journeys and that customers could negotiate this with individual drivers.

9.6 Councillor Gilbey stated that Boundary Road, Portslade was covered by taxis from Brighton & Hove and Adur Fares charged were cheaper with Brighton & Hove and had been for some a number of years. time.

9.7 **RESOLVED** – (1) That the Committee authorises the proposed fare increases and authorises the Head of Regulatory Services to advertise the proposed variation in fares and invite any objections in accordance with the legal requirements;

(2) Agree that of no objections are made, or if any objections which are made are withdrawn, the varied table of fares will come into force in accordance with the statutory scheme; and

(3) Will reconsider the matter at the next meeting of this Committee if valid objections are made but not withdrawn. As there are strict legal timescales relating to fare reviews a special meeting of the Committee may be required.

10. AMENDMENT TO STREET TRADING POLICY

10.1 The Committee considered a report of the Head of Planning and Public Protection seeking amendment to the council's existing street trading policy.

- 10.2 The Head of Regulatory Services, Mr Nichols explained that the Brighton & Hove City Council street trading policy had been introduced on 2 April 1998 and that subsequently on 26 November 2009, a revised street trading policy had been adopted. St the meeting of the Licensing Committee held on 23 June 2011 that policy had been confirmed by Committee as being current with the addition of guidelines for relevant convictions and further issue zone b trading consents. Officers had recently received a request from a farmers market operating in central Brighton which would require a change to the current policy.
- 10.3 Councillor Lepper enquired regarding the level of fees payable stating that these should be set at a level that was such that they should cover the level of costs that arose for the service. Mr Nichols explained that there were three options available to organisers/traders and that they were able to opt for the one that was most economical for them.
- 10.4 Councillor C Theobald requested clarification regarding the location of the market as she thought that this was in a potentially dangerous spot. Mr Nichols explained that the market took place in the redundant bus lane which ran parallel to the Royal Pavilion and which was now closed to traffic.
- 10.5 Councillor Deane stated that she was in agreement that the Farmers Market should pay a level of fees relative to the service they received, the Council should seek to cover its costs. In the case of the market located in George Street, Hove she was of the view that this had the potential to develop further as it had also attracted street. artists and had a positive ambience
- 10.6 Councillor Robins stated that a similar Market had operated on the Western Lawns at Hove in the past.
- 10.7 **RESOLVED** – (1) That subject to designation as a Consent Street, the Committee agrees that street trading in Memorial Way will be restricted for use as a farmers market;
- (2) That Members confirm that consent fees will be payable for this farmers market, subject to designation; and
- (3) That the Committee endorses the minor amendment to the policy which has arisen since June 2011, that is the granting of consents for street artists in George Street, Hove.

11. DESIGNATION OF A NEW CONSENT STREET

- 11.1 The Committee considered a report of the Head of Planning and Public Protection seeking amendment to the council's existing street trading policy.
- 11.2 The Head of Regulatory Services, Mr Nichols explained that the Brighton & Hove City Council street trading policy had been introduced on 2 April 1998 and that subsequently on 26 November 2009, a revised street trading policy had been adopted. St the meeting of the Licensing Committee held on 23 June 2011 that policy had been confirmed by Committee as being current with the addition of guidelines for relevant convictions and further issue zone b trading consents. Officers had recently received a request from a

farmers market operating in central Brighton, from a Ward Councillor and market organisers that could not be accommodated within and would require a change to the current policy.

11.3 **RESOLVED** – (1) That the Committee authorises the Head of Planning and Public Protection to publish notice of the council's intention to resolve to designate Memorial Way in the Old Steine as a consent street (as set out in the map attached at Appendix D to the report and outlined in red); such notice to be published in the local newspaper and served to the Chief Officer of Police and Highway Authority to request necessary consent; and

(2) That the Head of Planning and Public Protection report any representations arising to the next meeting of the Committee.

12. LAW COMMISSION INTERIM STATEMENT ON REFORMING THE LAW OF TAXI AND PRIVATE HIRE SERVICES

12.1 The Committee considered a report of the Head of Planning and public Protection on reforming taxis and private hire legislation.

12.2 The Head of Regulatory Services, Mr Nichols explained that on 10 May 2012, the Law Commission had launched consultation on reforming the law on taxi and private hire services. Subsequently, on 9 April 2013 the commission had published an interim Statement on its consultation, the statement was attached as Appendix1 to the report.

12.3 The key points locally were:

- Limitation (hackney quantitative controls) policies would remain within the discretion of licensing authorities which would permit current Council policy of restricted numbers and managed growth. New limited districts would not allow plate transfer to preclude plates selling at premium (commercial value of hackney carriage licence).
- Local authority discretion to set local standards for hackney carriages (but not for private hire). Would allow local policies like livery and CCTV. CCTV licence conditions for private hire vehicles could be an issue.
- Compellability to tackle the problem of taxi drivers failing to stop for disabled passengers.
- Mandatory disability awareness training, which would inform our accessibility policy.
- Secretary of State (DfT) would retain powers to set standards to promote accessibility to balance local and national control. Defining an accessible vehicle and proportions of accessible vehicles in fleet still an issue.

12.4 The Government had previously responded to the consultation by the Law Commission in the following terms:

- Reforming Quantity Controls: The Government had agreed that licensing authorities should no longer have the power to restrict taxi numbers recommending special transitional measures in place, like staggered or phased removal of the power to control taxi numbers.

- Accessibility: The Government on people with disabilities recognised the importance of taxis and PHVs, considers issues difficult, stresses non-regulatory measures preferable, and
- Accessibility: The Government was concerned about the burden that a statutory obligation for disability awareness training would place on the trade and is not convinced that the benefits would justify the costs.

12.5 The views of Central Government and the Law Commission were at variance currently and how that would be taken on board in the proposed reforms remained unclear at the present time.

12.6 Councillor Lepper enquired whether there was anything further that that Members/the Licensing Authority could do about this at the present time. Mr Nichols explained that detailed responses had already been sent in respect of the consultation.

12.7 **RESOLVED** – That the Committee notes the content of the Interim Statement.

13. ITEMS TO GO FORWARD TO COUNCIL

12.1 There were none.

The meeting concluded at 4.55pm

Signed

Chairman

Dated this

day of

Subject:	Designation of new consent street		
Date of Meeting:	21 November 2013		
Report of:	Head of Regulatory Services		
Contact Officer:	Name:	Jean Cranford	Tel: 29-2550
	Email:	jean.cranford@brighton-hove.gcsx.gov.uk	
Ward(s) affected:	All		

FOR GENERAL RELEASE

1. SUMMARY AND POLICY CONTEXT:

- 1.1 On 27 June 2013, a resolution was passed to publish a notice of the council's intention to resolve to designate Memorial Way in the Old Steine as a consent street; such notice to be published in the local newspaper and served to the Chief Officer of Police and Highway Authority to request necessary consent; and that any representations arising were reported to the next meeting of the Committee.
- 1.2 Representations received and letter sent to the local paper are reproduced in paragraph 5.

2. RECOMMENDATIONS:

- 2.1 That members consider in light of representations received, whether the Council should designate Memorial Way as a consent street.
- 2.2 That, if 2.1 were resolved, as a matter of street trading consent policy, no consents will be issued for three days of the year when ceremonies take place at the War Memorial; including the Blessing of the Gardens on the Thursday before Remembrance Sunday, Remembrance Sunday itself and Armistice Day on 11th November.

3. RELEVANT BACKGROUND INFORMATION/CHRONOLOGY OF KEY EVENTS:

- 3.1 In order to facilitate a farmers market on a temporary basis, trial period, officers from the council's Highways team made a sealed order for the road closures for the trial period which runs until 15 March 2014. The first of these trial farmers markets took place on Saturday 20 April 2013.
- 3.2 In a separate report on 27 June 2013, it was resolved:
 - (1) That subject to designation as a Consent Street, the Committee agrees that street trading in Memorial Way will be restricted for use as a farmers market;
 - (2) That Members confirm that consent fees will be payable for this farmers market, subject to designation.

3.3 Representations were received (see 5 – Community Engagement and Consultation). A report from the current market organiser is attached at appendix A, in which he states “In order to maintain operating on the current site, the council would need to waive all future fees”.

- 3.4 The reason and justification for charging a street trading consent fee:
- Applicability of the European Services Directive and R v WCC ex parte Hemming 2012 Proper annual determination is necessary. Need to make distinction between enforcement against licensed operators and unlicensed operators. European Services Directive applies to street trading and sex licensing.
 - R v Manchester ex parte King 1991 and R v GLC ex parte Rank 1982. Set at level reasonably expected to cover cost of service.
 - R v WCC ex parte Hutton 1985 Surplus and deficit should carry over.
 - Challenges to the reasonableness and proportionality of the determination of the authorisation fee will be subject to established public law principles
 - The licensing authority is not entitled to make a profit. R v Manchester ex parte King (1991) 89 LGR 696.
 - Different fee levels for different types of application.

Extract from corporate fees policy:

- “charges for services provided should be set to recover costs, including central overheads and capital financing, or to a defined subsidy level agreed by the Council...unless it can be demonstrated that: there will be an anticipated negative effect on service usage; which is contrary to corporate priorities; prevailing or comparable public or private sector market rates dictate charging levels; there are prohibitive legislative factors; or there are legitimate concerns about anti-poverty issues.”
- Correspondence from Brighton and Hove Food and Drink Festival is appended. This reports progress of the trial market operating with Highway Act 1981 s115E licence.

4. ANALYSIS & CONSIDERATION OF ANY ALTERNATIVE OPTIONS

No action. No new farmers market.

5. COMMUNITY ENGAGEMENT AND CONSULTATION

5.1 Finance and legal services, Sussex Police and officers acting as Highway Authority were consulted.

5.2 Sussex Police commented as follows:

There is one representation I need to make and this relates to the 3 days of the year

when ceremonies are taking place at the War Memorial. These are Blessing of the Gardens which takes place on the Thursday before Remembrance Sunday, Remembrance Sunday and Armistice Day on 11th November.

Due to the sensitivity and solemnity of these ceremonies can I ask that consideration is given to street trading in these areas being prohibited on these days.

5.3 The Head of Highways Operation commented as follows:

“Our comments regarding the order are principally for Highways but need to be taken into account for any granting of markets, street trading. The comments are as follows:

- This street contains a cycleway. Anyone wishing to use the area for street trading/markets must apply to the Highway Authority for a temporary suspension of the cycle lane. There will be a charge for this to cover the council’s administration costs
- Ingress and exit from the street is close to very busy traffic and to pedestrian crossings. Events organisers must submit a traffic management plan showing how they will manage the arrival and departure of vehicles (e.g. use of properly trained and equipped personnel to stop traffic”).

5.4 A local resident telephoned; he was concerned about the potential for noise during ceremonies. We discussed the representation made by Sussex Police and he confirmed that if 2.2 was resolved, his concerns would be ameliorated.

5.5 A letter written by a resident appeared in the Argus on 7 October 2013 as follows:

“Show some respect...

A proposal submitted by Brighton & Hove City Council on September 27 concerns an area known as Memorial Way, adjacent to the War Memorial, being used for street trading.

Apart from the possible mess, this is totally inappropriate for that area and, once again, appears to show a lack of sensitivity on the part of the council.

Will the traders be asked to pack up and go when various services are held there?

Will they be moved to the Royal Pavilion Gardens?

I hope enough people will protest to the head of regulatory services of the council to stop this disrespectful proposal”.

5.6 A letter objecting to all types of street trading on Memorial Way was received on 27 September 2013 from a local resident.

