

Committee: Licensing & Environmental Health

Agenda Item

Date: 5 March 2014

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Title: Consultation On Fees Under The Licensing Act 2003

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Item for decision

Summary

1. This report is to inform members of a government consultation concerning shifting the power to set fees under the Licensing Act 2003 from central government to licensing authorities.

Recommendations

2. That members consider whether and if so how they wish to respond to the consultation.

Financial Implications

3. The proposal is that fees should be set at a level which is self-financing. At present the nationally set fees do not cover the cost of the council in administering the Licensing Act 2003 and the outcome of the reform is therefore likely to be that there is a financial gain to the council.

Background Papers

4. None.

Other papers referred to by the author of this report in connection with this preparation:

5. Home Office "A Consultation on Fees under the Licensing Act 2003 available at www.gov.uk/government/uploads/system/uploads/attachment_data/file/279706/locally_set_fees_consultation_v4.pdf

Impact

- 6.

Communication/Consultation	As the council formulates its own response to the government consultation it is not appropriate for the council to consult others.
Community Safety	None.
Equalities	None.

Health and Safety	None.
Human Rights/Legal Implications	None.
Sustainability	None.
Ward-specific impacts	None.
Workforce/Workplace	None.

Situation

7. The Licensing Act 2003 established a fees regime for licensing. Under the Act fees are set nationally. With regard to premises licences and club premises certificates a fee is paid upon application. Once a licence or certificate has been granted, an annual fee is then payable. Fees are also payable for variations to licences and certificates and on transfers of licences. Fees are also charged for temporary event notices. With regard to personal licences these are granted for a period of 10 years. A fee is payable upon each grant of a licence (including its renewal). However, the government has indicated its intention to abolish the need to renew personal licences so that they will last for the life of the licence holder or until forfeiture or surrender. It has also consulted on the possibility of removing the need for personal licences altogether. The outcome of that consultation is not yet known.
8. The Police Reform and Social Responsibility Act 2011 contained provisions enabling the Home Secretary to give power to individual licensing authorities to set fees locally. Many commentators consider that the current fees regime is not compatible with European legislation and these reforms are long overdue. The government is now consulting on how to transfer the fee setting responsibility to licensing authorities.
9. All functions under the Licensing Act 2003 are to be performed by the council and most by virtue of the Act are automatically delegated to the Licensing Committee. Once the reforms have gone through the Licensing Committee will therefore become responsible for setting licensing fees under the 2003 Act.
10. Licensing authorities will not have carte blanche to set fees at any level they consider appropriate. The fees must be set on the basis of cost recovery and the Home Secretary is likely to impose a cost cap which cannot be exceeded.
11. At present annual fees are payable on the anniversary on the grant of a licence. Holders of multiple premises licences find this inconvenient and would prefer a single date upon which all annual fees are payable nationwide. The government is seeking views on this proposal.
12. At present there is no power for local authorities to exempt applicants from the payment of fees. The government does not intend to change that approach but is intending to deregulate certain activities. This will obviously avoid the need for payment of a fee. The government is also introducing a new form of authorisation, the "community and ancillary sales notice", which will reduce the burden on

community groups that sell small amounts of alcohol and on businesses such as small accommodation providers that only sell limited amounts of alcohol alongside a wider service. Licensing authorities will also be enabled to deregulate late-night refreshment in their area.

13. The government does not intend to amend the additional fees for large events at the present time. It has however, indicated that it will revisit the topic after licensing authorities have developed expertise in setting fees under the 2003 Act.
14. The consultation document was issued on the 13 February and the consultation runs for 8 weeks. Accordingly if the committee wish to respond, any response must be made by the 10 April.
15. Attached is a list of the questions posed by the government with suggested responses

