

Licensing Committee

3 December 2019

Is the final decision on the recommendations in this report to be made at this meeting?

Yes

Licensing Fees and Charges 2020/21

Final Decision-Maker	Licensing Committee
Portfolio Holder(s)	Matthew Bailey, Portfolio Holder for Sustainability
Lead Director	Paul Taylor Director of Change and Communities
Head of Service	Gary Stevenson, Head of Housing, Health & Environment
Lead Officer/Author	Sharon Degiorgio, Senior Licensing Officer
Classification	Non-exempt
Wards affected	All

This report makes the following recommendations to the final decision-maker:

1. That the Licensing Committee approves the fee levels as set out in Appendices A and B of the report for implementation on 1 April 2020
2. Members note for information the statutory fees charged for Premises Licences/Club Premises Certificates and other licences/miscellaneous at Appendix C.
3. Members are requested to approve the proposed Licensing Pre-application advice fees at Appendix D.

Explain how this report relates to the Corporate Priorities in the Five Year Plan:

- It is proposed to set fees which enable the authority to be self-financing to these services and within the constraints of the legislation;
- Supporting smaller businesses and helping to develop a vibrant town.

Timetable

Meeting	Date
Licensing Committee	3 December 2019

Licensing Fees and Charges 2020/21

1. PURPOSE OF REPORT AND EXECUTIVE SUMMARY

- 1.1 The authority is required to review the fees set for the administration of the Local Government (Miscellaneous Provisions) Act 1982, The Gambling Act 2005 and The Scrap Metal Dealers Act 2013. This ensures the Council complies with its statutory duty and the licensing of these regimes is self financing, in accordance with the Council's Medium Term Financial Plan.
 - 1.2 To seek Member approval of the licence fees and charges for the financial year 2020/21 where the Council has discretion over the level of fee as set out in Appendices A and B of the report for implementation on 1 April 2020
 - 1.3 Note the nationally set fees for 2020/21 as set out in Appendix C
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2. INTRODUCTION AND BACKGROUND

- 2.1 Tunbridge Wells Borough Council has statutory responsibility for the administration and enforcement of a wide range of licences, registrations and consents and permits. Many of these schemes allow the Council to charge a fee payable by an applicant for a licence, in order to cover the costs (or a proportion thereof) of the administration of those licence types. In some cases, costs are also permitted to cover other aspects of providing the regulatory scheme.
- 2.2 The basis in setting such fees is generally to ensure full cost recovery, or as close as possible. Licensing fees may not be used to generate a profit for Councils. This report summarises all licensing fees that are proposed to be reviewed to come into effect from 1 April 2020.
- 2.3 The European services Directive, as incorporated by the Provision of Services Regulations 2009 provides that fees and charges 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". This principle was affirmed by the courts *in the 2015 case of R (on the application of Hemming (t/a Simply Pleasure Ltd)) v Westminster City Council*, the Supreme Court ruled that licensing authorities could include the costs of regulatory and enforcement activities in determining the licence fees to be paid by licensed operators. The costs charged for the clerical and administrative aspects must be reasonable and proportionate to the actual costs for each type of activity.
- 2.4 All fees have been calculated by examining the time it takes to carry out the various tasks in processing the application and who in the authority is likely to carry them out. The hourly rates of staff are fed in to a spreadsheet produced in conjunction with the finance team to calculate costs for each type of activity.
- 2.5 Having considered the fee structure it's proposed to apply an inflationary increase of 2.5% where permitted for 2020/21.

2.6 The Gambling Act 2005

The government decided that for England and Wales, Licensing Authorities will determine their own fees for gambling premises licence but that the Secretary of State will prescribe the maximum fee payable for each category of licence. Fees for Gaming Machine Permits and Temporary Use Notices are set by statute.

The maximum levels have been included in **Appendix B** in brackets for comparison purposes. The previous year's fees are printed in italics for your information. Those cells that are shaded in the body of the table are where we have reached the maximum fee level that may be set.

