

Report to Licensing committee
21 March 2018
Report of Head of citywide services
Subject Licence and registration fees

Item

6

Purpose

To consider the level of fees payable for those licences administered by the council's licensing section.

Recommendation

To:-

- (1) Approve the fees detailed in the column headed 'total recommended licence fee 2018-19 of Appendix A to the report; and
- (2) Agree 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

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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 four 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 five. 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.

