

**LICENSING ACT 2003
CONSULTATION ON DRAFT FEE LEVELS
(Report by Head of Administration)**

1. INTRODUCTION

- 1.1 The Department for Culture, Media and Sport has finally published a consultation paper on fee levels to be established by regulation under the Licensing Act 2003. The closing date for the receipt of comments is 23rd December 2003. After the DCMS has considered the responses, the fees need to be brought into effect by order in time for the first appointed day for the receipt of applications of 7th February 2005. The timescales are extremely restricted, bearing in mind that the Act was passed in July 2003.

2. PROPOSED FEE LEVELS

- 2.1 The DCMS has assessed the volume of applications currently being dealt with under the existing licensing regimes to be replaced by the new Act and, based upon past evidence and recent surveys, made assumptions about the number of objections that will be received and hearings and appeals generated. The Government has previously announced that fees will be set at a level that will achieve full recovery of administrative, inspection and enforcement costs falling on licensing authorities, including those costs of non-licensing staff that directly result from the Council's other roles as a responsible authority under the Act (environmental health, plan, crime and disorder, and health and safety). They are not intended however to cover costs that would otherwise be incurred by officers in carrying out their other functions, such as statutory nuisances.
- 2.2 The DCMS has made an assessment of the time required by a licensing authority to undertake each of its individual licensing functions, e.g. 15 minutes to supply a copy of a licence and three hours preparatory time before an appeal to the courts. Fees have been based upon an average administration charge of £28 per hour, enforcement costs of £45 per hour and professional costs of £60 per hour. Using these estimates, fees have been proposed for premises licences and club premises certificates based upon non-domestic rateable values and for personal licences and other charges upon a time allocation basis.
- 2.3 For premises, the proposed fees are in 5 bands as follows:-

Non-domestic rateable value

Band	A	B	C	D	E
Non-domestic rateable value	£ 0 - £4,300	£ 4,301 - £33,000	£33,001 - £87,000	£ 87,001 - £125,000	£125,001 and over

Application fee

A	B	C	D	E
£80	£150	£250	£350	£500

Annual charge

A	B	C	D	E
£40	£125	£175	£200	£225

- 2.4 In respect of personal licences, the proposed fee is £37 and for temporary events notices £21. The remaining charges relate to change of address, change of designated premises supervisor etc.

3. PROPOSED COMMENTS

- 3.1 While an attempt has been made by the DCMS to establish fee levels from an evidential basis, this reflects previous licensing activities which may not be wholly relevant under the new Act. The general view of the Local Government Association and LACORS is that the DCMS has underestimated the volume of work involved and that the fee levels are too low. An annex is attached with suggested comments on some of the questions raised in the consultation paper.

4. CONCLUSION

- 4.1 Although it remains difficult to predict with any accuracy the amount of time that will be necessary to successfully implement and administer the changes introduced by the Act, it is clear that some of the timescales have been significantly underestimated and fee levels may be insufficient to meet all of the Council's costs. Moreover some fees, for example in the case of personal licences, reflect very poorly with fees set by Government agencies such as the Security Industry Authority and Criminal Records Bureau in similar circumstances.
- 4.2 The Committee are therefore

RECOMMENDED

to endorse the comments suggested in the attached annex for submission to the DCMS.

BACKGROUND PAPERS

Consultation document issued by the DCMS.

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CHAPTER 3 – COSTING ASSUMPTIONS

The DCMS estimates of licensing authority expenditure are based upon evidence nationally that only 100 applications for justices on-licences and 250 for off-licences are refused annually and revocations only apply to 350 justices licences at the triennial review and 270 public entertainment licences annually. Based upon that evidence and recent surveys, the DCMS has estimated that about 65% of applications during the transitional period will involve a request for a licence variation and only 5% of those will attract objections, leading to a hearing.

Comment

Experience locally suggests that objections arise on almost each occasion that residents are consulted on licence extensions. The DCMS predictions grossly underestimate the number of objections that are likely to arise in the case of applications for extended hours of opening. A more accurate assessment based upon local experience is that 50% of the applications for variations will lead to hearings.

The DCMS estimates that there will be up to 1500 reviews of premises licences and club registration certificates nationally each year (1% of the total and averaging 3 - 4 on average in each local authority area). They also predict that there will be applications for licence variations from no more than 15% of licensed premises in the first year after the second appointed day and 5% per annum thereafter, of which no more than 5% will generate objections and hearings.

Comment

Once the public are aware through the local media that they can trigger a review of premises licences if they experience anti-social behaviour and nuisance from licensed premises, they are likely to request the Council to review licences that have been granted. This is especially true now that hearings will be before sub committees of the licensing authority as opposed to the courts. A more accurate prediction of reviews will be 5 – 10% per annum.

The number of licence variations will be dependent upon the ability of licensees to predict their future requirements. Irrespective of whether an applicant applies for extended hours at the time of conversion or by way of a later licence variation, this is likely to generate objections and hearings in 50% of all applications.

