

**Report to:** Lead Member for Community Services

**Date of meeting:** 25 May 2016

**By:** Director of Communities, Economy and Transport

**Title:** Update on fees charged by Trading Standards for statutory and non-statutory functions

**Purpose:** To enable the Trading Standards Service to charge appropriate fees for some of its services and to note the required statutory fees for specific functions.

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**RECOMMENDATIONS:** The Lead Member is recommended to:

- (1) Note the statutory fees payable for the issuing of explosives licences as set out in Appendix 1 for the 2016/2017 financial year;**
  - (2) Approve the fee payable for the issuing of a copy of a performing animals licence as set out in Appendix 1 for the 2016/2017 financial year;**
  - (3) Approve the hourly rate for conducting metrology related work as set out in Appendix 1 for the 2016/2017 financial year;**
  - (4) Approve the hourly rate of the Accredited Financial Investigator when conducting financial enquiries and investigations as set out in Appendix 1 for the 2016/2017 financial year; and**
  - (5) Note the percentage of confiscation obtainable by the Accredited Financial Investigator for successful Proceeds of Crime Act 2002 proceedings as set out in Appendix 1 for the 2016/2017 financial year.**
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## **1 Background Information**

1.1 As part of a review of all income generation opportunities the East Sussex County Council Trading Standards Service (TS) is looking at how it can increase cost recovery. Part of this programme is to review fees charged for some functions. TS are responsible for enforcing a range of legislation. Some of this legislation places a statutory obligation on the County Council, as the relevant local authority ('Local Authority') to undertake responsibility for certain activities. Other legislation provides the County Council with the power and authority to enforce it where offences or breaches may have been committed and evidence can be obtained to support this.

1.2 The Explosives Regulations 2014 state that the Local Authority is responsible for the issuing of explosives licenses. These licences are granted to explosives stores and registered premises who store fireworks. Any person or company, who wishes to store more than 5kg (net mass) of explosives, including fireworks, will require a licence. There are four hazard types of explosives – 1 is the most hazardous and 4 is the least hazardous. The fee payable is dependent on the quantity and type of fireworks being stored.

1.3 The Performing Animals (Regulation) Act 1925 is an Act to regulate the exhibition and training of performing animals. No person can exhibit or train any performing animal unless they are registered in accordance with this Act (with the exception of animals for bona fide military, police, agricultural or sporting purposes, or the exhibition of any animals so trained). Every Local Authority is required to keep a register for the purpose of this Act.

1.4 S.76 of the Weights and Measures Act 1985 states that the County Council, as a local weights and measures authority ('W&M Authority'), may charge such reasonable fees as it may determine, (a) for services or facilities provided by them, or by the inspectors appointed for their area, in pursuance of a

Community obligation, and (b) for authorisations, certificates or other documents issued by the W&M Authority or any such inspector in pursuance of a Community obligation.

1.5 The Proceeds of Crime Act 2002 (“POCA”) sets out the legislative scheme for the recovery of criminal assets with criminal confiscation being the most commonly used power. Confiscation occurs after a conviction has taken place. Other means of recovering the proceeds of crime which do not require a conviction are provided for in POCA, namely civil recovery, cash seizure and taxation powers. The aim of the asset recovery schemes in POCA is to deny criminals the use of their assets, recover the proceeds of crime and disrupt and deter criminality.

1.6 Investigations under POCA can only be carried out by an Accredited Financial Investigator (AFI). Trading Standards currently employs an AFI on a two year fixed term contract. He is specifically tasked with conducting financial enquiries and investigations relating to offences under the POCA.

## **2 Supporting Information**

2.1 The fees charged for issuing explosives licences are set under The Health and Safety Fees Regulations 2012 as amended by The Explosives Regulations 2014. The charges proposed at Appendix 1 of this report are reflective of this scale of fees.

2.2 The Performing Animals (Regulation) Act 1925 allows the Local Authority to charge a fee that it feels is appropriate to issue a performing animals licence. The fee proposed of £72.00 is based on, and is consistent with, the hourly rate proposed for providing advice to East Sussex businesses. Before issuing the licence our officers make a visit to the applicant to see the animal(s) and discuss the proposed activity. If there are no welfare concerns or other issues then the licence will be granted. The actual visit usually takes no longer than an hour.

2.3 The Performing Animals (Regulation) Act 1925 also allows the Local Authority to charge such fees as appear to them to be appropriate for inspection of the register, for taking copies thereof or making extracts therefrom or for inspection of copies of certificates of registration issued by them. It is viewed that the fee of £15.00 is a reasonable sum payable to reflect the time required to make the register available if requested and / or provide a copy of the licence to the requester. This is taking into account officer time, the cost of copying and if requested posting to the requester.

2.4 The Weights and Measures Act 1985 allows the W&M Authority to charge a reasonable fee for the service or facilities provided by them. The rate of £72.00 per hour has been determined through consultation and discussion with 19 other Trading Standards Authorities who make up the Trading Standards South East (TSSE) region. The rate reflects the fact that this is a professionally qualified officer who is required to carry out the metrology work. This could be the testing of a VOSA weighbridge, a brake tester or a petrol pump. It also takes into account travelling time.

2.5 With regards to POCA, under the asset recovery incentivisation scheme (ARIS) agencies will get back 50% of what they recover. The amount of incentive money available for allocation will be determined by the total value of receipts received in the Home Office in each financial year. The Home Office can only pay out 50% of the total it receives. Incentive allocations will be based on each agency’s contribution to the total value of remittances from cash forfeiture orders, confiscation orders (including part paid orders and interest), and civil recovery and taxation cases.

2.6 Agencies with cash seizure and detention powers under POCA, such as Trading Standards, get 50% of the forfeited amount. With regards to civil recovery the agency that enforces the order gets 50% of the net receipts, after deduction of receiver’s costs.

2.7 With regards to confiscation, the Criminal Justice Service ministers have agreed that confiscation receipts will be split three ways. 18.75% of the money confiscated will go to the investigator. This will be Trading Standards with regards to any investigation that is Trading Standards related. 18.75% will go to the prosecution. As Trading Standards takes its own legal proceedings it is also eligible for this 18.75% share as well. Therefore in cases where we have investigated (using our Accredited Financial Investigator (AFI)) and prosecuted we can get a maximum of 37% of the 50% available. The other 12.5% is awarded to the courts.

2.8 The AFI's time is proposed to be charged at £45.00 per hour. This is to account for financial investigations and enquiries he conducts for other County Council departments, as well as other agencies (for example borough and district councils, East Sussex Fire and Rescue Service etc.). The £45.00 per hour reflects the time spent investigating a case, where the department taking the case may ultimately decide not to pursue formal action. A charge will be made for the AFI's time where a percentage of the confiscation is no longer an option due to the agency not proceeding with the case. We have drawn up a specific Memorandum of Understanding for any work conducted by the AFI and how any cost recovery will be charged. This could be an hourly rate, a percentage of the confiscation amount received, or a mixture of both, depending on the circumstances. The hourly rate is consistent with that charged across other local authorities in the Trading Standards South East region.

### **3 Conclusion and Reasons for Recommendations**

3.1 The Lead Member is therefore recommended to approve the proposed fees set out in Appendix 1 relating to Trading Standards conducting metrology work, the Accredited Financial Investigator's hourly rate for undertaking financial investigations and the costs of issuing copies of a performing animals licence. The Lead Member is also recommended to note the statutory fees payable for the issuing of explosives licences as set out in Appendix 1 for the 2016 / 2017 financial year.

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#### LOCAL MEMBERS

All

#### BACKGROUND DOCUMENTS

None