

Report to Licensing committee
4 April 2018
Report of Head of citywide services
Subject Licence and registration fees

Item

3

Purpose

This report invites members to consider the level of fees payable for those licences administered by the council's licensing section.

Recommendation

To approve:

- (1) the fees detailed in the column headed 'total recommended licence fee 2018/19' of Appendix A attached to the report; and
- (2) the charging policy detailed in paragraphs 10 and 11 of the report.

Corporate and service priorities

The report helps to meet the corporate priority of a safe and clean city and the service plan priority of protecting the interests of the public through the administration of the licensing function.

Financial implications

Advertising costs to be met from existing budget.

Ward/s: All wards

Cabinet member: Councillor Maguire – Safe city environment

Contact officers

Michael Stephenson, Public protection manager 01603 212283

Tony Shearman, Environmental protection, licensing and markets manager 01603 212278

Background documents

None

Report

1. This report invites members to consider increasing the fees payable for those licences currently administered by the head of citywide services and detailed in appendix A to the report. The fees in respect of the licences shown in appendix A were last reviewed at the meeting of Licensing Committee on 9 March 2017.
2. Members will note that the charges fall under three headings: discretionary fees (the level of fee is at the discretion of the licensing authority subject to the principles outlined in paragraph 3 below), discretionary fees with statutory maxima (as discretionary fees but with an upper limit) and fixed fees (set by statute and cannot be increased).

European Court of Justice ruling – Hemming v Westminster case

3. The European Court of Justice (ECJ) ruling in the Hemming v. Westminster case in respect of licensing fees for sex establishments, relates to the correct interpretation of the 2006 EU Services Directive, which is applied in the UK by the Provision of Services Regulations 2009. The Directive does not apply to taxis or gambling activities.
4. In April 2015, the Supreme Court ruled in favour of Westminster City Council in a long running dispute relating to the licence fees charged to a group of sex establishments in Westminster. The Supreme Court overturned an earlier Court of Appeal ruling by concluding that the Services Directive 2006 does not prevent licensing authorities from charging fees that are proportionate to the cost of administering and enforcing the relevant licensing framework, to those who receive licences.
5. However, the Supreme Court sought an opinion from the ECJ regarding how such fees should be levied. It identified two different approaches to charging fees:
 - Whereby a council charged a fee upon application (covering the costs of authorisation procedures) and a subsequent fee to successful applicants (covering the cost of administering and enforcing the framework) - the 'type A' approach, or
 - Where a council charged a single fee on application covering all costs, on the basis that the relevant proportion of the fee would be refunded to unsuccessful applicants – the 'type B' approach.
6. The Supreme Court found the type A approach of charging two fees is permissible under the Services Directive but considered that the type B approach of charging a single fee was more problematic.
7. The ECJ ruled that the type B approach of fee setting is not compatible with the Services Directive, arguing that the Directive '*precludes the requirement for the payment of a fee, at the time of submitting an application for the grant or renewal of a authorisation, part of which corresponds to the costs relating to the management and enforcement of the authorisation scheme concerned, even if that part is refundable if that application is refused.*'

8. It is important to note that the ruling of the ECJ applies solely to the issue that was referred to it, that is whether a type B approach to fee setting is compatible with the Services Directive. Licensing Authority application fees should relate solely to the cost of authorisation procedures, i.e. the costs associated with reviewing and application and granting or refusing a licence. Under the type A approach, on which the Supreme Court ruling still holds, successful licence applicants should subsequently be charged an additional fee relating to the costs of administering and enforcing the relevant licensing framework. It is worth noting on this point that the Supreme Court view – which again still holds – was that there is nothing to stop licensing authorities making the payment of such a fee a condition of holding a licence. This would mean that authorities could withhold a licence until payment of the relevant fee had been received.