6. **CONCLUSION**

That members consider the recommendations.

7. **FINANCIAL & OTHER IMPLICATIONS:**

Financial Implications:

7.1 Fees charged will be in accordance with the existing schedule of street trading charges. These are set locally under the Local Government (Miscellaneous Provisions) Act 1982. They must be set at a level which is reasonably expected to cover costs.

Finance Officer Consulted: Steven Bedford

Date: 17/10/13

Legal Implications:

7.2 Schedule 4 paragraph 2 of the Local Government (Miscellaneous Provisions) Act 1982 sets out the procedure for designation of streets. The committee must

consider the representations and decide whether to pass a resolution to designate the street as a Consent street

Lawyer Consulted:

Rebecca Sidell

Date: 18/10/13

Equalities Implications:

- 7.3 Farmers markets may encourage availability of nutritious food economically.

Sustainability Implications:

- 7.4 Farmers markets promote locally sourced sustainable food produce reducing 'food miles' (distance food transported from production point).

Any Other Significant Implications:

- 7.5 There are no direct crime and disorder implications.

SUPPORTING DOCUMENTATION

Appendices:

1. Appendix A – Brighton Farmers Market Interim Report.
2. Appendix B – Letter of objection.

Documents in Members' Rooms

1. None.

Background Documents

1. None.



Brighton Farmers Market interim report

30 September 2013

About the Food Festival

The festival organisation operates two major festival periods in the city, every April and September, alongside a year-round programme of food and drink events including farmers markets, gourmet bus tours and tasting events with partner hospitality businesses. We also administer the Brighton Restaurant Association and run regular business-to-business events to match buyers with producers. Our International Chef Exchange initiative is raising the profile of the city and county across the globe with projects running in Maastricht, Rotterdam and Lyon, and plans underway for Toronto, Malaga and Grenoble in 2014. Interest has been shown in ICEX events in Dubai, Seattle, Perth and Miami.

Over the course of the year, we engage with around 160,000 consumers at our major events, plus in the region of 350 businesses across food and drink production, retail and hospitality. Despite being one of the largest food events in the UK, we are in the unique position compared to other food organisations, that whilst having specific community-driven objectives, we receive no public funding. The festival is a not-for-profit community interest company run by a voluntary board of directors.

About the Brighton Farmers Market

The market launched in April 2013 and runs every third Saturday of the month in a disused bus lane alongside the War Memorial on Old Steine. The market is organised by the Brighton & Hove Food and Drink Festival team, who also run the weekly Churchill Square Farmers Market on Wednesdays. We are currently undertaking a 12 month pilot of the site.

Stallholders

We've tried to ensure that we have a varied offering of fresh, local food ranging from meat, cheese and fruit and vegetables, to cakes, pastries and breads. We currently have only one 'hot' food stall in the form of takeaway curries and Indian snacks. The number of stalls increased from April to May, however the number of stalls decreased in June, July and August (see 'Competition' below).

Presently most stallholders are paying £50 of which £30 pays for gazebos and marshalling. We offered fresh fruit and vegetables, and fish, free stalls for the first six

months. Despite this, we have lost Laines Organic, Barcombe Organic and our fishmonger as they are not generating enough income to warrant their attendance.

Resourcing

The use of uniform gazebos – whilst highly desirable – is a huge overhead at £30 per stall. In other towns there is greater flexibility with stallholders supplying their own set-up, which may be an issue due to wind if we were to adopt at this location. The additional £20 goes towards subsidising the free pitches, and administrative, book-keeping and marketing costs. This additional income does not currently generate the festival organisation revenue to ensure the sustainability of the event in its current format, and certainly will not afford any revenue to be paid to the council in terms of a weekly license fee.

It is noted that in many towns – including neighbouring Shoreham – that their farmers market is managed by a paid council officer, and stalls are often owned and stored by the local authority. This keeps the cost of pitches down, whilst ensuring that the community is still getting access to locally grown food and drink, and the food economy is supported.

Consumer Demographics

The Saturday Brighton Farmers Market attracts significant footfall however the conversion rate is relatively low. Stallholders reflect to us that tourists aren't looking for fresh food but food to eat immediately, which most stallholders do not provide as we deliberately limited hot food for a variety of reasons. The number of residents shopping for food is much higher at the Churchill Square farmers market on Wednesdays which we believe reflects the greater frequency of the event plus the location is more accessible for older buying groups. Whilst there is a very obvious increase in interest in food from younger demographics, that doesn't necessarily mean they want to (or indeed know how to) actually prepare and cook from raw ingredients.

Competition

Both of our farmers market events are now competing for spend with the Street Diner events which are being held at increasing frequency in Brighthelm Gardens and St Peters (Wednesday, Friday, Saturday, Sunday). The demand for street food in the city is currently very high, however we have had concerns fed back to us by local bricks and mortar restaurants, cafés and pubs that the event in Brighthelm Gardens is displacing spend rather than creating new footfall and spend. It has been reflected to us by stallholders that Street Diner is affecting our Wednesday market at Churchill Square, where we have no hot food offering.

Generally, competition for both consumer spend, and stallholder attendance, was high in June, July and August due to People's Day, the Mumford and Sons event in Lewes and the Brunswick Festival. Despite being asked to make a minimum three month commitment to the market, stallholders have followed the events where they feel they will generate most income, rather than see the long-term success of the market as being integral to their attendance (we lost the bread stall at the last minute for two consecutive months which damaged the consumer experience).

It is noted that the Open Market is due to launch at the end of the year. We have been in discussions with Ethical Properties to run a weekly artisan and farmers market at that location. If we were to proceed with this plan then this would probably mean that the current Old Steine site would become redundant. However, at this time there is concern from my fellow festival directors over the viability of the Open Market per se, so this is something that we'll need to consider closely over the coming weeks.

It may well be that there is simply too much 'noise' in Brighton to have a commercially sustainable regular farmers market. With consumers having limited spend, we are competing against not only supermarkets but also other food events and wider events and activities in the city. Our surrounding towns don't suffer from this noise – their market events are the highlight of the week and a big draw for residents and visitors.

It is noted that Petworth and Haslemere are both considering dropping their farmers markets.

Proposals to be considered

- In order to maintain operating on the current site, the council would need to waive all future fees
- We need to restructure the market so it is a combination of local farmers/producers, artisan produce from further afield and hot foods
- This location may simply be wrong, and further sites may need to be looked at. New Road is certainly the preferred option, although the licensing costs of using the site for 20-30 stalls is prohibitive
- The market is supported by funding from the council or another agency

Our Plans

- We will continue to run the market monthly in October and November, with the addition of some carefully considered hot food stalls to help build footfall
- Subject to stallholder support, on 7, 14, 21 December we would like to run a Christmas market event to generate greater awareness amongst both stallholders and consumers
- Decide in conjunction with council offers in January whether the above two activities have created a more sustainable operating environment, and as to whether a monthly (or weekly) farmers market event is actually viable at this site

27th September 2013

Chatham Place
Brighton,
BN1 3TN.

Head of Regulatory Services,
P.O. Box 780,
Bartholomew House,
Bartholomew Square,
Brighton,
BN1 1JP.



Dear Mr. Nicholls,

LOCAL GOVERNMENT (MISC PROVISIONS) ACT 1982
SCHEDULE 4/STREET TRADING

I understand the above notice to mean that the Council is seeking to allow street trading in the Memorial Way part of the Old Steine.

I am therefore objecting to the idea of enabling all types of "street trading" to be allowed in this particular section of the Old Steine in Brighton.

I feel that only specific or licensed events for relevant memorial/commemorative events should take place at this particular location e.g. poppy selling or other relevant commemorative activities.

It should be made clear what part of the Old Steine you regard as "Memorial Way"; what type of activities are meant by "street trading"; and what is meant by a "Consent Street".

Please could you submit this response to the relevant Committee and give me a written response if possible.

Yours sincerely,

Subject:	Setting licence fees: Scrap Metal Dealers Act 2013		
Date of Meeting:	21 November 2013		
Report of:	Executive Director Environment, Development & Housing		
Contact Officer:	Name:	Mark Savage-Brookes	Tel: 292100
	Email:	mark.savage-brookes@brighton-hove.gcsx.gov.uk	
Ward(s) affected:	All		

FOR GENERAL RELEASE

1. PURPOSE OF REPORT AND POLICY CONTEXT

- 1.1 This report sets out the proposed fees for licences applied for under the new Scrap Metal Dealers Act 2013, issued by the Licensing office within Regulatory Services. The legislation confirms that the Authority should set the fees for these licences.

2. RECOMMENDATIONS:

- 2.1 That the proposed fees, as set out in Appendix 3 of this report, are agreed by members.

3. CONTEXT/ BACKGROUND INFORMATION

- 3.1 Central Government has introduced a new piece of legislation, The Scrap Metal Dealers Act 2013 (the 2013 Act), to help tackle the growing national problem of metal theft.
- 3.2 Previously, the scrap metal industry was regulated by the Scrap Metal Dealers Act 1964, which required scrap metal dealers to register with the Local Authority for the area in which they operated or lived. Registration lasted for 3 years. A registration fee was not required and the legislation gave very limited powers to authorised officers.
- 3.3 Similarly, Part 1 of the Vehicles (Crime) Act 2001 required those in the vehicle dismantling industry to register with their Local Authority, without fee and with limited powers for officers.
- 3.4 It was recognised that the existing regulation of scrap metal dealers had become ineffective and the existing legislation was outdated and not an effective tool to deal with the increasing metal theft problem.
- 3.5 The 2013 Act received Royal Assent on the 28 February 2013, delivering much needed reform of the scrap metal sector. Parts of the legislation came in to force on 1 October 2013, with the full legislation becoming enforceable from 1 December 2013.

- 3.6 The 2013 Act provides effective and proportionate regulation of the sector, by introducing a robust, Local Authority run, licensing regime. The legislation supports legitimate scrap metal dealers yet provides officers with more powers to effectively tackle unscrupulous operators. It will raise trading standards across the whole sector.
- 3.7 The 2013 Act repeals the old legislation and brings forward a revised combined regulatory regime for the scrap metal dealing and vehicle dismantling industries. The Act maintains local authorities as the principal regulator and increases their powers to refuse and revoke licences.
- 3.8 In addition, it requires a national register of dealers to be set up and maintained by the Environment Agency, with all Local Authorities supplying regular updated information for this register.
- 3.9 The 2013 Act creates two different types of licence: a 'site licence', allowing a dealer to carry on business at any sites in the issuing Local Authority area, as listed on the licence; and: a 'collector's licence', allowing dealers who do not have a site and regularly collect through door to door collections.
- 3.10 The collector's licence will only allow the collection of metal to be carried out in the issuing Local Authority area. This means that collectors working in different areas will require a licence from each Local Authority responsible for each area that they collect in.
- 3.11 Both licences will be issued for a three year period and must be displayed on the site premises in an area open to the public and also clearly on view on any vehicle used by a collector.
- 3.12 The 2013 Act introduces a "suitable person" test, requiring the Local Authority to be satisfied that any applicant is a suitable person to operate as a dealer.
- 3.13 In reaching a decision over suitability, Local Authorities will be able to consider any relevant information, this includes a basic Disclosure and Barring Service check and other enforcement information obtained from the Police and the Environment Agency.
- 3.14 The issuing Local Authority will be able to add conditions to a licence where dealers or their site managers have been convicted of relevant offences. The power to vary, refuse or revoke an existing licence is also contained in the 2013 Act. The 2013 Act also contains extensive powers of entry for Police and authorised officers from Local Authorities, and requires a more stringent record keeping system for the dealers.
- 3.15 The 2013 Act allows Local Authorities to set locally agreed fees for the licences. Central Government has decided not to impose either a set fee or a cap, but has stated that it expects authorities to be broadly similar in their fee setting regime. It also expects different levels of fee for the two types of licence, the site licence attracting the higher fee due to the need for an inspection process.