CHAPTER 4 – CALCULATING COSTS

The draft regulations are extremely precise as to the amount of time that will be taken by licensing authorities to carry out their licensing functions, for example an average of 40 minutes in the case of applications for a personal

licence. Based upon an average administration charge of £28 per hour, the cost to a licensing authority of processing an application for a personal licence is estimated by the DCMS to be £27. A further £10 is added to the suggested personal licence fee to cover the development of a central register (£5) and the costs of recording the surrender of a licence, change of name etc. over the ensuing 10 years (£5).

Comment

The estimate of time to process an application for a personal licence is grossly underestimated. This will involve advice to applicants, issue of application forms, checking of completed forms, verifying authenticity of counter-signatories of true likeness, verifying applicants' licensing qualification or existing licence during transitional period, verifying information for application for CRB basic disclosure check; checking returned CRB disclosure, verifying authenticity of disclosure of relevant and foreign offences and non suspension of previous licence, ensuring that notice has been served on the Police and reconciling Police reply, determining the application, producing and issuing the licence, entering the details on the licensing register. In the ensuing ten years prior to renewal, additional expenditure will be incurred in communications, liaison with licensees, enforcement, prosecutions, maintenance of records and the register etc. It is inconceivable that this can be achieved in an average of 40 minutes per applicant over a period of ten years.

The suggested fee of £37 for a 10 year licence period reflects extremely poorly with the fee for a standard CRB disclosure of £28 or £190 for a Security Industry Authority licence which lasts 3 years. The comparison between the fees for a personal licence and an SIA licence is even more marked when viewed over a 10 year period where the charge is to the licensee is £37 and £530 respectively.

With regard to premises licences and club premises certificates, the DCMS proposes that enforcement should be highly focused and targeted on the basis of local risk assessment and local intelligence, involving less than 3% of premises in any year. This is reflected in the annual charges payable to licensing authorities.

Comment

The DCMS makes no provision for liaison with designated premises supervisors and personal licence holders to promote and maintain high standards in licensed premises and ignores the value of preventative work with licensees to avoid potential future problems. If authorities adopt a reactive only approach, this is more likely to lead to problems developing locally which will then be more difficult to resolve. The DCMS should provide for a greater level of communication with licensees in calculating the level of the annual charge.

The DCMS estimate that the average cost of processing a temporary events notice will be 45 minutes which will generate a fee of £21. They envisage that there will be 50,000 notices annually after the second appointed day but that only 1% will give rise to Police objections and of those only half will generate a hearing. Minimal enforcement is envisaged.

Comment

Bearing in mind the scale of temporary events (up to 500 people for a period up to 72 hours), these are likely to generate considerable problems in terms of Police objection and enforcement. The potential impact of TENS suggests that, on average, the volume of time involved in dealing with an application will be considerably in excess of the 45 minutes proposed by the DCMS.

CHAPTER 7 – ALLOCATING FEE RATES TO INDIVIDUAL PREMISES

The DCMS proposes the use of rateable values as the most equitable and fairest method of determining fees for individual premises, bearing in mind that it is an indicator of business size and local overheads and takes into account location and regular reviews.

Comment

There is no objection to the use of rateable values but the introduction of new RVs in April 2005 will potentially mean that those who apply between the first appointed date and the end of March may pay a lower fee than those who apply after the beginning of April. Bearing in mind the potential problems for licensing authorities in coping with the influx of applications in the transitional period, all applications during that period should be based on the new RVs post 1st April.

The DCMS propose that no fees should be payable in respect of village and church halls and schools, with the costs of licensing being met by central Government. All other premises, including land which is not subject to a rateable value will be charged at the lowest band of £80 with an annual charge of £40. In the case of exceptionally large events which might involve temporary structures requiring expert inspection, the DCMS propose an additional fee of £5,000 commencing at an attendance of 6,000 people and rising to £50,000 for an attendance of over 75,000 people. Where the premises are to be licensed on a permanent basis rather than a time-limited period, the DCMS propose that the annual charge be half the cost of the additional fee.

Comment

There is no indication as to how licensing authorities will be reimbursed the cost of licensing those premises for which fees cannot be charged. The fees for the licensing of land do not reflect the costs involved. The proposals will give rise to fees for the licensing of land of £21 for a temporary events notice for up to 499 people, £80 for a premises licence for between 499 people and 5,999 people and £5,080 for 6,000 to 9,999 people. The costs to the licensing authority will be the same for a large open air event, regardless of whether the proposed attendance is 3,000 people or 6,000 people. The additional fees for large events should begin at 1,000 people and could then be graduated for each additional thousand attendance until the figure of £5,000 for an event involving 6,000 people is reached. It is difficult to envisage how a large event in the open air can be licensed on a permanent basis with the changes that will inevitably take place between events in terms of their nature and duration.