Risk Analysis

16. There are no risks associated with this report.

CONSULTATION QUESTIONS

	Question	Suggested Response
1	<p>Currently fees for premises licences and club premises certificates are calculated by reference to the rateable value of premises. The government's intention is that cost recovery should be achieved without cross subsidisation and that unless there is evidence that one class or type of fee payer leads to higher average costs than others, everyone should pay the same. The first question is whether the committee agrees or disagrees that the use of national non-domestic rateable value bands as a criterion for variable fee amounts should be abandoned?</p>	<p>In terms of granting licences, the amount of work required by officers is not affected by the rateable value of the premises. Arguably smaller premises with lower rateable values will have weaker management structures and therefore cause more difficulty to licensing authorities. There is no justification for retaining the differential based on rateable value.</p>
2	<p>If it is the opinion of the licensing authority that higher rateable values cause higher cost to the licensing authorities, what is the reason for that opinion?</p>	<p>Not applicable.</p>
3	<p>There are alternative types of premises for which different fee amounts could be charged. By way of example the government suggests that licensed restaurants or premises that close early consistently may result in lower costs than premises used mostly for drinking or those which open until late. It is proposed that licensing authorities should be able to prescribe what would be a late terminal hour but that it should be within the period from midnight to 6am.</p> <p>The government's proposal is to limit the distinction of types of premises to (a) premises which are authorised to provide licensable activities until a late terminal hour and (b) premises which are used exclusively or primarily for the sale of alcohol for consumption on the premises. The consultation asks whether the committee agrees or disagrees that the criterion of whether or not a premises is authorised to provide licensable activities to a late terminal hour is linked to costs?</p>	<p>In terms of the grant of a licence or a variation seeking an extension of hours, premises which open later will be likely to attract more representations. Bearing in mind however that only one representation is needed to trigger a hearing, it is not clear as to how much this would be reflected in costs. Once a licence has been granted the costs incurred by the licensing authority in administering the licence will be governed not by the authorised hours but by the extent to which use is made of those hours. A large number of premises in the district have extended opening hours which are not used in practice.</p>
4	<p>What evidence is there in support of the answer above?</p>	<p>As above.</p>

5	Is the criteria whether or not a premises is authorised to provide licensable activities to a late terminal hour sufficiently practical to implement?	It is open to premises licensed and club premises certificate holders to seek different permitted hours on different days of the week. It is not clear at what point the requirement for a higher fee would kick in.
6	What are the reasons for the committee's views?	It would appear irrational and inequitable to charge the same fee for a premises licence/club premises certificate which is authorised to open late say on Friday and Saturday only as for other premises which are authorised to open late 7 days a week. Further the comment above regarding costs relating to the use of the premises rather than the hours authorised should be repeated.
7	Does the committee agree that licensing authorities should be able to determine the hours which trigger payment of a higher fee between the hours of midnight and 6am?	This question appears poorly worded and seems to relate to the concept of whether the hours within which the local authority can specify the higher fee is payable should be within the period within midnight to 6am and not whether or not the licensing authority should be able to determine the terminal time which triggers the higher fee. There is no evidence to suggest that an earlier time for payment of the higher fee would be appropriate.
8	Does the committee wish to specify alternative hours if it disagrees with the midnight to 6am suggestion?	No comment.
9	Should licensing authorities have a discretion to dis-apply higher fees to premises only authorised to open late on special occasions such as New Year's Eve or St Patrick's Day?	If the ability to charge a higher fee is to be linked to authorised hours it would be reasonable to expect premises that did not wish to pay the higher fee to limit their authorised hours accordingly and to use temporary events notices for special occasions.
10	What are the reasons for the view expressed above?	As above.

11	Should the fees payable be variable depending on whether the premises are primarily used for drinking?	In terms of costs of granting licences and dealing with applications for variations, there would appear to be no difference. Typically for such premises, it is the entertainment aspect of the licences which causes most controversy rather than the sale of alcohol. In terms of dealing with applications for the grant and variation it is the terminal hour of the premises which attracts representations rather than the use to which the premises are being put. Premises primarily used for drinking which have a terminal hour at or before midnight are marginally more likely to generate complaints and request reviews than premises not so used. There can be some difficulty in determining whether or not premises are primarily used for drinking although there is precedent for this in the existing fee regulations which apply a higher charge to such premises if they fall within bands D or E for rating purposes.
12	What evidence is there in support of the answer above?	Officers can provide details of the nature of the premises which have generated complaints and requests for reviews in the past.
13	Are the criteria for determining whether premises are exclusively or primarily used for the sale of alcohol for consumption on the premises sufficiently practical to implement?	This is a very grey area. There is no case law to assist an interpretation. Whilst the government guidance under the Act deals with suspension of fees and additional fees for large scale events it does not address the issue of exclusive or primary use for the supply of alcohol. It is therefore open to interpretation as to whether this should be based upon the number of customers using the premises for consumption of alcohol as opposed to other uses, turnover or some other criteria.
14	What are the reasons for the view given above?	As above.
15	Should there be discretion to apply higher fee amounts only where both criteria apply in combination (i.e. the premises have a late terminal hour and are primarily or exclusively used for supply of alcohol)?	Where premises have a late terminal hour, complaints after that time will normally be based upon noise nuisance caused either by entertainment being provided at the premises or by the behaviour of patrons leaving. Whether or not the premises are used exclusively or solely for the supply of alcohol would appear to be irrelevant to this situation. Higher fees should relate therefore to either of the criteria not both in combination.