- 3.16 The fee setting process further states that authorities must have regard to the guidance on such matters, which has very recently been issued by the Secretary of State and is attached at Appendix 1.
- 3.17 Also attached, at Appendix 2, is Local Government Association guidance on 'Applications' for licences made under the 2013 Act. Page 10 of this document gives additional guidance to Licensing Authorities on setting fees.
- 3.18 As with all licence fees the European Court Directive is clear they must be based on cost recovery of the process used, and cannot be set to generate surpluses for licensing authorities.

4. ANALYSIS & CONSIDERATION OF ANY ALTERNATIVE OPTIONS

None.

5. COMMUNITY ENGAGEMENT & CONSULTATION

- 5.1 Council's finance officer and legal services consulted.

6. CONCLUSION

Licensing Authorities have a duty to set fees for Scrap Metal Dealers.

5. FINANCIAL & OTHER IMPLICATIONS:

Financial Implications:

- 5.1 The proposed fees have been set in accordance with the relevant legislation and are based on a level which is reasonably expected to recover costs. The fees will be reviewed annually in accordance with the corporate fees and charges policy.

Finance Officer Consulted: Steven Bedford Date: 18/10/2013

Legal Implications:

- 5.2 The legal implications are contained within the body of the report.

Lawyer Consulted: Rebecca Sidell Date: 18/10/2013

Equalities Implications:

- 5.3 There are no direct equalities implications.

Sustainability Implications:

- 5.4 There are no direct sustainability implications.

Any Other Significant Implications

None.

SUPPORTING DOCUMENTATION

Appendices:

1. Secretary of State issued Fee Guidance
2. Local Government Association issued Application guidance
3. Breakdown and recommended fees

Documents in Members' Rooms

1. None

Background Documents

1. None

Appendix 1

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 dealer. 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).

Appendix 2

LGA Guide to the Scrap Metal Dealers Act 2013: Applications

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Foreword

Metal theft has, over the last few years, had a significant impact on communities, businesses and councils themselves. A survey we conducted in early 2012 showed that seven out of ten councils had been the victims of metal theft, and that this cost councils over £5.25 million in 2010/11.

Co-ordinated action by the police, councils, the Environment Agency/Natural Resources Wales (NRW) and other organisations since 2011, particularly through Operation Tornado, has been successful in reducing metal theft rates. This joint work has been aided by a fall in the price of metals since they peaked in early 2011. However the high metal prices we have seen recently, driven by industrialisation in China, are likely to continue to be a feature of the world economy over the next decade, and possibly longer, as other countries like India and Brazil follow a similar pattern of growth.

That is why the Local Government Association – following requests from our members, along with a range of other bodies – pressed the government to reform the regulation of scrap metal dealers. The result was the Scrap Metal Dealers Act 2013, taken through Parliament by Richard Ottaway MP as a private members' bill.

Much of the thrust of British Transport Police's Operation Tornado was to get dealers to voluntarily adopt measures (such as proper checks on the identities of sellers) that went on to inform, influence and be included in the Act; so we know that this legislation will make a difference to levels of metal theft in England and Wales.

There are undoubted challenges for councils in introducing a new licensing regime in a comparatively short timescale, and then enforcing it. However, it is in our own interests to make this legislation work. We have seen the results of high metal prices and an environment where thieves felt there was little risk of being caught. We have seen communications and trains disrupted, precious memorials desecrated, artwork stolen, church and library roofs vandalised, manhole covers, gully covers and road signage stolen. Money we could have spent on other vital local services has instead been taken up replacing what has been lost. Motivated by this I am sure councils will go that extra mile to ensure the Scrap Metal Dealers Act 2013 is implemented successfully.

Cllr Mehboob Khan,
Chair of the LGA's Safer and Stronger Communities Board

Introduction

The Scrap Metal Dealers Act 2013 replaces the previous registration system for scrap metal dealers created by the 1964 Scrap Metal Dealers Act. In its place it establishes a new licensing regime. This scheme will be run and administered by local authorities, and is based on the legislation for alcohol licences created in the 2003 Licensing Act. Every scrap metal dealer will be required to have a licence, and operating without one will be a criminal offence. Under the new legislation the definition of scrap metal dealers is extended so it now includes motor salvage operators, and the provisions in the Vehicles (Crime) Act 2001 under which they operate will end once the new Act comes into effect.

Whereas under the 1964 Act councils have to register anyone who notifies them that they are operating as a scrap metal dealer, councils will be able to refuse to grant a licence where the applicant is judged not to be a suitable person to operate as a scrap metal dealer. This ability to regulate who is, and who is not, a scrap metal dealer is designed to improve the operating standards of those dealers who do not operate in the same way as the majority of reputable dealers. The transition from the requirement on dealers to register to holding a licence provides an opportunity to ensure that those dealers who have been operating illegally are no longer able to do so.

The Home Office is looking to commence the new regime from 1 October 2013, but with a transitional period to ensure a smooth hand over from the old regime to the new with minimal disruption to scrap metal dealers. That imposes a challenging timetable for councils in implementing the legislation. This guide is designed to assist local authorities so that they are ready to issue the new scrap metal dealers licences in time for enforcement of the licensing regime from 1 December. It forms part of a set of guides to help councils understand their responsibilities under the new Act, and the role councils have in tackling metal theft.

The other guides are:

- Enforcement guide: An explanatory guide to enforcing the new licensing regime.
- Fees guide: A toolkit that assists with the setting of licence fees that comply with the requirements of the EU Services Directive and the Provision of Services Regulations 2009.
- Getting in on the Act: A short outline of the new Act and how it differs from the 1964 Act.
- Councillor handbook: A guide to help councillors to understand their role and responsibilities in tackling instances of metal theft.

- Tackling metal theft toolkit: A toolkit that outlines additional strategies and tools that go beyond the limitations of the 2013 Act and can be used more broadly to tackle instances of metal theft.

We hope that you find this a useful document. Should you have any questions please contact either Mark Norris (mark.norris@local.gov.uk) or Ian Leete (ian.leete@local.gov.uk) at the LGA.

Licences

In order for anyone to carry on business as a scrap metal dealer they have to have a licence. These licences will last for three years. Trading without a licence is a criminal offence.

If convicted of trading without a licence the offender can be fined. The fine will be at Level 5 on the standard scale. Amendments to the size of the fines that courts can impose in the Legal Aid, Sentencing and Punishment of Offenders Act 2012 mean that when the provisions come into force, a fine at that level will be unlimited.

There are two types of licence specified in the Act:

- **Site licence**
All the sites where a licensee carries on business as a scrap metal dealer have to be identified, and a site manager has to be named for each site. This licence allows the licensee to transport scrap metal to and from those sites from any local authority area.
- **Collector's licence**
This allows the licensee to operate as a collector in the area of the issuing local authority. It does not allow the collector to operate in any other local authority area, so a separate licence has to be obtained from each council the collector wishes to operate in. The licence does not authorise the licensee to operate a site; to do so they will need a site licence from the relevant local authority.

It should be noted that a dealer can only hold one type of licence in any one local authority area. They have to decide whether they are going to have a site or a mobile licence in any one area. They cannot hold both a site and mobile collector's licence from the same council (s2(9)).

Timetable for transition to new regime

The licensing regime created by the Scrap Metal Dealers Act 2013 will commence on 1 October 2013. In order to provide time for councils to process applications without existing businesses being in a position where they cannot operate, the Home Office is implementing a transition process.

The transition arrangements will be implemented by a commencement order which will be made in August 2013. This order will allow councils to set a licence fee for applications from 1 September. It will also specify that the remaining sections in the Act commence on 1 October, apart from the majority of criminal offences and enforcement-related provisions, which will come into force on 1 December. The exception to this will be the ban on using cash to pay for scrap metal which will also come into force on 1 October. Any dealer currently registered under the 1964 Scrap Metal Dealers Act, or a motor salvage operator already registered under the 2001 Vehicles (Crime) Act, will be deemed to have a licence under the 2013 Act until the council grants a licence or sends the dealer notice of its decision to refuse the licence, provided they submit an application on or before the 15 October. If they do not submit an application their deemed licence will lapse on 16 October. If they wish to trade in the future they would then need to submit an application, but would not be able to legally trade until a licence had been granted.

While their application is being considered by the local authority, these dealers will be able to operate as if they have a licence. No date will be specified in the regulations setting out when councils will have to have made a decision on applications made between 1 and 15 October. We recommend that decisions on whether to grant or refuse a licence to previously registered dealers are made before 1 December 2013. Dealers will therefore be able to continue to trade without disruption during the transition period without fear of being prosecuted for operating illegally. While an actual transitional licence need not be issued, sending the dealer an acknowledgement that the application has been received on or before 15 October 2013 should enable a dealer to satisfy the police that during this period they were legally able to operate.

Where an applicant is not registered under the Scrap Metal Dealers Act 1964 or the Vehicles (Crime) Act 2001 before 1 October then they will not be able to trade legally after 1 October until a licence has been issued. Full enforcement of the provisions in the 2013 Act will commence from 1 December 2013.

The transition timeline is:

- The Commencement Order will be made in August.
- This will allow local authorities to set a licence fee from 1 September.
- The main provisions of the Act commence on 1 October including the offence of buying scrap metal for cash.
- Dealers and motor salvage operators registered immediately before 1 October will be deemed to have a licence under the Act from 1 October.
- Provided the dealer submits 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 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.

There are two implications for councils arising from this transitional timetable. They will need to be in a position to accept applications for licences from 1 October. To do that councils will have had to have agreed the fees they will charge applicants no later than the end of September.

There is also the question for councils about how they deal with renewals of registrations under the 1964 Scrap Metal Dealers Act and Vehicles (Crime) Act 2001. We have been advised by the Home Office that any registrations that expire in August or September will need to be renewed for the dealer or operator to take advantage of the temporary licence provision in the transitional arrangements. We would therefore advise that councils continue to renew registrations for both the 1964 Scrap Metal Dealers Act and Vehicles (Crime) Act 2001 but do not charge a fee for the motor salvage operators in view of the Scrap Metal Dealers Act 2013 coming into force on 1 October.

What is a scrap metal dealer, what is a site, what is a mobile collector and what is scrap metal?

The 2013 Act defines a scrap metal dealer, a site, a mobile collector and scrap metal.

A dealer is defined under s21(2) of the Act as someone carrying on a business which consists wholly or in part of buying or selling scrap metal, whether or not the metal is sold in the form in which it is bought. However a manufacturing business that sells scrap metal created only as a by-product of the processes it uses, or because it has a surplus of materials, is not caught by this definition (see s21(3)).

The definition of scrap metal dealer is deliberately quite widely drawn, and there are no further details provided in the Act or the explanatory notes about

who potentially might have to apply for a licence. Does it, for example, include firms that hire out skips, or to tradesmen like plumbers or builders who sell scrap metal resulting from any work they do?