There are three figures for each licence type/fee. The figure in bold font is the new proposed fee, the figure in brackets is the maximum fee set by the legislation and the figure in italics is the existing fee.

The new proposed fee	BOLD
Maximum fees set by legislation	(brackets)
Existing fee	<i>Italics</i>

There is an initial fee to cover the cost of application and an annual fee due every year.

Licensing Authorities have been asked to set fees to ensure full cost recovery and that the fee levels represent fairness and value for money for the gambling industry. All Licensing Authorities must set their fees upon a cost recovery basis only and will be required to review their fee levels on an annual basis to ensure this.

The Borough currently has 11 betting premises that will be affected by the proposed fee increases.

2.7 **Street Trading**

Paragraph 9 of Schedule 4 of the 1982 Act states "a Council may charge such fees as they consider reasonable for the grant or renewal of a street trading consent". It is therefore necessary for the Authority to review its fees.

At the time of writing this report there is one street trader operating in the Borough.

There has been no increase in the fees since the initiative took effect in 2013, due to the limited "take up".

The fee consists of two elements, firstly, the initial fee which will cover the costs associated with the administration for processing the application and the issuing of the necessary consent. Secondly, a daily pitch fee which will include a contribution towards ensuring compliance of licence conditions.

2.8 **Sexual Entertainment**

The type of work involved in Sexual Entertainment Establishment premises applications include: assistance to applicant, checking of an application upon receipt, processing the application, assessing representations for relevance, undertaking informal mediation, and undertaking site visits where necessary.

The costs associated with an appeal and hearings have been estimated and an estimation has been made as to the likelihood of these events occurring, which has been factored into the calculations. The risk of appeals and hearings occurring has been based on the experience of our partners within the Licensing Partnership.

There are currently no Sex Establishments operating in the Borough.

2.9 Scrap Metal

The Scrap Metal Dealers Act 2013 maintains local authorities as the principal regulator, but gives them the power to better regulate these industries by allowing them to refuse to grant a licence to 'unsuitable' applicants and a power to revoke licences if the dealer becomes 'unsuitable'.

The suitability of applicants is based on a number of factors as outlined in the Act, including any unspent relevant criminal convictions. Whilst it is expected that straight forward applications will be decided under delegation to Officers, any applications with objections where the applicant wishes to make representations would need to be heard at a hearing, with an option to appeal their decision to the Magistrates' Court.

Under the Act there are two types of licence; a site licence and a collector's licence, both of which will be administered by the local authority. Site managers are named on site licences. Collectors need a licence in each local authority area in which they collect. Both types of licence last for three years

There are currently 8 Site Licences and 2 Collectors licences operating in the Borough.

2.10 Licensing Act 2003

Fees for licences issued under the Licensing Act 2003 are fixed by central Government at levels which have not changed since 2005. These figures are included at Appendix C for information only.

2.11 PRE-APPLICATION ADVICE - PROPOSED FEES

At a meeting of the Licensing Committee on 17th September 2019, the Committee agreed to the introduction of fees for Licensing pre-application advice **in principle** with a view to the proposed fees being included as part of the annual review of fees and charges. The proposed fees are set out in Appendix D

3. AVAILABLE OPTIONS

- 3.1** Members may approve the inflationary increase fees as set out in Appendices A & B.
- 3.2** Members may decide not to apply an inflationary increase and leave the fees unchanged.
- 3.3** To note the current statutory fees charged for Certificates/Licences at Appendix C.
- 3.4** Members may approve the proposed fees for Licensing Pre-application advice as set out in Appendix D

- 3.5 Members may decide not to approve the proposed fees for licensing pre-application advice and, if necessary, give further direction to officers.