16	<p>Should licensing authorities have discretion to exclude certain types of premises from the higher fee amount (e.g. accommodation providers, theatres and cinemas, bingo halls, community amateur sports clubs and community premises? If members agree the regulations would need to specify each premises type that could be excluded. The licensing authority would then have discretion to exclude any of those types of premises if they have evidence linking them to lower costs. The consultation paper suggests that such a discretionary power of exclusion may be used as an alternative to but not in conjunction with the “combined criteria” approach above.</p>	<p>It would be sensible to have a discretion to exclude some types of premises from the higher fee regime. In particular hotels and guest houses which are only authorised to sell to residents and bona fide guests of residents after midnight are unlikely to generate any additional cost to the authority and should be exempt. However, this discretion should be in addition to, and not in substitution for, the “combined criterion” approach if that is adopted by the government.</p>
17	<p>What type of premises should be specified in the regulations as being potentially excluded classes?</p>	<p>Members are views are sought on the suitability of those cited by the consultation paper and as to any other types of premises which members consider could be included in the list.</p>
18	<p>Are there any alternative options which should be available to the licensing authorities to apply different fee amounts within their area?</p>	<p>In order to avoid cross-subsidisation it would be appropriate to require an increased annual fee from premises which have been the subject of an application for a review.</p>
19	<p>The consultation sets out proposed fee caps in accordance with the table attached and asks whether the committee agrees or disagrees that these will enable the licensing authority to recover costs.</p>	<p>Generally the fees quoted are adequate. It is noted from paragraph 8.5 of the consultation document that fees under the Act are intended to recover the cost of licensing authorities but not the cost of inspection, monitoring of compliance or enforcement that arise “in respect of the wider duties of responsible authorities under other legislation”. By implication, cost of inspection, monitoring of compliance and enforcement arising under the Licensing Act 2003 will be recoverable. On that basis the suggested cap of £740 for an annual fee is insufficient and a cap of £1,500 should be substituted. With regard to the fee for notification of interest of a freeholder etc. in premises whilst £50 would cover the cost of registering the freeholder’s interest it would not cover the cost of notifying the freeholder of any changes to the licensing register. It is suggested that the cap for this be £250 to enable licensing authorities to recover the cost involved.</p>