The answer to this question varies according to individual circumstances to a certain extent, but generally where the sale of the metal is incidental to the main type of work or business undertaken then a licence will not be needed. In the case of most tradesmen such as plumbers and electricians and some skip hire firms the sale of scrap metal is not an integral part of their business and they will not require to be licensed as a scrap metal dealer. Where though there is a reasonable expectation, for example, that the material deposited in the skip will contain significant amounts of scrap metal, such as skips used where there is demolition activity or ones sited at engineering manufacturing establishments and plumbers' yards, then the skip hire company will generally require a scrap metal dealers licence.

In considering whether a scrap metal dealers licence is needed, questions that local authorities may wish to take into account include:

- Is the applicant a business?
- Is the applicant associated with any other business that might buy or sell metal (eg subsidiaries, businesses run by the same people, companies within a group etc)?
- Do they buy scrap metal in any form as part of the business?
- Is the purchase or sale of scrap metal an integral part of the business? Is the buying or selling of metal advertised by the business, including on the internet?
- Is any advertising of metal sales etc done separately from the main part of the business?
- Is the metal sold as a by-product from a manufacturing process?
- What happens to any waste metal that is collected by the business?

The Home Office's and LGA's view is that household waste collections by councils or their contractors that pick up metal items thrown out by households and which are to be recycled, along with municipal waste/civic amenity sites ('council tips') are not caught by these provisions. As councils have a statutory obligation to collect household waste any resulting sales of scrap metal are incidental to this objective. Additionally only 7.3 per cent of the material recycled by councils is metal or metal objects so it is merely a small proportion of the recycled material councils deal with. Any income from this would only offset a fraction of the cost of running a waste collection service and the landfill charges councils incur.

Dealers under the legislation are further divided into two categories based on the two different types of licence: those operating from fixed sites; and those who are mobile collectors. A collector is defined (by s22(4)) as a person who carries on business as a scrap metal dealer otherwise than at a site, and regularly engages in the course of that business in collecting waste materials

and old, broken, worn out or defaced articles by means of door to door visits.

A site is defined in the Act (s22(9)) as 'any premises used in the course of carrying on business as a scrap metal dealer (whether or not metal is kept there)'. Due to the wording of the definition this means that someone who trades in scrap metal and is thus defined as a dealer under s21(2) will need a site licence for their office even if they do not operate a scrap metal store or yard.

A dealer also includes someone carrying on business as a motor salvage operator. This is defined as a business that:

- wholly or in part recovers salvageable parts from motor vehicles for reuse or re-sale, and then sells the rest of the vehicle for scrap
- wholly or mainly involves buying written-off vehicles and then repairing and selling them off
- wholly or mainly buys or sells motor vehicles for the purpose of salvaging parts from them or repairing them and selling them off.

Scrap metal itself includes any old, waste or discarded metal or metallic material, and any product, article or assembly which is made from or contains metal and is broken, worn out or regarded by its last holder as having reached the end of its useful life. This definition is not intended to include second hand goods, but these could be caught by the definition if they are made from or contain metal that is broken or worn out. It will be a question in each case as to whether items fall within the definition. The definition does however include platinum and a range of other rare metals now being used in catalytic converters although gold or silver are not included in the definition of scrap metal. Jewellers or businesses trading in second hand gold and silver jewellery or products are not therefore caught by this definition.

The boundary of what is scrap metal and what is a second hand good containing metal will probably be something that is explored further as the legislation is implemented. There is some concern that some motor salvage operators may argue they are trading in second hand cars, rather than breaking up cars for scrap to avoid the ban on buying scrap metal for cash. Councils will have to take a view according to the circumstances of the case, and perhaps after consultation with police and Environment Agency/NRW colleagues, as to whether a person, partnership or company is really buying or selling scrap metal, or trading in second hand goods and whether they need to apply for a licence or not. Issuing a certificate of destruction would clearly indicate a vehicle is scrap and a trader should not in those circumstances pay cash for it. Where a certificate is not issued, factors such as whether the car has a valid MOT and is driveable without repair, and also whether the dealer has facilities for repairing vehicles and a history of selling vehicles, will indicate if it is second hand or scrap.

Licence applications

Schedule 1 of the Act sets out what information must accompany an application for a scrap metal dealers licence. This includes:

- the full name, date of birth and usual place of residence of an individual applicant (including mobile collectors), anyone proposed as a site manager for a site, and every partner where a partnership is applying for a licence
- the company name, registered number and registered office address where it is the applicant
- any proposed trading name for the business
- the telephone number and email address (if any) of the applicant.
- where it is a site licence, the address of each proposed site to be included on the licence
- the address of any site in another council area where the applicant already carries on business or proposes to do so
- details of any relevant environmental permit or registration held by the applicant
- details of any other scrap metal licences issued to the applicant within the three years before making this application
- details of the bank account(s) to be used for cashless transactions – where a licensee operates multiple sites different bank accounts may be used
- details of any relevant conviction or enforcement action that relates to the applicant.

There are practical reasons why this information has to be supplied. Either it relates to details that have to be included on the licence if it is granted, it helps in the assessment of an applicant's suitability to hold a licence, or it has to be provided to the Environment Agency/Natural Resources Wales for inclusion on the register of scrap metal dealers.

Although the local authority has to be supplied with this information this is not the limit of what it can ask for. Under Schedule 1, paragraph 4(1) councils are entitled to request any further information they regard as relevant to considering the application. If therefore they believe they need more information before they can reach a decision they can request it. Where a council is considering seeking additional information from all applicants, the short timescale for previously registered dealers to submit applications (to take advantage of the deemed licence in the transition period) means that local authorities in this position should consider making their application forms and guidance on completing them available at the earliest opportunity. If councils do not make the application forms and guidance available in good time, there may be legal challenges/complaints from dealers who were previously registered who fail to put in an application by 15 October, and claim that this is the fault of the local authority for not making these essential documents available.

With applications by companies the suitability of any directors, shadow directors and company secretaries need to be assessed so councils should also ask for their details. In the event that an applicant does not supply the information that has been requested, the council can refuse to proceed with the application. This could be of relevance where an applicant has refused to provide a Basic Disclosure to enable the council to arrive at a view on the suitability of the applicant, which is covered in a later section.

Some other information the authority may consider useful could be:

Site licences

- what security arrangements exist to prevent the unlawful purchase, sale or theft of scrap metal
- details of the arrangements to be used to record sales, storage and purchase of scrap metal

Mobile collectors

- details of the vehicles to be used
- where the vehicles are stored when not being used.
-

In order to assist local authorities, and so there is a degree of consistency in what the application form asks for, the LGA has produced a template application form for scrap metal dealers. This is set out in Appendix A. It covers the information the legislation specifies must be provided along with some additional information that it will be helpful to have.

Application fees

Any application must be accompanied by a fee. The fee is set by the local authority having had regard to guidance issued by the Home Office with the approval of the Treasury. This guidance is due to be published shortly. It will contain information on whether an element of the fees should contribute towards the costs of maintaining the national register of licences or not.

In setting their fees local authorities will of course have to have regard to the requirements of the European Union Services Directive and any licensing case law, of which the recent case in the Court of Appeal of *Hemming v Westminster City Council* is especially relevant.

In calculating their fees councils will want to take into account:

- 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 applicants on what will be a new process
- carrying out inspections and ensuring compliance with the law
- training for staff and councillors 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
- any officer time spent providing information for inclusion in the register of dealers.

These costs are likely to differ over the period from the initial grant of a licence through to the renewal of the licence three years later, which suggests the need to reassess the fees on a regular basis.

Not mentioned in the list immediately 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 might be. Given the likely number of applicants is very difficult to assess it would be sensible to increase the number of hearings in any estimate rather than decreasing them. However once at the end of the first year of operation of the licensing system it would be sensible to review how many hearings there had actually been and revise the fees accordingly. Councils are also assisted by one of the decisions from *Hemming v Westminster* which allows deficits or surpluses to be carried over into the next financial year.

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 any rooms for the meeting
- the cost of printing and sending out the agendas, legal services costs and any legal advice the committee needs
- officer costs associated with actually running the hearing.

When looking at enforcement costs it is important to bear in mind that they

must be based on the principles of good regulation, and they have to be set in an open and transparent way. An important point arising out of the *Hemming v Westminster* case is that the fees cannot be used to pay for enforcement action against unlicensed dealers (particularly collectors) or as an economic deterrent or to raise funds. The limitation placed by the EU Services Directive around enforcement means that councils cannot recover the cost of issuing closure notices to unlicensed dealers and applying for closure orders from the magistrates' court.

A further consideration from *Hemming* is that councils cannot demand a fee where that has not been determined. In the case of *Hemming* there were a number of years where in effect the fee was carried over from the previous year without being considered in detail by a committee or the council. This point highlights the importance of regularly reviewing the fees and also making sure that when committees come to determine fees they have all the relevant information before them, otherwise they could be subject to legal challenge. One final matter is whether to consult on the fees. There is no requirement in the Act to do so, and it will not be practical to do so under the transitional provisions, but looking ahead consulting on the fees in the future may assist in reducing the potential for challenge where there has been a transparent and open process for agreeing them.

The LGA will shortly be producing a toolkit on setting licensing fees under the EU Services Directive which may provide assistance in setting fees for scrap metal dealer licences.

Assessing the suitability of the applicant

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 business as a scrap metal dealer – the 'suitability test'. In the case of a partnership this means assessing the suitability of each of the partners in the partnership, while in the case of a company it means assessing the suitability of any directors, company secretaries or shadow directors.

In assessing an applicant's suitability the council can consider any information it considers relevant. Applicants' behaviour in the operation of their business, such as the fact they have been operating for a considerable period of time without planning permission for their site, or that they are not registered with the Information Commissioner's Office (ICO) under the Data Protection Act, could be factors that are considered. The template application form requests information on whether the applicant has planning permission for their site. The lack of planning permission can only be taken into account for sites established after 1 November 1990 as sites in use before then will not have needed to obtain planning permission. Using the lack of planning permission as a relevant consideration for a site where it has not been needed could provide valid grounds for appealing the council's decision.

Even the lack of planning permission for a site established after 1 November 1990 or the lack of registration with the ICO would not in our view be enough on its own to arrive at the view an applicant is not suitable to hold a licence. If however there are also a range of other behaviours and activities that suggest an applicant is unsuitable to hold a licence then the lack of planning permission or registration with the ICO might be a factor in reaching an overall decision that the applicant is unsuitable. Councils will be in a stronger position to defend any challenges to their decision to refuse a licence where they made their decision based on the factors specifically listed in the legislation. The list includes whether:

- the applicant or site manager has been convicted of a relevant offence, or subject to any relevant enforcement action
- the applicant has previously been refused a scrap metal dealers licence or an application to renew a licence has been refused
- the applicant has previously been refused a relevant environmental permit or registration
- they had previously held a scrap metal dealers licence that has been revoked.

Much of this information should be set out in the application form, and it is an offence under paragraph 5 of Schedule 1 for the applicant to make a false statement or recklessly make a statement which is false in a material way. However local authorities will undoubtedly want to satisfy themselves that an applicant is a suitable person by checking that they do not have previous relevant convictions, been the subject of any relevant enforcement action or have been refused a licence. There are benefits from the industry's perspective in there being a standardised process when it comes to assessing applicants' suitability, and in having a consistent approach applied to each application.

Agreement has therefore been reached between the Home Office and Disclosure Scotland allowing applicants for a scrap metal dealers licence to apply for a Basic Disclosure as part of the application process. This offers the possibility of providing a fair, transparent and objective means of identifying matters that might lead a council to conclude an applicant was not a suitable person to hold a scrap metal dealers licence.