4. PREFERRED OPTION AND REASONS FOR RECOMMENDATIONS

- 4.1 Members are requested to approve the proposed inflationary fee increases as set out in Appendices A and B of the report to ensure that the fee income reflects the cost of providing the service.
- 4.2 Members note for information the statutory fees charged for Premises Licences/Club Premises Certificates and other licences/miscellaneous at Appendix C.
- 4.3 Members are requested to approve the proposed Licensing Pre-application advice fees at Appendix D.

5. CONSULTATION

- 5.1 The fees set out in Appendices A and B are not subject to consultation and where permitted any increases proposed will be limited to inflation only.
- 5.2 The fees set out in Appendix D are not subject to consultation.

6. NEXT STEPS: COMMUNICATION AND IMPLEMENTATION OF THE DECISION

- 6.1 The fees will be charged with respect to new, existing and renewal applications from 1 April 2020 and published on our website.

7. CROSS-CUTTING ISSUES AND IMPLICATIONS

Issue	Implications	Sign-off
Legal including Human Rights Act	Should parts of industry believe the Authority's fees are at a level which is greater than the costs of the statutory functions then it would be open to them to undertake judicial review proceedings. Should this arise, the authority would need to evidence how it arrived at the fee levels to demonstrate that they have been calculated on a cost recovery basis only.	Robin Harris, Senior Lawyer (Contentious) Mid Kent Legal Services 30.10.19
Finance and other resources	It is necessary for the Council to deliver a balanced budget and cover the costs of providing this service.	Head of Finance and Procurement Jane Fineman 30.10.19
Staffing establishment	No issues identified. This report is limited to reviewing and setting of fees to contribute towards the recovery of costs of the service.	Sharon Degiorgio, Senior Licensing Officer 30.10.19
Risk Management	No issues identified. This report is limited to reviewing and setting of fees to contribute towards the recovery of costs of the service.	Sharon Degiorgio, Senior Licensing Officer

		30.10.19
Data Protection	No issues identified. This report is limited to reviewing and setting of fees to contribute towards the recovery of costs of the service.	Sharon Degiorgio, Senior Licensing Officer 30.10.19
Environment and Sustainability	No issues identified. This report is limited to reviewing and setting of fees to contribute towards the recovery of costs of the service.	Sharon Degiorgio, Senior Licensing Officer 30.10.19
Community Safety	No issues identified. This report is limited to reviewing and setting of fees to contribute towards the recovery of costs of the service.	Sharon Degiorgio, Senior Licensing Officer 30.10.19
Health and Safety	No issues identified. This report is limited to reviewing and setting of fees to contribute towards the recovery of costs of the service.	Sharon Degiorgio, Senior Licensing Officer 30.10.19
Health and Wellbeing	No issues identified. This report is limited to reviewing and setting of fees to contribute towards the recovery of costs of the service.	Sharon Degiorgio, Senior Licensing Officer 30.10.19
Equalities	No issues identified. This report is limited to reviewing and setting of fees to contribute towards the recovery of costs of the service.	Sharon Degiorgio, Senior Licensing Officer 30.10.19

8. REPORT APPENDICES

The following documents are to be published with and form part of the report:

- Appendix A: Proposed Fees and Charges 2020/21
- Appendix B: Proposed Gambling Act 2005 Fees 2020/21
- Appendix C: Licensing Act 2003 Fees
- Appendix D: Proposed fees for Pre-application advice

9. BACKGROUND PAPERS

Full Council 23 May 2007 – (Setting of fees for Gambling Act 2005)

<http://www.culture.gov.uk>

<http://www.gamblingcommission.gov.uk>

Home Office: Scrap Metal Dealers Act 2013: guidance on licence fee charges 1
April 2016 – 31 March 2017 <https://www.gov.uk/government/publications/scrapmetal-dealer-act-2013-licence-fee-charges>

Street trading: <http://www.legislation.gov.uk/ukpga/1982/30/schedule/4>

Sex Establishment <http://www.legislation.gov.uk/ukpga/1982/30/schedule/3>

