



## General Licensing and Registration Committee

**Date**        **Wednesday 23 April 2014**  
**Time**        **10.00 am**  
**Venue**       **Committee Room 2, County Hall, Durham**

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### Business

#### Part A

1. Apologies for Absence
2. Declarations of Interest (if any)
3. The Minutes of the Meeting held on 17 October 2013 (Pages 1 - 4)
4. Licensing (Policy) Fee Setting for Sex Establishments and Sexual Entertainment Venues (Pages 5 - 8)
5. Such other business as, in the opinion of the Chairman of the meeting, is of sufficient urgency to warrant consideration.

**Colette Longbottom**  
Head of Legal and Democratic Services

County Hall  
Durham  
15 April 2014

To: **The Members of the General Licensing and Registration Committee**

Councillor C Carr (Chairman)  
Councillor E Bell (Vice-Chairman)

Councillors B Alderson, A Batey, D Bell, J Bell, J Blakey, D Boyes, P Crathorne, I Geldard, B Glass, B Graham, O Gunn, C Hampson, J Hart, D Hicks, A Hopgood, K Hopper, I Jewell, J Lee, T Nearney, J Maitland, L Marshall, P May, D Stoker, A Surtees and A Willis

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**Contact: Jill Errington**

**Tel: 03000 269703**

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**DURHAM COUNTY COUNCIL**

At a Meeting of **General Licensing and Registration Committee** held in Committee Room 2, County Hall, Durham on **Thursday 17 October 2013 at 10.00 am**

**Present:**

**Councillor C Carr (Chairman)**

**Members of the Committee:**

Councillors E Bell (Vice-Chairman), B Alderson, A Batey, D Bell, J Bell, P Crathorne, B Glass, B Graham, O Gunn, C Hampson, D Hicks, A Hopgood, K Hopper, I Jewell, J Lee, T Nearney, J Maitland, L Marshall, D Stoker and A Willis

**Also Present:**

C Rudman – Licensing Manager  
C Greenlay – Principal Solicitor, Litigation  
H Johnson – Licensing Team Leader

**1 Apologies for Absence**

Apologies for Absence were received from Councillors I Geldard, J Hart and P May.

**2 Declarations of Interest**

There were no declarations of interest received.

**3 Minutes**

The Minutes of the meeting held on 19 January 2012 were agreed as a correct record and were signed by the Chairman.

**4 Scrap Metal Dealers Act 2013 - Guidance**

Consideration was given to the report of the Head of Environment, Health and Consumer Protection which provided Members with information and guidance on the Scrap Metal Dealers Act 2013 (for copy see file of Minutes).

C Rudman, Licensing Manager presented the key features of the Act which sought to harmonise the previous scrap metal registration scheme and the motor vehicle salvage operators regimes.

The Act introduced a Site Licence which required all sites at which the licensee carried on business as a scrap metal dealer within the local authority area to be

identified, and a Collector's Licence which authorised the licensee to operate as a mobile collector in the area of the issuing local authority.

Members discussed the Guidance and implications of the legislation at length and asked a number of questions which were responded to by the Licensing Officers and the Principal Solicitor - Litigation.

In response to questions about application fees, the Committee was referred to the report which set out the factors that had been taken into account in calculating appropriate fees. As the legislation was new the costs were a prediction and would be subject to review on an annual basis. Durham County Council's proposed fees were found to be at a reasonable level when measured against other local authorities.

Members referred to trades other than scrap metal dealers who bought and sold scrap metal as a result of their business and asked if they would require a licence. The Committee was advised that a licence would not be required if the purchase or sale of scrap metal was ancillary to their business/trade.

Licensed collectors would be required to display their licence in every vehicle used to collect scrap metal. Employees of the licence holder did not need to be licensed.

An individual could not have both a Collector's Licence and a Site Licence from the same Licensing Authority. A Collector's Licence allowed the collector to operate door to door and did not permit the licensee to carry on a business at a site within any area.

In considering the process of dealing with hearings and delegations to Officers, the Committee was advised that the Act did not specify how Authorities should deal with these. Therefore Members' views were sought on which applications should be dealt with by Officers and which should be referred to the General Licensing and Registration Sub-Committees. This would assist Members and Officers in dealing with applications until the Policy was produced in 2014.

C Rudman advised that the Police may submit representations about a licence application where they believed that the applicant was not a suitable person, for example where the applicant had been convicted of a relevant offence. A lengthy discussion ensued on relevant offences and it was concluded that applications should be referred to the Sub-Committees when a relevant offence had occurred within the last 3 years or where there were 3 or more convictions.

It was also agreed that relevant offences and tariffs along the lines of those which were set out in the Hackney Carriage and Private Hire Licensing Policy should be applied to applications under the Scrap Metal Dealers Act 2013.

In discussing site licences Members asked about the location of some sites and the potential impact on neighbours. The Committee was of the view that operators should have planning permission before a licence was granted but were advised that this was not a specific requirement within the legislation, and in some cases may not be required, for example where there were permitted development rights.

It was therefore suggested that the Policy include a statement to the effect that a licence would not normally be granted without the appropriate planning permission, and that the application should ask for a Planning Reference Number. In addition it was suggested that the application should be accompanied by a plan with the site boundary identified. This should prevent encroachment beyond the site and assist in any enforcement action.