As part of the application process the applicant should be asked to provide a Basic Disclosure certificate with the application form. In order to ensure there is minimal delay in processing applications councils are advised to inform dealers of the need to apply for a Basic Disclosure certificate before they submit their application, so that the form and certificate can be submitted together on or before 15 October. The Basic Disclosure certificate will remain the property of the applicant. This would allow them to use it for other applications to other local authorities. There is no requirement under the Act for applicants to provide a Basic Disclosure certificate, and the deemed licence for previously registered dealers will not lapse if it is not supplied with

the application. However refusing to supply a certificate would be grounds for the council to consider what further information it needed to judge whether the applicant was suitable. Refusing to provide a Basic Disclosure certificate would also be grounds under paragraph 4(2) of Schedule 1 for the local authority to decline to proceed with the application.

The Basic Disclosure certificate contains details only of any unspent convictions as of the date the certificate is issued. It can be applied for on-line or by completing a form, and paying a fee of £25. Disclosure Scotland will usually be able to provide a certificate with the results of the disclosure application within 14 days so there should not be any significant delay in the application process. The Basic Disclosure process can also be used for applicants living overseas (such as directors of multinational companies based abroad) to see whether they have any unspent convictions for relevant offences in this country. The older a certificate is, the more likely it is to be out of date. Councils will therefore have to consider at what point they will decide a certificate is not up-to-date enough to provide a reasonable check on an applicant's suitability. As some scrap metal dealers may have already applied for a Basic Disclosure certificate in anticipation of the legislation coming into effect, we would recommend that when considering applications from registered dealers and operators made between 1 to 15 October, councils accept certificates up to three months old.

Once the local authority has received the application they can then compare the results of the certificate with the relevant offences prescribed by the Home Office. The list of offences will be set out in regulations which it is intended will be laid in Parliament in September. The regulations will also set out the relevant enforcement action a local authority may have regard to when considering an application.

Based on the explanatory notes to the Act the LGA expects the offences listed in the regulations will mirror, where possible, those that the Environment Agency/Natural Resources Wales consider when granting an environmental permit. It is also likely to include criminal offences relevant to metal theft. The regulations will also set out the relevant enforcement action local authorities may consider when assessing suitability.

The Basic Disclosure certificate will reveal only any unspent convictions on the Police National Computer. It will not therefore necessarily contain details of convictions for relevant offences secured by the Environment Agency/Natural Resources Wales or other local authorities.

We would recommend that councils as a result consult these other organisations when assessing the suitability of an applicant. Section 3(7) provides the legal basis for doing this as it allows a council to consult other councils, the Environment Agency and/or Natural Resources Wales and the police about the suitability of an applicant.

Where for example the Basic Disclosure certificate reveals an unspent relevant conviction the council may well wish to seek additional information from the police to enable them to better assess the applicant's suitability. Councils may also wish to do this where there are other indications that an applicant may not be a suitable person, such as operating without planning permission or having registered with the ICO.

As a matter of course councils should also check the Environment Agency/Natural Resources Wales public registers to see if they have taken any relevant enforcement action. Searching through the Environment Agency website provides an easy means of doing this. This will not however show any on-going enforcement action, and the only way to check that is through directly contacting the Environment Agency (through their National Customer Contact Centre on 03708 506 506, Mon-Fri, 8am - 6pm) or Natural Resources Wales (0300 065 3000, Mon-Fri, 8am - 6pm, or email: enquiries@naturalresourceswales.gov.uk). There is also a duty on councils to provide these bodies and the police with any information they have received in respect of a licensing application if requested.

Finding out if there has been any relevant enforcement action by another local authority is in some senses more problematic. Local authorities have for some time been encouraged to notify their local force of prosecutions for recordable offences so these can be entered on the Police National Computer. We would encourage local authorities to continue to do this, and specifically in the case of the Scrap Metal Dealers Act 2013, to notify their forces where they have secured convictions under any of the relevant offences already listed. There is however no central database of council prosecutions that could be checked as part of an assessment of whether an applicant is a suitable person.

To assist councils in the role of assessing the suitability of applicants the Home Office would like to see a proactive exchange of information, with the police and Environment Agency/Natural Resources Wales advising local authorities when they are prosecuting a scrap metal dealer for a relevant offence so a local authority may have regard to this information when considering applications for a scrap metal dealers licence, or when considering whether to instigate procedures to revoke a licence.

It is important to bear in mind when considering any application that even if an applicant has been convicted of a relevant offence this is not automatic grounds for refusing to grant a licence. The local authority has discretion in this matter and could decide after receiving further information from an applicant or other bodies, and considering the matter further, that they can grant a licence, or grant the licence with conditions. For example the council could take into account how long ago the offence was committed, the nature of the offence or enforcement action; the gravity of the offence or enforcement action; when the enforcement action was taken; along with any other relevant information as set out in s3(2).

Representations

Where a council proposes to reject an application (or revoke it or vary it) the applicant has to be notified what the council proposes to do and the reasons for it. If having conducted an initial assessment of an applicant's suitability the council is minded to refuse the application, the relevant officer has to write to the applicant to let them know.

In doing so the notice from the council has to give the applicant (or licensee) the opportunity to make representations or let the council know they wish to. The notice must also specify a period of time in which the applicant does this, which cannot be less than 14 days from the date on which the notice is given to the applicant. If the applicant does not make any representations, 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 council has to give them a further period in which to do so, and only if they fail to do so can they refuse the application or revoke or vary the licence.

Where the applicant makes representations the council has to consider them (Schedule 1, paragraph 7(7)), and if the applicant states they want to make oral representations the council must provide them with the opportunity to appear before a licensing committee. This is in our view the most appropriate way of interpreting the requirement in the Act for a person appointed by the council to hear representations (Schedule 1, paragraph 7(8)).

Application hearings

The requirement on councils to allow an applicant to make oral representations means that it will be appropriate to refer any contested applications to a licensing committee. Those applications which are uncontested or where there are no questions about the suitability of the applicant can be delegated to licensing officers to make the decision on whether or not to grant the application. Before that can occur, councils will need to have the appropriate delegations in place.

The most obvious instance where an application should be referred to a licensing committee is where there is information available to the council that suggests the applicant may not be suitable to hold a scrap metal dealers licence. Existing good practice around the consideration of applications by licensing committees should be applied to the consideration of applications for scrap metal dealers licences.

In the event the committee is minded to refuse the application then it will need to carefully consider the grounds on which it has decided to do so. The applicant has to be given the reasons an application has been rejected (see

the next section) and if there is an appeal, the council will want to have robust grounds on which to defend its decision not to grant a licence.

Notices of decisions

Where a council has refused an application, revoked a licence or varied a licence it must give the applicant or licensee notice of the decision, which also sets out the reasons for the decision.

The notice also has to inform the applicant or licensee of their right to appeal the decision; the timeframe for making that appeal; and, where the licence has been revoked or varied, the date under which that comes into effect.

Appeals

Appeals against a decision by the council to refuse an application, to impose a condition on the licence or to revoke or vary the licence are to the magistrates' court.

The dealer has 21 days from the day on which they were given notice of the decision in which to appeal. The magistrates' court then has the power to confirm, vary or reverse the council's decision and issue any directions it considers appropriate having regard to the Act.

As the notice under paragraph 8 to schedule 1 must be in writing, notice will be deemed to have been given when the applicant/dealer has received it. Ordinarily, this will be the next working day if delivered by first class post.

Including conditions in the licence

A council's ability to impose conditions on a licence is very limited. Conditions can be imposed only where the applicant or any site manager has been convicted of a relevant offence, or, where the council is revoking a licence when a condition can be imposed, until the revocation comes into effect. For the majority of applicants therefore it is unlikely that a council will be in a position of being able to consider imposing conditions. In considering whether to issue a licence where the applicant or a site manager has a relevant conviction, the local authority might decide to do so on the basis that a condition is imposed on the licence.

Councils can impose one or both of two conditions. These conditions 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.

Varying the licence

Dealers can apply to vary a licence from a site licence to a collector's licence or vice versa, and have to apply to vary the licence where there are any changes in certain details stipulated by the Act (see paragraph 3(2) in Schedule 1). The application has to be made to the council that issued the licence and has to set out the details of how the licence needs to be amended. A variation in a site licence has to be applied for where there are any changes relating to the name of the licensee on the licence; any change in the sites from which the licensee is authorised to carry on business; and any change in the details of a site manager.

In the case of a collector's licence a variation has to be applied for where there is a change in the details relating to the name of the licensee.

Councils have to be aware that variations related to changes in the name of the licensee on the licence for a site or a collector's licence cannot be used to effect a transfer of the licence from one person to another. Anyone wanting to hold a licence to be a scrap metal dealer has to apply for their own licence, they cannot take over an existing licence. This includes the situation where one business buys another business.

Failure on the part of the licensee to apply for a variation is an offence punishable by a fine not exceeding level 3 on the standard scale.

Notifications to the National Register

The Scrap Metal Dealers Act creates a requirement for a register of scrap metal dealers licences. The Environment Agency must maintain a register of scrap metal licences issued in England, and Natural Resources Wales must maintain a register of scrap metal licences issued in Wales. Both registers will be open to the public.

Under the provisions of the Act when councils issue a licence they are obliged to pass on certain information to the Environment Agency/NRW to enter on the register. The information that has to be passed on about each licence is:

- the name of the council which issued the licence
- the name of the licensee
- any trading name under which the licensee conducts business as a dealer
- the address of any site identified in the licence
- the type of licence (site or mobile)
- the date the licence expires.
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It is planned that councils will email a CSV file across to a dedicated email address at the Environment Agency and Natural Resources Wales. The more frequently the information is passed across to the Environment Agency/NRW

the more up-to-date the register will be, and the more useful it will be in enforcement terms. As a matter of good practice we would encourage councils to email details of licences issued or revoked to the Environment Agency/NRW within 10 working days of the decision to issue or revoke the licence being made.

A template form for submitting the information to the Environment Agency/NRW is in the process of being agreed and when available the LGA and the Environment Agency/NRW will be circulating this to councils. The aim of this is to ensure that the Environment Agency/NRW do not have to send data back to the originating local authority for correction and to provide as much consistency in entries on the register as possible. This will be important as the licensing regime develops in facilitating checks on dealers. With mobile dealers potentially holding multiple licences across a range of local authorities, differences in the way information is entered will make it more difficult to spot that one authority may have revoked the collector's licence. For this reason consideration is being given to ask for more information through the template than just what is required for the public register. The home addresses of mobile collectors will help councils and the police distinguish between mobile collectors so there is a possibility councils will be asked to supply and update this information as well.

In order for the register to work properly each licence will need a unique identification number. The Environment Agency/NRW are therefore keen to agree a naming and numbering convention for licences, including retaining the licence number when a licence is renewed even if a separate reference number is automatically generated by the council's back-office systems.

Where information has been submitted but data has been found that needs correction then the files will be sent back to the local authority to be amended. Details will be supplied as to why the data needs correcting. Councils will therefore have to provide the Environment Agency/NRW with an email address to which the data can be returned. Once the register is up and running any questions about the data on it will be referred back to the licensing authority by the Environment Agency/NRW.

The register itself will be accessed through the Environment Agency/NRW website, where it will appear as a separate searchable register. This will show the type of licence, and may also show the postcode for mobile collector's licences.

The process described here will also be used for notifying the Environment Agency/NRW of any variations in the licence as councils are required to do under s8 of the Act. This includes:

- changing the type of licence from one form to the other
- changes in the name of the licensee(s)
- a change in sites from which the licensee can carry on business

- a change in the name of the site manager(s)
- whether the business has stopped trading in that local authority area as a scrap metal dealer
- any changes in the trading name.

