

# Licensing Fees and Charges 2021/2022

Licensing Committee on 1 December 2020 \_\_\_\_\_

## Summary

**Lead Member:** Councillor Matt Bailey – Portfolio Holder for Sustainability

**Lead Director:** Paul Taylor – Director for Change and Communities

**Head of Service:** Gary Stevenson – Head of Housing, Health & Environment

**Report Author:** Sharon Degiorgio – Senior Licensing Officer

**Classification:** Public document (non-exempt)

**Wards Affected:** All

Approval Timetable	Date
Licensing Committee	1 December 2020

## Recommendations

1. That the Committee approve approves the fee levels as set out in Appendices A, B, and C of the report for implementation on 1 April 2021
2. Note the nationally set fees for 2021/22 as set out in Appendix D

# 1. Introduction and Background

- 1.1 Tunbridge Wells Borough Council has a 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.
- 1.2 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 2021.
- 1.3 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.
- 1.4 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.
- 1.5 Having considered the fee structure it’s proposed to apply an inflationary increase of 2.5% where permitted for 2021/22

## 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	<b>BOLD</b>
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 only has 11 betting premises and it is not proposed to apply any additional increase as in most cases we have already set the relevant fee at the upper limit of permitted charges.

## 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.

There has been limited ‘take up’ of street trading.

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.

## 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

### **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 6 Site Licences and 1 Collectors licences operating in the Borough.

### **Pre-application advice**

This initiative was introduced last year, however to date there has been limited take up.

### **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 D for information only.

## **2. Options Considered**

- 2.1 That Members may approve the inflationary increase fees as set out in Appendices A, B and C.
- 2.2 Members may decide not to apply an inflationary increase and leave the fees unchanged.
- 2.3 To note the current statutory fees charged for Certificates/Licences at Appendix D.

### **3. Preferred Option and Reason**

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

### **4. Consultation on Options**

- 2.1 The fees set out in Appendices A, B and C are not subject to consultation and where permitted any increases proposed will be limited to inflation only. The decision will be published on Tunbridge Wells Borough Council's website.

### **5. Implementation**

- 2.1 The fees will be charged with respect to new, existing and renewal applications from 1 April 2021 and published on the Council's website.

### **6. Appendices and Background Documents**

Appendices:

- Appendix A: Proposed Miscellaneous Fees and Charges 2021/22
- Appendix B: Proposed Gambling Act 2005 Fees 2021/22
- Appendix C: Proposed Pre-Application advice fees 2021/22
- Appendix D: Licensing Act 2003 Fees 2021/22

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/scrap-metal-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>

## **7. Cross Cutting Issues**

### **A. Legal (including the 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, Mid Kent Legal Services Team Leader (Contentious), 14.11.2020

### **B. Finance and Other Resources**

It is necessary for the Council to deliver a balanced budget and cover the costs of providing this service.

Jane Fineman, Head of Finance, Procurement and Parking. 14.11.2020

### **C. Staffing**

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, 14.11.2020

### **D. 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, 14.11.2020

### **E. 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, 14.11.2020

## **F. 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, 14.11.2020

## **G. 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, 14.11.2020

## **H. 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, 14.11.2020

## **I. 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, 14.11.2020

## **J. 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, 14.11.2020