Levels of fees / charging policy

9. The Supreme Court has given a further judgment on 19 July 2017, which is a sequel to the previous judgment of April 2015, made with the benefit of the Court of Justice's answer to the questions concerning fees which were referred to the Court of Justice. In summary the court states as is mentioned in the paragraphs above that European law permits a fee to cover the costs of running and enforcing the licensing scheme becoming due upon the grant of a licence.
10. It is proposed that the 'type A' approach to charging (which the Supreme Court found permissible) be applied to those types of licence detailed in sections (ii) - environmental services licences and (iii) - other non-fixed licences under the 'Discretionary Fees' heading of appendix A.
11. In effect this will mean that applicants for these types of licences will need to submit the fee detailed in column one of appendix A with their application and when the council are in a position to issue the licence, the applicant will then need to pay the fee detailed in column two. If the applicant failed to pay the second part of the fee then the licence would be withheld.
12. This charging policy would not apply to section (i) – hackney carriage and private hire or to the licence types under the Gambling Act 2005 heading of appendix A, as the Services Directive does not apply in respect of taxi licensing or gambling. The Licensing Act 2003 fees would also be unaffected as these are statutorily set and cannot be amended.
13. When determining the levels of fees charged for the licensing function there are three main areas for consideration:
- licensing authorities are entitled, where legislation allows, to recover the cost of administering a licensing scheme, provided that allowance is made for exemptions or reductions;
 - where certain licences are exempt from a fee, the cost of administering these licences cannot be 'transferred' to other licence fee payers; and
 - licensing authorities are not empowered to raise revenue through their licensing function but they may include costs within licence fees relating to enforcement action against un-licensed activities.

14. The points outlined in paragraph 13 above are taken into account when determining the base estimates for the current financial year. In calculating the projected income for each type of licence it is necessary to estimate the number of licences that may be issued over the course of the year.

Implementation

15. The increases can be brought into effect from April 2018. However, members should be aware that a statutory advertising procedure applies in respect of an increase in the fees payable for hackney carriage vehicle licences, private hire vehicle and private hire operators' licences. If objections are received in respect of these particular fees, then members will have to give further consideration to those increases.

Discretionary Licence Fees Summary

	1	2	3	4	5	6	7	8	9	10
	<u>2018-19 Proposed</u>	<u>2018-19 Proposed post</u>		<u>2018-19</u>	<u>2018-19</u>	<u>2017-18</u>			<u>2017-18</u>	<u>2017-18</u>
<u>Licence Type</u>	<u>application</u>	<u>authorisation fee</u>	<u>2018-19 Proposed</u>	<u>Estimated no.</u>	<u>Estimated</u>	<u>Application</u>	<u>2017-18 Post</u>	<u>2017-18 Total</u>	<u>Estimated no.</u>	<u>Estimated</u>
	<u>administration fee</u>	<u>(enforcement etc)</u>	<u>total fee</u>	<u>licences issued</u>	<u>income</u>	<u>admin fee</u>	<u>authorisation fee</u>	<u>fee</u>	<u>licences issued</u>	<u>income</u>
Hackney Carriage Driver - Grant (3 years)	387	103	490	2	980	363	78	441	6	2646
Private Hire Driver - Grant (3 years)	259	90	349	80	27,954	260	65	325	95	30875
Hackney Carriage Driver - Renewal (3 years)	172	103	275	150	41,191	141	98	239	0	0
Private Hire Driver - Renewal (3 years)	128	90	218	200	43,614	102	86	188	0	0
Hackney Carriage Vehicle - Grant and Renew	95	27	123	200	24,570	84	23	107	242	25894
Private Hire Vehicle - Grant and Renewal (1	97	27	124	500	62,007	82	23	105	510	53550
Private Hire Operator - Grant (5 years)	91	820	911	0	0	77	699	776	0	0
Private Hire Operator - Renewal (5 years)	50	820	870	0	0	42	699	741	0	0
Transfer of HC/PH vehicle licence			20	90	1,800			20	40	800
Replacement Vehicle Licence Plate			20	15	300			20	15	300
Replacement Vehicle Roundels (each)			5	20	100			0	0	0
Knowledge Test			27	50	1,359			0	0	0
Safeguarding Training			33	50	1,646			0	0	0
Sub total					205,522					114,065