Similarly councils are obliged to notify the Environment Agency/NRW of any licences that are revoked. Any notification of changes to the register detail are likely to require the overwriting of all the old data about the licence so the template provided for notifying the Environment Agency/NRW of a new licence will probably also be used for notifying them of any variations.

Form and content of licence when issued

The details the licence has to contain are set out in the legislation (s2(4) and (6)), and it also has to be in a form that allows it to be displayed in accordance with the requirements in s10.

In the case of a site licence, the actual licence has to state on it the name of the licensee; the name of the authority that issued it; list the sites in the authority's area where the licensee is allowed to conduct business; the name of any site manager at each site; and the date the licence will expire.

With a mobile collector's licence, the actual licence has to state the name of the licensee; the name of the authority that issued it and the date on which it is due to expire.

Although not required by law, councils should consider inserting the unique licence number for that licence created in relation to the national register as that would aid the police, the Environment Agency/NRW and other agencies in checking the dealer against the national register.

In the case of a mobile collector the dealer has to display a copy of the licence in their vehicle in such a way that it can be read by a person outside the vehicle. Councils will therefore have to give consideration when issuing the licence to ensure it is legible from outside the vehicle if, for example, it is left on the dashboard like a disabled parking badge.

Appendix 3

SCRAP METAL DEALERS ACT 2013

Fee Breakdown

Fees are based on the following officer costs:

Admin officer	£36 per hr
Technical Officer	£62 per hr
Senior Technical Officer	£67 per hr

NB. Both Technical Officers and Senior Technical Officers may carry out 'Officer' functions. Therefore, the average hourly cost of both posts has been used for these functions ($62 + 67 / 2 = £64.50$).

Compliance Visits (site licence only)

(carried out by Technical or Senior Technical Officers):

1 per year x 1.5 hrs x 3 years	£290.25
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Admin per application

(including scanning applications, checking application is complete, inputting on to Council database, carrying out Police and Env Agency checks, issuing licence, sharing data with Environment Agency register):

2 hrs	£72
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Supervision and decision making per application

(including either Technical Officer or Senior Technical Officer checking applications, deciding suitability of applicants, reviewing relevant offences, deciding whether licence to be issued):

1 hr	£64.50
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Legal costs per application

(there are currently four known sites and eight previously registered itinerant collectors operating in Brighton and Hove. Legal costs are based on £2000 in total, split over the existing scrap metal dealers and the assumption that we will get approximately 8 additional and new applications for collectors. One or two of which may result in a committee hearing).

£100

Fees to be set in the first year

Site Licence (3 year)	£526.75
Collector (3 year)	£236.50

Renewals	As above
Major Variation (collector to site) (charged at the difference in cost between a collector and site licence)	£290.25
Minor Variation (name/address changes) (1hr admin officer)	£36
Copy of Licence (1/2 hour admin officer)	£18

LICENSING COMMITTEE (NON-LICENSING ACT 2003 FUNCTIONS)

Agenda Item 22

Brighton & Hove City Council

Subject:	Licence fees 2014/2015		
Date of Meeting:	21 November 2013		
Report of:	Head of Planning and Public Protection		
Contact Officer:	Name:	Tim Nichols	Tel: 29-2163
	Email:	tim.nichols@brighton-hove.gcsx.gov.uk	
Ward(s) affected:	All		

FOR GENERAL RELEASE

1. SUMMARY AND POLICY CONTEXT:

- 1.1 This report sets out the proposed licence fees and charges for 2014/15 relating to Street Trading, Sex Establishments and Sex Entertainment Licences, Gambling premises, taxi licensing and other licensing functions.

2. RECOMMENDATIONS:

- 2.1 That the committee approves the following variation to licence fees:
- Hackney carriage driver fee +10%, hackney carriage vehicle fee -5%, private hire driver fee +10% and private hire vehicle fee -5%.
 - Sex entertainment venues and sex establishments are decreased by -7.5%.
 - Street trading fees - decreased by -5%.
 - All Gambling Act 2005 fees: increased by 10% applied annually in 2014/15 and 2015/16 to remove the shortfall (except where already set at the maximum e.g. Adult Gaming Centres/Family Entertainment Centres).

3. CONTEXT/ BACKGROUND INFORMATION

- 3.1 In order to ensure that council tax payers are not subsidising work concerning licensing administration, income is raised by licence fees which aim to cover the cost of administration of each regime within constraints of regulation. Licence fees should not be used to raise revenue.

3.2 Licence Fee Setting – general principles

1. There must be a proper determination of the authorisation fee (see Hemming [2013] EWCA Civ 591).
2. A clear understanding of the policy and objects of the regime in question is required. It follows that the relevant considerations for vetting an applicant for a street trading licence will be different to those required for a sex establishment (see R v Manchester City Council ex parte King (1991) 89 LGR 696; also R (on the application of Davis & Atkin) v Crawley Borough Council [2001] EWHC 854 (Admin)). Particular attention needs to be had to those statutory provisions

where a power is given to the local authority for the determination of an authorisation fee and other administrative fees.

3. Applicability of the European Services Directive (see Hemming [2013] EWHC 1260 (Admin) and [2013] EWCA Civ 591: The Directive applies to street trading and sex licensing; not gambling or taxis.

4. Different fee levels for different types of application. A licensing authority is entitled to set either the same or different fee levels for different types of applications: i.e. grant, renewal, variation, alteration or transfer. R v Greater London Council, ex parte Rank Organisation [1982] LS Gaz R 643.

5. Recovery of deficit. In R v Westminster City Council, ex parte Hutton (1985) 83 L.G.R. 461 it was held that where the fee income generated in one year fails to meet the costs of administering the licensing system, it is open to the local authority to make a proportionate increase in the licence fee for the following year so as to recoup the cost of the shortfall (Hutton at p 518). This longstanding principle was confirmed in Hemming [2012].

6. Accounting for surplus. In Hemming [2012] EWHC 1260 (Admin) and [2013] EWCA Civ 591 the court determined surpluses as well as deficits are to be carried forward. The licensing authority is not entitled to make a profit. (R v Manchester ex parte King 1991 89 LGR 696.

7. Rough and ready calculations. In Hemming [2012] EWHC 1260 (Admin) and [2013] EWCA Civ 591, the court did not require pin-point precision year on year. The council does not have to adjust the licence fee every year to reflect any previous deficit or surplus, so long as it 'all comes out in the wash' eventually. And the adjustment does not have to be precise: a rough and ready calculation which is broadly correct will do.

8. Anticipated costs. Cases demonstrate that the fee level may be fixed by reference to anticipated costs of administering the authorisation scheme.

9. Over-estimation. If the fee levied in the event exceeds the cost of operating the scheme, the original decision will remain valid provided it can be said that the district council reasonably considered such fees would be required to meet the total cost of operating the scheme. R v M ex parte King.

Hackney Carriage & Private Hire

3.3 The Council must be able to show that it calculates hackney carriage and private hire licensing fees in accordance with the specific requirements of the Local Government (Miscellaneous Provisions) Act 1976. This requires that such fees have to be reasonable to recover the cost of issue and administration. They cannot be used to raise revenue. The Act allows the following costs to be recovered in the fees:

- The reasonable cost of carrying out vehicle inspection to decide if a licence should be granted
- The reasonable costs of providing hackney carriage stands
- Any reasonable administrative or other costs in connection with vehicle inspection and providing hackney carriage stands and

- Any reasonable administrative or other costs in the control and supervision of hackney carriage and private hire vehicles.

The Council aims to be transparent in recording or presenting its method for calculating licence fees. This report aims to do that.

- 3.4 A trading position has been established, taking into account all expenditure that the Council has incurred in administering the service, including both direct and indirect costs. (Indirect costs for example would include an element of management time to oversee the activity, a legitimate expense in administering the licensing function). The results are set out in the table below.

Financial Year	Balance on Taxi License Fees £000*
2012/13 Actual	58 deficit
2013/14 Forecast	42 deficit
2014/15 Forecast	41 deficit
Total	141 deficit

- 3.5 The initial cost projections for 2014/15 show that if licence fees are increased at the corporate rate of inflation of 2.5% a deficit will remain on the trading account. The proposed fee changes will reduce the annual deficit with an aim to bring the trading account to a breakeven position within a five year period. Detailed trading accounts are attached in Appendix 1-3.

Sex establishments and Street trading

- 3.6 R v. Manchester ex parte King - fees should be set at a level reasonably expected to cover costs. Surplus should be reinvested in service.

The Provision of Services Regulations 2009 is likely to have the effect that fees may need to accommodate “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.” Recent case law, Hemming (and others) v Westminster City Council (2012), has held that this cannot include the cost of investigating and prosecuting persons, firms or companies who operate sex establishments within the Council’s area without a licence.

- 3.7 Sex establishments: A breakdown of inspections carried out during 2012/13 by officers shows that an insignificant amount of inspections related to unlicensed premises. The administration of sex establishments and SEVs is broken down as follows:

There are 5 Sex Establishments in total, only one of which paid in full. The remaining four paid in instalments, necessitating a significant amount of additional work for officers. All of this work relates to licensed premises.

SEVS: There are 3 SEVs in total – two establishments have paid in full, one establishment has paid in instalments, necessitating additional work. SEV fees are based on licence renewals. It is unlikely that a further SEV licence would be granted as this would be contra policy.

- 3.8 A trading position has been established, taking into account all expenditure that the Council has incurred in administering the service, including both direct and indirect costs. (Indirect costs for example would include an element of management time to oversee the activity, a legitimate expense in administering the licensing function). The results are set out in the table below.

Financial Year	Sex establishments and sex entertainment venues £000*
2012/13 Actual	28 surplus
2013/14 Forecast	18 surplus
2014/15 Forecast	14 surplus
Total	60 surplus

As part of the 2013/14 licence fee report to Committee it was agreed to amalgamate the fees for sex establishments and sex entertainment venues, and to charge a fee of £6,500 for both. Initial forecasts suggest that charging for sex establishment and venues at the current charge rate would result in a surplus in 2013/14 of approximately £18,000. The proposed fee changes reduce the annual surplus with an aim to bring the trading account to a breakeven position within a five year period. Detailed Trading Accounts are attached in Appendix 1-3.

- 3.9 Following the same principles as stated previously, a trading position has been established for Street Trading. During 2012/13, the majority of inspections carried out by officers are recoverable. The administration of street trading is wholly recoverable, broken down as follows:

Zone A:

3 traders at 50 sq ft: all pay quarterly.

2 traders at 42 sq ft – ditto.

Zone B:

14 traders, 2 have paid in full, 12 pay by quarterly instalments

Upper Gardner Street

Total 51 traders – 3 pay in full with the remainder of the traders paying by quarterly instalments

- 3.10 Taking into account all the council expenditure incurred in administering the service including an element of management time to oversee the activity, the results are set out in the table below.

Financial Year	Balance on Street Trading Fees £000*
2012/13 Actual	17 surplus
2013/14 Forecast	17 surplus
2014/15 Forecast	13 surplus
Total	47 surplus

Fees should be set each year to recover the expected cost of administering the service. Initial forecasts suggest that charging for street trading at the current charge rate would result in a surplus in 2013/14 of approximately £17,000. The proposed fee changes reduce the annual surplus with an aim to bring the trading account to a

breakeven position within a five year period. Detailed Trading Accounts are attached in Appendix 1-3.