20	Asks for any other comments on the proposed cap levels?	We should strongly urge the government to abandon the concept of annual fees in favour of an annual renewal of the licence. There are strong arguments that the concept of an annual fee (as opposed to an annual renewal) is not compatible with European legislation regarding charging for administering regulatory regimes. An annual renewal would prevent a potential challenge.
21	The consultation document suggests a cap of £100 for temporary events notices compared to the present fee of £21. The consultation asks whether this cap would enable the licensing authority to recover its costs of dealing with temporary event notices.	£100 would appear to be adequate but not by a significant margin.
22	What evidence is there in support of the answer above?	No comment.
23	The consultation document asks a range of questions concerning the fee setting procedure. It asks whether we agree or disagree that (a) fees should be published before implemented (b) the basis of calculation should be published (c) the measures taken to keep costs down should be published (d) comments should be invited from interested parties.	I would suggest that the committee agree with paragraphs (a) (b) and (d). With regard to (c) the council overall strives for efficiency and it is difficult to identify particular steps taken with regard to setting licensing fees in isolation.
24	What steps can licensing authorities take to secure efficiency?	Continuous monitoring of costs.
25	<p>The consultation document refers to “safeguards against excessive costs and gold plating”. The government intends to issue guidance to guard against this. The consultation asks whether these areas should be included in the guidance as being a particular risk and excessive costs or gold plating.</p> <p>a. Notification of residents individually of licensing applications in their area by letter.</p> <p>b. Central re-charges e.g. from Legal Services, HR, IT etc. it being suggested these should relate to costs actually incurred in the delivery of functions under the Act and not a standard percentage of central costs.</p> <p>c. Costs of discharging statutory functions arising under other legislation.</p>	<p>a. This council introduced a policy of notifying by letter those living adjacent to, opposite and behind premises which were the subject of applications. This was in response to complaints being received that neighbours were not aware of applications for premises. It has been well received and is considered to be a good but not “gold-plated” service.</p> <p>b. It is the practice of this authority that the cost of central services (e.g. Legal, HR, IT etc) are shared between the other council departments pro rata based on the use of those services. It is considered this is a reasonable approach. To require central services to effectively invoice the licensing authority for particular items of work done would be unreasonable in the context of overall administration and disproportionate.</p> <p>c. This would be appropriate to be included in the guidance.</p>
26	Are there other activities that present a	There are none.

	particular risk of excessive costs or “gold-plating”?	
27	Do we agree there should be a single national payment date for annual fees in England and Wales?	This would impose a huge burden upon licensing authorities. Where a licence fee is not paid the local authority has a duty to suspend the licence. At present the monitoring of payment of annual fees and consequential suspensions of licences are spread during the course of the year. To require a licensing authority to undertake this task with regard to all of its licences once a year would impose a huge demand on the service to the detriment of other service users.
28	Do we have any comments on the impact assessments prepared in connection with the consultation?	None.
29	Do we have any comments on the methodologies or assumptions used in the impact assessment?	None.

PROPOSED CAP LEVELS

Table 1: proposed cap levels				
Question	Fee Category	Proposed cap	Current fee or maximum fee (for information only)	Agree/ disagree/ don't know
processes that can result in hearings or include review hearings				
19 (a)	Application for the grant of a premises licence	£2,400	£1,905*	
19 (b)	Application for a provisional statement	£2,400	£315	
19 (c)	Application to vary a premises licence	£2,400	£1,905*	
19 (d)	Application to vary premises licence to specify designated premises supervisor	£105	£23	
19 (e)	Application to vary a premises licence to remove requirement for a designated premises supervisor	£105	£23	
19 (f)	Application for the transfer of a premises licence	£65	£23	
19 (g)	Interim authority notice	£114	£23	
19 (h)	Annual fee payable by premises licence holder	£740	£1,050*	

13 That is, they are based on the licensing authorities whose reported average cost over the year was highest for each process. They do not reflect the highest possible cost of administrating a single application or notice.

14 Outliers are defined here as those falling outside two standard deviations from the mean.

15 Application for the grant of a licence and application to vary a licence to specify a designated premises supervisor, respectively.

19 (i)	Application for the grant of a certificate	£2,400	£635*	
19 (j)	Application to vary a certificate	£2,400	£635*	
19 (k)	Annual fee payable by club premises certificate holder	£720	£350*	
19 (l)	Application for grant or renewal of a personal licence	£114	£37	
other processes under the 2003 Act				
19 (m)	Application to replace stolen, lost etc. premises licence	£46	£10.50	
19 (n)	Notification of change of name or address of premises licence holder	£46	£10.50	
19 (o)	Application for minor variation of a licence	£244	£89	
19 (p)	Application to replace stolen, lost etc. certificate	£46	£10.50	
19 (q)	Notification of change of name or change of rules of club	£46	£10.50	
19 (r)	Notification of change of address of club	£46	£10.50	
19 (s)	Application to replace stolen, lost etc. temporary event notice	£38	£10.50	
19 (t)	Application to replace stolen, lost etc. personal licence	£59	£10.50	
19 (u)	Notification of change of name or address of personal licence holder	£59	£10.50	
19 (v)	Notification of interest of freeholder etc. in premises	£50	£21	

*denotes current maximum fee, where fee level is variable