Acupuncture - Shop	211	108	318	3	955	179	93	272	4	1088
Accupuncture - Employee	58	22	79	5	397	48	19	67	13	871
Ear Piercing - Shop	211	108	318	2	637	179	93	272	0	0
Ear Piercing - Employee	58	22	79	12	952	48	19	67	4	268
Electrolysis - Shop	211	108	318	0	0	179	93	272	0	0
Electrolysis - Employee	58	22	79	0	0	48	19	67	1	67
Tattooing - Shop	211	108	318	10	3,184	179	93	272	6	1632
Tattooing - Employee	58	22	79	40	3,172	48	19	67	18	1206
Dangerous Wild Animals	201	208	409	0	0	171	193	364	0	0
Dog Breeding	201	208	409	0	0	171	193	364	0	0
Animal Boarding Establishments	201	208	409	0	0	171	193	364	0	0
Pet Shops	201	208	409	4	1,637	171	193	364	6	2184
Sub total					10,933					7,316

Sex Establishments	1522	1116	2638	4	10,552	2450	89	2539	1	2539
Sex establishment - transfer			74	0	0					
Scrap Metal Dealers - Site Licence	304	0	304	0	0	170	97	267	0	0
Scrap Metal Dealers - Collectors Licence	156	0	156	5	780	130	0	130	0	0
Scrap Metal Dealers - renew site licence	304	0	304	1	304	170	97	267	2	534
Scrap Metal Dealers - renew collectors licen	156	0	156	3	468	130	0	130	14	1820
Scrap Metal Dealers - vary, licensee name cl	46	0	46	0	0	38	0	38	0	0
Scrap Metal Dealers - vary, change of site	270	0	270	0	0	135	97	232	0	0
Scrap Metal Dealers - vary, change of site n	158	0	158	0	0	136	0	136	0	0
Scrap Metal Dealers - vary, site to collectors	46	0	46	0	0	38	0	38	0	0
Scrap Metal Dealers - vary, collectors to site	46	0	46	0	0	38	0	38	0	0
Tables and Chairs - Grant (1 year)	366	101	467	4	1,869	315	86	401	4	1604
Tables and Chairs - Renewal (3 years)	246	303	549	6	3,295	220	258	478	14	6692
Sub total					17,269					13,189

Total Estimated Annual Income**£233,724****£134,570**

Gambling Act 2005 Licences (Discretionary fees with statutory maxima) - The statutory maxima fugure is used

		Estimated		Estimated		Estimated	
		Licence	No. of	Estimated	Licence	No. of	Estimated
		Fee	Licences	Income	Fee	Licences	Income
		2018/19	Issued in	2018/19	2017/18	Issued in	2017/18
		£	2018/19	£	£	2017/18	£
Bingo Club							
	Transitional (fast track)	300.00	0	0	300.00	0	0
	New Application	3,500.00	0	0	3,500.00	0	0
	Annual Fee	1,000.00	1	1,000	1,000.00	1	1,000
	Transfer	1,200.00	0	0	1,200.00	0	0
	Re-Instatement	1,200.00	0	0	1,200.00	0	0
	Provisional Statement	3,500.00	0	0	3,500.00	0	0
	Provisional Licence Application	1,200.00	0	0	1,200.00	0	0
Betting Premises							0
	Transitional (fast track)	300.00	0	0	300.00	0	0
	New Application	3,000.00	0	0	3,000.00	1	3,000
	Annual Fee	600.00	28	16,800	600.00	28	16,800
	Variation	1,500.00	0	0	1,500.00	0	0
	Transfer	1,200.00	0	0	1,200.00	0	0
	Re-Instatement	1,200.00	0	0	1,200.00	0	0
	Provisional Statement	3,000.00	0	0	3,000.00	0	0
	Provisional Licence Application	1,200.00	0	0	1,200.00	0	0
Tracks							0
	Transitional (fast track)	300.00	0	0	300.00	0	0
	New Application	2,500.00	0	0	2,500.00	0	0
	Annual Fee	1,000.00	0	0	1,000.00	1	1,000
	Variation	1,250.00	0	0	1,250.00	0	0
	Transfer	950.00	0	0	950.00	0	0
	Re-Instatement	950.00	0	0	950.00	0	0
	Provisional Statement	2,500.00	0	0	2,500.00	0	0
	Provisional Licence Application	950.00	0	0	950.00	0	0
Family Entertainment Centre							0
	Transitional (fast track)	300.00	0	0	300.00	0	0
	New Application	2,000.00	0	0	2,000.00	0	0
	Annual Fee	750.00	1	750	750.00	1	750
	Variation	1,000.00	0	0	1,000.00	0	0
	Transfer	950.00	0	0	950.00	0	0
	Re-Instatement	950.00	0	0	950.00	0	0
	Provisional Statement	2,000.00	0	0	2,000.00	0	0
	Provisional Licence Application	950.00	0	0	950.00	0	0
Adult Gaming Centre							0
	Transitional (fast track)	300.00	0	0	300.00	0	0
	New Application	2,000.00	0	0	2,000.00	0	0
	Annual Fee	1,000.00	1	1,000	1,000.00	1	1,000
	Variation	1,000.00	0	0	1,000.00	0	0
	Transfer	1,200.00	0	0	1,200.00	0	0
	Re-Instatement	1,200.00	0	0	1,200.00	0	0
	Provisional Statement	2,000.00	0	0	2,000.00	0	0