Reference was made to the Equality and Diversity statement contained in Appendix 1 of the report and it was suggested that the Policy should include an appropriate statement that all applicants would be treated equally by the Local Authority and that no decision taken under the Act would in any way discriminate against any person or group in society.

Following discussion it was **Resolved** that:

- (i) the draft Guidance under the Scrap Metal Dealers Act 2013 be noted;
- (ii) applications be referred to the General Licensing and Registration Sub-Committees in the following circumstances:-
  - (a) when a relevant offence had occurred within the last 3 years or;
  - (b) where the applicant had 3 or more convictions of any nature;
  - (c) adopt a similar tariff to that applied for offences in the Hackney Carriage and Private Hire Licensing Policy for further consideration by Members in the licensing of applicants under the Scrap Metal Dealers Act 2013;
- (iii) reference be made in the Guidance that a site licence would not normally be granted without the appropriate planning permission;
- (iv) each application for a site licence be accompanied by a plan with the site boundary identified, and include a Planning Reference Number where appropriate;
- (v) an Equality and Diversity statement be included in the Policy.

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**General Licensing and  
Registration Committee**

**Date: 23 April 2014**

**Subject: Licensing (Policy)  
Fee setting for Sex  
Establishments and Sexual  
Entertainment Venues**



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**Report of Joanne Waller, Head of Environment, Health and  
Consumer Protection Service**

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**Purpose of the Report**

1. Members are asked to consider for adoption by Council proposed new fees relating to the licensing of sex establishments and sexual entertainment venues.

**Background**

2. On 8 September 2010 the Council resolved to adopt schedule 3 of the Local Government (Miscellaneous Provisions) Act 1982 and the amendment to this schedule provided by section 27 of the Policing and Crime Act 2009. This enabled the Council to licence all forms of sex establishments including sex shops, sex cinemas and Sexual Entertainment Venues. At the time of this resolution, Council set the application and annual fees at £3000.
3. The application and annual fees for such licences must be determined by a duly authorised Licensing Committee in accordance with the Local Government (Miscellaneous Provisions) Act 1982.
4. The EU Service Directive that came into force on 28<sup>th</sup> December 2009 requires fees for the granting of licences to be cost-neutral.

**Material Considerations**

5. The provision of fee setting under this section of the Act does not allow the delegation of the responsibility to any other officer or function other than the Licensing Committee. The proposed fee is supported by Neighbourhood Services Management Team and by Corporate Management Team. This proposal is passed to General Licensing and Registration Committee for Member consideration and endorsement.
6. It is known that applications for licences for this category of trading are highly contentious and result in significant resource pressures due to the usual level of interest and likely objections.
7. The proposed fee has been calculated having had regard to guidance issued by the Home Office with the approval of the Treasury and the Local Government Association. Figures relating to salary costs

provided in guidance have also been used by many local authorities when setting their fees. In setting their fees a local authority must 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.

8. The following aspects have been considered in calculating the proposed fees:
  - Consultation with the trade and other relevant parties
  - Advice and guidance to prospective applicants
  - Fee processing
  - Application processing
  - Consideration of application
  - Formal committee hearings where required
  - Production of licence
  - Post licence inspection(s)
9. The proposed fee for the licence is £3517 with a breakdown of the estimated costs attached as Appendix 2 to this report.
10. The cost estimate is based on a previous application for such a venue in 2012. The fees in relation to the costs of hearing is a best estimate as Democratic Services are unable to provide an accurate figure which shows the overall costs as they consider that there are too many variable factors.

### **Conclusion**

11. A local authority can set a fee for sex establishments and sexual entertainment venues.
12. This fee must be cost neutral and must be set by the Licensing Committee.

### **Recommendations**

13. The Committee is asked to agree the proposed Sexual Entertainment Licensing Fee of £3517 and recommend its adoption by Council.

### **Background papers:**

- Local Government (Miscellaneous Provisions) Act 1982

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**Contact: Joanne Waller Tel: 03000 260924**

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## **Appendix 1: Implications**

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**Finance** – None. Licensing fees must be considered cost neutral and a breakdown of how this proposed fee is included in this report.

**Staffing** - None

**Risk** – Local Councils have been challenged as to the cost of Sexual Entertainment fees. These challenges have been for fees set considerably higher than the DCC proposed fee. The fee has been set based on the officer time and cost of similar applications so it is considered that this fee is realistic and is less likely to be challenged.

**Equality and Diversity / Public Sector Equality Duty** - None

**Accommodation** - None

**Crime and Disorder** - None

**Human Rights** - None

**Consultation** – None

**Procurement** - None

**Disability Issues** - None

**Legal Implications** - Local Councils have been challenged as to the cost of Sexual Entertainment fees. These challenges have been for fees set considerably higher than the DCC proposed fee. The fee has been set based on the officer time and cost of similar applications so it is considered that this fee is realistic and is less likely to be challenged.

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**Appendix 2: Cost accounting for Fee setting – Sexual Entertainment Licensing**

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**A. Total Personnel Costs (Based on Previous Application from 2012)**

<b>Officer</b>	<b>£ Per Hour</b>	<b>Time in Hours</b>	<b>£ Total</b>
Licensing Manager (LM)	45	15	675
Senior Licensing Officer (SLO)	32	5	160
Licensing Team Leader (LTL)	32	74 (2 weeks)	2368
Legal Advice (LA)/Committee (C)/Members (M)			£250
Licensing Enforcement officer (Based on an annual inspection)	32	2	£64
		<b>94</b>	<b>3517</b>