Gambling Act 2005

- 3.11 It was agreed in November 2012 that Gambling fees would be increased by £40 then a 10% increase is applied annually in 2014/15 and 2015/16 to remove the shortfall (except where already set at the maximum e.g. Adult Gaming Centres/Family Entertainment Centres). Trading accounts can be found at appendix 3.
- 3.12 A table showing the fee increases can be seen at appendix 4.
- 3.13 Licensing (Income and Banking) was audited between August and October 2012. The internal auditors reported that Substantial Assurance is provided on the effectiveness of the internal controls over the Licensing Income and Banking system. This opinion means that the effective controls are in place to manage the key risks to the system.

4. ANALYSIS & CONSIDERATION OF ANY ALTERNATIVE OPTIONS

Fees must be set.

5. COMMUNITY ENGAGEMENT AND CONSULTATION

- 5.1 Council's finance officer and legal services.

6. CONCLUSION

Fees must be set.

7. FINANCIAL & OTHER IMPLICATIONS:

Financial Implications:

- 7.1 License fees are set annually at a level that it is reasonably believed will cover the costs of providing the service, and in accordance with the legal principles involved. This is necessary in order to ensure that council tax payers are not subsidising work concerning licensing administration. Detailed trading account are attached in Appendix 1-3.

Finance Officer Consulted: Steven Bedford

Date 01/10/13

Legal Implications:

- 7.2 Legal constraints on setting fees

Fees must be charged in accordance with the requirements of the legislation under which they are charged. Thus for instance the Licensing Act 2003 gives the Council no discretion as they are set centrally by the relevant government department. Other legislation such as the Local Government (Miscellaneous Provisions) Act 1982 which covers a whole raft of activities and includes street trading and sex establishments simply states that we may charge such fees as we consider reasonable.

The term 'Reasonable' however does not imply wide discretion but incorporates important legal principles and constraints. These were highlighted in the case of *R v Manchester City Council ex parte King* concerning street trading. This case held that the fees charged must be related to the costs incurred in providing the street trading service. They must not be used to raise revenue generally. This principle is key and applies to other licensing regimes such as sex establishments. This means the fees must be set at a level reasonably expected to cover the cost of providing the service.

This principle has been reinforced by the introduction of the European Services Directive which took effect from the end of 2009. It aims to ensure that licence applications and procedures are transparent and burdens on business kept to a minimum. The processes must be non-discriminatory, justified, proportionate, clear, objective, made in advance, transparent and accessible. The domestic legislation will require "any charges provided for by a competent authority which the applicant may incur under an authorisation scheme must be reasonable and proportionate to the cost of the authorisation procedures and formalities under the scheme and must not exceed those procedures and formalities". Any fee charged for establishing a service can only be based on cost recovery and cannot be set at an artificial high level to deter service sectors from an area. It was held in the recent case of *Hemming (and others) v Westminster City Council* (2012) EWHC 1260 (Admin) and (2013) EWCA Civ 591 that when determining what is a reasonable fee for the grant or renewal of a licence to operate a sex establishment, the Council is not, as a consequence of the European Services Directive, entitled to take into account the cost of investigating and prosecuting persons firms or companies who operate sex establishments within the Council's area without a licence. The same principle would also apply to the cost of unlicensed street traders. The Council should schedule regular fee reviews.

Therefore the trading accounts must be carefully looked at in accordance with these principles. There is a risk of challenge by way of Judicial Review in cases where fees are set at an unreasonable or unlawful level.

Lawyer Consulted: Rebecca Sidell

Date: 06/11/13

Equalities Implications:

- 7.3 There are no direct equalities implications.

Sustainability Implications:

- 7.4 There are no direct sustainability implications.

Any Other Significant Implications:

- 7.5 None.

SUPPORTING DOCUMENTATION

Appendices:

- 1-3 Trading Accounts.
4. List of fees and charges.

Documents in Members' Rooms

1. None.
2. None.

Background Documents

1. None.

Brighton & Hove City Council - Environmental Health & Licensing

Licensing Other - Trading Account

	2012-13 Outturn				2013-14 Forecast				2014-15 Draft Budget			
	Street Trading	SEVs	Outside Scope	Total	Street Trading	SEVs	Outside Scope	Total	Street Trading	SEVs	Outside Scope	Total
	£	£	£	£	£	£	£	£	£	£	£	£
Employees	42,560	29,765	45,035	117,360	38,097	27,446	40,543	106,086	38,643	27,789	41,114	107,546
Salaries	34,023	23,573	36,202	93,798	29,651	21,200	32,216	83,067	30,084	21,487	32,663	84,235
National Insurance	3,040	2,170	3,299	8,509	2,242	1,684	2,518	6,444	2,274	1,705	2,551	6,530
Superannuation	4,734	3,433	5,192	13,359	4,398	3,297	4,934	12,629	4,466	3,344	5,006	12,816
Overtime	310	165	280	755	787	434	725	1,946	795	439	732	1,966
Training & Other	453	424	62	939	1,019	831	150	2,000	1,024	814	162	2,000
Transport Related	393	367	53	813	127	104	19	250	128	102	20	250
Supplies & Services	1,415	1,324	192	2,931	510	415	75	1,000	512	407	81	1,000
Support Services	6,833	4,844	6,973	18,650	8,120	5,862	8,518	22,500	8,287	5,969	8,694	22,950
Management & Administration Overheads	1,216	863	1,241	3,320	1,202	868	1,260	3,330	1,228	884	1,288	3,400
Property Services	1,748	1,239	1,783	4,770	2,988	2,157	3,135	8,280	3,051	2,198	3,201	8,450
ICT Services	905	641	924	2,470	1,454	1,050	1,526	4,030	1,484	1,069	1,557	4,110
Financial Services	1,213	859	1,238	3,310	989	714	1,037	2,740	1,007	726	1,057	2,790
Human Resources	1,531	1,086	1,563	4,180	462	333	485	1,280	473	341	496	1,310
Strategy & Governance	73	52	75	200	949	685	996	2,630	968	697	1,015	2,680
Communications	147	104	149	400	76	55	79	210	76	54	80	210
Total Expenditure	51,201	36,299	52,253	139,754	46,854	33,828	49,155	129,837	47,570	34,267	49,909	131,746
Income from Licences	-68,529	-64,097	-9,319	-141,945	-63,771	-52,000	-9,412	-125,183	-60,566	-48,100	-9,564	-118,230
(Surplus)/Deficit	-17,328	-27,798	42,934	-2,191	-16,917	-18,172	39,743	4,654	-12,996	-13,833	40,345	13,516

Brighton & Hove City Council - Environmental Health & Licensing
Hackney Carriage and Private Hire Vehicles Licensing - Trading Account

	2012-13 Outturn						
	Hackney Carriages			Private Hire Vehicles			Total £
	Vehicles £	Drivers £	Total £	Vehicles £	Drivers £	Total £	
Employees	38,415	56,628	95,043	27,808	40,341	68,149	163,191
Salaries & Agency	30,426	44,850	75,276	22,024	31,951	53,975	129,251
National Insurance	2,175	3,206	5,381	1,574	2,284	3,858	9,239
Superannuation	4,020	5,926	9,946	2,910	4,221	7,131	17,077
Overtime	1,692	2,495	4,187	1,225	1,777	3,002	7,189
Training	49	73	122	36	52	88	210
Other Employee Costs	53	78	131	38	56	94	225
Premises	179	404	583	144	199	343	926
Transport Allowances	309	456	765	224	325	549	1,314
Supplies & Services	11,444	48,894	60,338	9,202	24,270	33,473	93,810
Criminal Record Bureau Checks	0	16,818	16,818	0	8,272	8,272	25,090
Furniture and Equipment	222	503	726	179	248	427	1,153
Licence Plates & Badges	1,994	4,515	6,509	1,614	2,221	3,835	10,344
Catering - Provisions	20	44	64	16	22	38	102
Staff Clothing Uniforms	61	90	151	45	64	109	260
Print Design and Reprographic	241	545	786	195	268	463	1,249
Office Stationery	1,615	3,656	5,271	1,306	1,799	3,105	8,376
General Office Expenses	2	4	6	2	2	4	10
Consultants' Fees	3,639	8,240	11,879	2,945	4,053	6,998	18,877
Legal Fees	0	0	0	0	0	0	0
Independent Assessments - Medical	0	6,699	6,699	0	3,295	3,295	9,994
Miscellaneous Fees	0	0	0	0	0	0	0
Postages	505	1,144	1,649	409	563	972	2,621
Mobile Telephones - Calls / Rental	32	47	79	23	33	56	135
Computers - Purchase Of Hardware	250	369	619	181	263	444	1,063
Computers - Software (Incl Licences)	332	489	821	241	348	589	1,410
Conferences - Officers	71	162	233	58	79	137	370
Subscriptions To Organisations	252	571	823	204	281	485	1,308
Hospitality	46	105	151	37	52	89	240
Publicity & Marketing	697	1,577	2,274	563	776	1,339	3,613
Miscellaneous Charges	16	37	53	13	18	31	84
Credit Card Commission	0	0	0	0	0	0	0
DVLA Checks	1,448	3,278	4,726	1,171	1,613	2,784	7,510
Support Services	9,860	20,834	30,694	7,320	12,755	20,076	50,770
Management & Administration							
Overheads	1,344	2,840	4,184	997	1,739	2,736	6,920
Supp Services Exp GFRA Misc Insc	4	9	13	3	4	7	20
Property Services	2,193	4,633	6,826	1,627	2,837	4,464	11,290
ICT Services	860	1,818	2,678	639	1,113	1,752	4,430
Financial Services	4,400	9,299	13,699	3,268	5,693	8,961	22,660
Human Resources	919	1,941	2,860	682	1,188	1,870	4,730
Strategy & Governance	60	127	187	45	78	123	310
Communications	80	168	248	59	103	162	410
Total Expenditure	60,207	127,216	187,423	44,699	77,890	122,589	310,012
Income from Licences	-91,989	-66,133	-158,122	-59,188	-35,020	-94,208	-252,330
(Surplus)/Deficit	-31,782	61,083	29,301	-14,489	42,870	28,381	57,682