Provisional Licence Application	1,200.00	0	0	1,200.00	0	0
	0.00					
Gambling Act 2005 Permits (Fixed fees)	0.00					
Family Entertainment Centre						0
Transitional	100.00	0	0	100.00	0	0
New Application	300.00	0	0	300.00	0	0
Renewall Fee	300.00	0	0	300.00	0	0
Prize Gaming						0
Transitional	100.00	0	0	100.00	0	0
New Application	300.00	0	0	300.00	0	0
Renewall Fee	300.00	0	0	300.00	0	0
Alcohol Licensed Premises - notification of 2 or less machines						0
Application fee	50.00	5	250	50.00	5	250
Alcohol Licensed Premises - more than 2 machines						0
Transitional	100.00	0	0	100.00	0	0
New Application	150.00	0	0	150.00	0	0
Annual Fee	50.00	12	600	50.00	16	800
Club Gaming Permit						0
Transitional	100.00	0	0	100.00	0	0
New Application	200.00	0	0	200.00	0	0
Renewall Fee	200.00	0	0	200.00	0	0
Annual fee	50.00	0	0	50.00	2	100
Club Gaming Machine Permit						0
Transitional	100.00	0	0	100.00	0	0
New Application	200.00	0	0	200.00	0	0
Renewall Fee	200.00	0	0	200.00	0	0
Annual fee	50.00	0	0	50.00	4	200
Small Society Lottery Registration						0
Application fee	40.00	10	400	40.00	4	160
Annual fee	20.00	15	300	20.00	140	2,800

Sub Total			21,100			56,010
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Licensing Act 2003 (Fixed Fees)

Premises Licence / Club Premises Certificate - Grant						
Band A	100.00	5	500	100.00	5	500
Band B	190.00	12	2,280	190.00	11	2,090
Band C	315.00	6	1,890	315.00	3	945
Band D	450.00	0	0	450.00	4	1,800
Band E	635.00	3	1,905	635.00	1	635
Other Licensing Act 2003 fees			10,200			5,000
Premises Licence / Club Premises Certificate - Annual Fee						
Band A	70.00	82	5,740	70.00	82	5,740
Band B	180.00	398	71,640	180.00	410	73,800
Band C	295.00	100	29,500	295.00	95	28,025
Band D	320.00	25	8,000	320.00	16	5,120
Band E	350.00	72	25,200	350.00	68	23,800
Premises Licence / Club Premises Certificate - Variation						
Band A	100.00	2	200	100.00	0	0
Band B	190.00	3	570	190.00	3	570

	Band C	315.00	1	315
	Band D	450.00	0	0
	Band E	635.00	0	0
Personal Licence		37.00	90	3,330
Temporary Event Notice		21.00	250	5,250
				166,520

	2	630
	0	0
	0	0
	91	3,367
	218	4,578
		156,600

Total overall estimated income421,344