	2013-14 Forecast						
	Hackney Carriages			Private Hire Vehicles			Total £
	Vehicles £	Drivers £	Total £	Vehicles £	Drivers £	Total £	
Employees	48,737	71,842	120,579	35,279	51,180	86,459	207,038
Salaries & Agency	39,396	58,074	97,470	28,518	41,371	69,889	167,360
National Insurance	2,171	3,201	5,372	1,572	2,280	3,852	9,224
Superannuation	4,379	6,455	10,834	3,170	4,599	7,769	18,603
Overtime	2,439	3,595	6,035	1,766	2,561	4,327	10,362
Training	257	378	635	186	269	455	1,090
Other Employee Costs	94	139	233	68	99	167	400
Premises	173	377	550	138	182	320	870
Transport Allowances	344	507	850	249	361	610	1,460
Supplies & Services	10,360	44,597	54,956	8,244	21,750	29,994	84,950
Criminal Record Bureau Checks	0	13,213	13,213	0	6,387	6,387	19,600
Furniture and Equipment	119	260	379	95	126	221	600
Licence Plates & Badges	3,236	7,061	10,298	2,589	3,413	6,002	16,300
Catering - Provisions	0	0	0	0	0	0	0
Staff Clothing Uniforms	141	208	349	102	148	251	600
Print Design and Reprographic	0	0	0	0	0	0	0
Office Stationery	0	0	0	0	0	0	0
General Office Expenses	488	1,066	1,554	391	515	906	2,460
Consultants' Fees	1,410	3,076	4,486	1,128	1,487	2,614	7,100
Legal Fees	437	953	1,390	349	461	810	2,200
Independent Assessments - Medical	0	9,189	9,189	0	4,441	4,441	13,630
Miscellaneous Fees	10	22	32	8	10	18	50
Postages	107	234	341	86	113	199	540
Mobile Telephones - Calls / Rental	235	347	582	170	247	418	1,000
Computers - Purchase Of Hardware	0	0	0	0	0	0	0
Computers - Software (Incl Licences)	200	295	495	145	210	355	850
Conferences - Officers	0	0	0	0	0	0	0
Subscriptions To Organisations	0	0	0	0	0	0	0
Hospitality	107	234	341	86	113	199	540
Publicity & Marketing	1,767	3,856	5,623	1,414	1,864	3,277	8,900
Miscellaneous Charges	0	0	0	0	0	0	0
Credit Card Commission	214	468	682	172	226	398	1,080
DVLA Checks	1,886	4,116	6,002	1,509	1,989	3,498	9,500
Support Services	10,456	20,589	31,046	7,705	12,879	20,584	51,630
Management & Administration							
Overheads	1,410	2,774	4,184	1,038	1,737	2,776	6,960
Supp Services Exp GFRA Misc Insc	48	104	152	38	50	88	240
Property Services	3,863	7,602	11,464	2,845	4,761	7,606	19,070
ICT Services	1,774	3,492	5,266	1,307	2,187	3,494	8,760
Financial Services	2,755	5,421	8,176	2,029	3,395	5,424	13,600
Human Resources	470	925	1,395	346	579	925	2,320
Strategy & Governance	73	144	216	54	90	144	360
Communications	65	128	192	48	80	128	320
Total Expenditure	70,069	137,912	207,981	51,615	86,352	137,967	345,948
Income from Licences	-94,513	-94,356	-188,869	-67,492	-47,793	-115,286	-304,155
(Surplus)/Deficit	-24,444	43,555	19,112	-15,877	38,559	22,682	41,793

2014-15 Draft Budget							
	Hackney Carriages			Private Hire Vehicles			Total £
	Vehicles £	Drivers £	Total £	Vehicles £	Drivers £	Total £	
Employees	49,062	72,322	121,384	35,515	51,522	87,037	208,421
Salaries & Agency	39,892	58,804	98,696	28,877	41,892	70,768	169,464
National Insurance	2,192	3,231	5,423	1,587	2,302	3,888	9,312
Superannuation	4,296	6,332	10,628	3,109	4,511	7,620	18,248
Overtime	2,332	3,438	5,770	1,688	2,449	4,137	9,907
Training	257	378	635	186	269	455	1,090
Other Employee Costs	94	139	233	68	99	167	400
Premises	173	377	550	138	182	320	870
Transport Allowances	344	507	850	249	361	610	1,460
Supplies & Services	10,479	44,924	55,403	8,339	21,908	30,247	85,650
Criminal Record Bureau Checks	0	13,213	13,213	0	6,387	6,387	19,600
Furniture and Equipment	119	260	379	95	126	221	600
Licence Plates & Badges	3,276	7,148	10,424	2,621	3,455	6,076	16,500
Catering - Provisions	0	0	0	0	0	0	0
Staff Clothing Uniforms	141	208	349	102	148	251	600
Print Design and Reprographic	0	0	0	0	0	0	0
Office Stationery	0	0	0	0	0	0	0
General Office Expenses	488	1,066	1,554	391	515	906	2,460
Consultants' Fees	1,430	3,119	4,549	1,144	1,508	2,651	7,200
Legal Fees	437	953	1,390	349	461	810	2,200
Independent Assessments - Medical	0	9,256	9,256	0	4,474	4,474	13,730
Miscellaneous Fees	10	22	32	8	10	18	50
Postages	107	234	341	86	113	199	540
Mobile Telephones - Calls / Rental	235	347	582	170	247	418	1,000
Computers - Purchase Of Hardware	0	0	0	0	0	0	0
Computers - Software (Incl Licences)	200	295	495	145	210	355	850
Conferences - Officers	0	0	0	0	0	0	0
Subscriptions To Organisations	0	0	0	0	0	0	0
Hospitality	107	234	341	86	113	199	540
Publicity & Marketing	1,787	3,899	5,686	1,430	1,884	3,314	9,000
Miscellaneous Charges	0	0	0	0	0	0	0
Credit Card Commission	214	468	682	172	226	398	1,080
DVLA Checks	1,926	4,202	6,128	1,541	2,031	3,572	9,700
Support Services	10,671	21,000	31,671	7,864	13,135	20,999	52,670
Management & Administration							
Overheads	1,439	2,830	4,268	1,060	1,772	2,832	7,100
Supp Services Exp GFRA Misc Insc	48	104	152	38	50	88	240
Property Services	3,941	7,752	11,693	2,903	4,854	7,757	19,450
ICT Services	1,811	3,563	5,374	1,334	2,231	3,566	8,940
Financial Services	2,810	5,528	8,338	2,070	3,462	5,532	13,870
Human Resources	480	945	1,425	354	591	945	2,370
Strategy & Governance	75	147	222	55	92	148	370
Communications	67	132	198	49	82	132	330
Total Expenditure	70,729	139,129	209,858	52,105	87,108	139,213	349,071
Income from Licences	-89,994	-102,503	192,497	-64,164	-51,314	-115,478	-307,975
(Surplus)/Deficit	-19,265	36,627	17,361	-12,059	35,794	23,735	41,096

Brighton & Hove City Council - Environmental Health & Licensing
Gambling Act 2005 - Trading Account

	2012-13 Outturn	2013-14 Forecast	2014-15 Draft Budget	Rolling 3 year position
	£	£	£	£
Employees	56,165	37,058	37,428	
Salaries	43,649	28,922	29,211	
National Insurance	4,087	2,930	2,959	
Superannuation	8,026	5,206	5,258	
Overtime	213	0	0	
Training	190	0	0	
Transport	103	0	0	
Mileage Allowances	103	0	0	
Support Services	15,560	8,010	8,170	
Management & Administration Overheads	1,470	1,480	1,510	
Property Services	11,610	4,590	4,682	
ICT Services	680	530	541	
Financial Services	550	110	112	
Human Resources	1,050	1,100	1,122	
Strategy & Governance	80	70	71	
Communications	120	130	133	
Total Expenditure	71,828	45,068	45,598	
Income from Licences	-34,867	-49,015	-53,917	
(Surplus)/Deficit	36,962	-3,947	-8,318	24,696

2014/15
Gambling Act 2005 CHARGE PER UNIT

Table of Premises Licence Fees for Brighton & Hove Licensing Authority

Classes of Premises Licence	Reg. 5(2)(a) Non Conversion - Provisional Statement Premises	Reg. 5(2)(b) Non Conversion - Other Premises	Reg. 6 and Reg. 8 First Annual and Annual Fees	Reg. 10 Change of Circumstance	Reg. 11 Variation	Reg. 12 Transfer	Reg. 13 Copy of Licence	Reg. 14 Reinstatement	Reg. 15 Provisional Statement
Regional Casino	n/a [8,000]	n/a [3,000]	n/a [15000]	n/a [50]	n/a [7,500]	n/a [6,500]	n/a [25]	n/a [6,500]	n/a [15,000]
Large Casino	n/a [5,000]	n/a [3,000]	N/a [10000]	N/a [50]	n/a [5,000]	n/a [2,150]	n/a [25]	n/a [2,150]	n/a [10,000]
Small Casino	n/a [3,000]	n/a [3,000]	N/a [5,000]	n/a [50]	n/a [4,000]	n/a [1,800]	n/a [25]	n/a [1,800]	n/a [8,000]
Existing Casino	n/a	n/a	£1,694 [3,000]	£12.70 [50]	£1,314.50 [2,000]	£1,314.50 [1,350]	£12.70 [25]	£1,314.50 [1,350]	n/a
Bingo Premises	£679.25 [1,200]	£1,314.50 [3,500]	£594 [1,000]	£12.70 [50]	£1,314.50 [1,750]	£1,200 [1,200]	£12.70 [25]	£1,200 [1,200]	£1,314.50 [3,500]
AGCs	£679.25 [1,200]	£1,314.50 [2,000]	£594 [1,000]	£12.70 [50]	£1,000 [1,000]	£1,200 [1,200]	£12.70 [25]	£1,200 [1,200]	£1,314.50 [2,000]
Betting – Tracks	£679.25 [950]	£1,314.50 [2,500]	£594 [1,000]	£12.70 [50]	£1,250 [1,250]	£950 [950]	£12.70 [25]	£950 [950]	£1,314.50 [2,500]
FECs	£679.25 [950]	£1,314.50 [2,000]	£456.50 [750]	£12.70 [50]	£1,000 [1,000]	£950 [950]	£12.70 [25]	£950 [950]	£1,270.50 [2,000]
Betting - Other	£679.25 [1,200]	£1,314.50 [3,000]	£374 [600]	£12.70 [50]	£1,314.50 [1,500]	£1,200 [1,200]	£12.70 [25]	£1,200 [1,200]	£1,314.50 [3,000]
Lotteries-New						£40.00	*	£40.00	0.00
- Renewal						£20.00	*	£40.00	0.00

Prices shown in pounds (£) are the relevant fees in Brighton & Hove only; prices in square brackets are legal maximum levels for information.

Licence fees

	2013/14	2013/14	% increase
Cosmetic piercing (acupuncturists, tattooists, cosmetic piercers, per premises, per additional piercer)	154.00	158.00	2.5%
Street trading			
Upper Gardner Street	594.00	564.00	-5%
Zone B	711.50	676.00	-5%
Zone A 50 sq. ft.	4,886.00	4,642.00	-5%
Zone A 42 sq. ft.	4,014.00	3813.00	-5%
Street artists	34.00	32.00	-5%
Misc. short term	34.00	32.00	-5%
Farmers market per stall	255.00	242.00	-5%
Small street market per occasion	340.00	323.00	-5%
Sex Entertainment Venue (lap dancing)	6,500.00	6,012.50	-7.5%
Sex establishments			
Grant	6500.00	6,012.50	-7.5%
Renewal	6500.00	6,012.50	-7.5%
Occasional	2167.00	2,004.00	-7.5%
Taxi licences			
First Application (drivers)	74.00	81.00	10%
DBS check – was CRB currently	44.00	44.00	Not set by BHCC
Hackney Carriage Drivers Licence	57.00	63.00	10%
Private Hire Drivers Licence	55.00	60.50	10%
Hackney Carriage Vehicle Licence	166.00	158.00	-5%
Ditto for 6 months	New	79.00	New
Private Hire Vehicle Licence	141.00	134.00	-5%
Ditto for 56 months	New	67.00	New
Hackney Carriage plate deposit	35.00	33.00	-5%
Private Hire plate deposit	25.00	24.00	-5%
Private Hire operator licence (1 or 2 cars)	63.00	60.00	-5%
Private Hire operator licence (3 or more cars)	221.00	210.00	-5%
Hackney Carriage Substitute Vehicle Fee	27.00	26.00	-5%
Private Hire Vehicle Substitute Vehicle Fee	26.00	25.00	-5%
Knowledge Test Fee	25.00	27.50	10%
Route Test Fee	35.00	38.50	10%
Replacement License Fee	5.00	5.50	10%
Replacement Badge Fee	10.00	11.00	10%
HC/PHVehicle transfer/change of detail	--	40.00	New