Report to Licensing committee Item

21 March 2018

Report of Head of citywide services

**Subject** Licence and registration fees

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**

Michael Stephenson, Public protection manager 01603 212283

Tony Shearman, Environmental protection, licensing and 01603 212278

markets manager

### **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.

### NORWICH CITY COUNCIL LICENSING CHARGES 2017/18 TO 2018/19

			Licence	No. of Licences	Estimated	Recommended	Estimated No. of Licences	Estimated
			Fee 2017/18	Issued in 2017/18	Income 2017/18	Charge (based on 3% incre 2018/19		Income 2018/19
	RETIONAR Hackney	RY FEES r Carriage & Private Hire	£		£	£		£
(-)	HC Driver PH Driver	rs - Grant rs Grant	363 260	6 95	2,178 24,700	374 268	2 80	7 21,4
	PH Driver	rs - Renewal rs Renewal Carriage Vehicle	134 114 149	0 0 242	0 0 36,058	139 118 154	150 200 200	20,8 23,6 30,8
	Private Hi	ire Vehicle ire Operator Renewal	129 859	510 0	65,790 0	133 885	500 0	66,5
	Transfer of	ire Operator Grant of HC/PH vehicle licence	898 20 20	0 40	800 300	925 21 21	90 15	1,8
	Sub total	nent Vehicle Licence Plate	20	15	300 129,826	21	15	166,1
(ii)	Acupunct	nental Services Licences ure - Shop ure - Employee	270 30	4 13	1,080 390	279 31	3 5	8
	Ear Pierci	ing - Shop ing - Smployee	270 30	0 4	0 120	279 31	2 12	5
	Electrolys Electrolys	sis - Shop sis - Employee	270 30	0	30	279 31	0	0
		- Shop Employee us Wild Animals	270 30 270	6 18 0	1,620 540 0	279 31 279	10 40 0	2,7 1,2
	Dog Bree		270 270	0	0	279 279	0	
	Pet Shops Sub Total		270	6	1,620 5,400	279	4	1,1 7,0
(iii)	Sex Estab	n-fixed Licences olishments	2,583	1	2,583	2,661	5	13,3
		of Sex Establishments licence - No objections received of Sex Establishments licence - Objections received e Hearing	20 Actual cost of C	0 ommittee He	0 earing	20	0	
	Scrap Me	tal Dealers: (collectors licence)	213 97	0 0	0	220 100	0 5	5
	Scrap Me	tal Dealers: (renew site licence) tal Dealers: (renew collectors licence)	213 97	2 14	426 1,358	220 100	1 3 0	3
	Scrap Me	tal Dealers: (vary - licensee name change) tal Dealers: (vary - change of site) tal Dealers: (vary - change of site manager)	23 173 105	0 0 0	0 0 0	24 178 109	0	
	Scrap Me	tal Dealers: (vary - site to collectors) tal Dealers: (vary - site to collectors)	24 24	0	0	25 25	0	
		nd Chairs (grant) nd Chairs (renewal 3 yearly)	607 375	4 14	2,428 5,246 12,041	626 386	4 6	2,5 2,3 19,1
	Total				147,267			192,3
amb		005 Licences (Discretionary fees with statutory m	naxima)					
	Bingo Clu	ub Transitional (fast track) New Application	300.00 3,500.00	0	0	300 3,500	0	
		Annual Fee Transfer	1,000.00 1,200.00	1 0	1,000	1,000 1,200	1 0	1,0
		Re-Instatement Provisional Statement	1,200.00 3,500.00	0	0	1,200 3,500	0	
	Betting P	Provisional Licence Application Premises Transitional (fast track)	1,200.00	0	0 0 0	1,200 300	0	
		New Application Annual Fee	3,000.00 600.00	1 28	3,000 16,800	3,000 600	0 28	16,8
		Variation Transfer	1,500.00 1,200.00	0	0	1,500 1,200	0	
		Re-Instatement Provisional Statement Provisional Licence Application	1,200.00 3,000.00 1,200.00	0 0 0	0 0 0	1,200 3,000 1,200	0 0 0	
	Tracks	Transitional (fast track)	300.00	0	0	300	0	
		New Application Annual Fee	2,500.00 1,000.00	0	0 1,000	2,500 1,000	0	
		Variation Transfer Paragraphy	1,250.00 950.00	0 0 0	0 0 0	1,250 950	0 0 0	
		Re-Instatement Provisional Statement Provisional Licence Application	950.00 2,500.00 950.00	0	0	950 2,500 950	0	
	Family Er	ntertainment Centre Transitional (fast track)	300.00	0	0	300	0	
		New Application Annual Fee Variation	2,000.00 750.00 1,000.00	0 1 0	750 0	2,000 750 1,000	0 1 0	7
		Transfer Re-Instatement	950.00 950.00	0	0	950 950	0	
	A - I - I - O	Provisional Statement Provisional Licence Application	2,000.00 950.00	0	0	2,000 950	0 0	
	Adult Gal	ming Centre Transitional (fast track) New Application	300.00 2,000.00	0	0 0 0	300 2,000	0	
		Annual Fee Variation	1,000.00 1,000.00	1	1,000	1,000 1,000	1 0	1,0
		Transfer Re-Instatement	1,200.00 1,200.00	0	0	1,200 1,200	0	
		Provisional Statement Provisional Licence Application	2,000.00 1,200.00	0	0 0 0	2,000 1,200	0	
amb		005 Permits (Fixed fees) ntertainment Centre			0 0			
		Transitional New Application Renewall Fee	100.00 300.00 300.00	0 0 0	0 0 0	100 300 300	0 0 0	
	Prize Gar		100.00	0	0	100	0	
		New Application Renewall Fee	300.00 300.00	0	0	300 300	0	
		Licensed Premises - notification of 2 or less machines Application fee Licensed Premises - more than 2 machines	50.00	5	0 250 0	50	5	2
	. aconor L	Transitional New Application	100.00 150.00	0	0 0	100 150	0	
	Club Gan	Annual Fee ning Permit	50.00	16	800 0	50	12	6
		Transitional New Application Renewall Fee	100.00 200.00 200.00	0 0 0	0 0 0	100 200 200	0 0 0	
	Club Gan	Annual fee ning Machine Permit	50.00	2	100	50	0	
		Transitional New Application Renewall Fee	100.00 200.00	0	0	100 200 200	0	
		Renewall Fee Annual fee ciety Lottery Registration	200.00 50.00	0 4	0 200 0	200 50	0	
	Small So	Application fee	40.00 20.00	4 140	160 2,800	40 20	10 15	3
	Small So	Annual fee					Γ	21,1
	Small Soc				27,860			
cens	Sub Total	1003 (Fixed Fees) Licence / Club Premises Certificate - Grant		[	27,860			
cens	Sub Total	1003 (Fixed Fees) Licence / Club Premises Certificate - Grant Band A Band B	100.00 190.00	5 11	500 2,090	100 190	5 12	2,2
cens	Sub Total	2 <b>003 (Fixed Fees)</b> Licence / Club Premises Certificate - Grant Band A Band B Band C Band D	100.00 190.00 315.00 450.00	11 3 4	500 2,090 945 1,800	190 315 450	12 6 0	2,2 1,8
cens	Sub Total sing Act 2 Premises Other Lice	2003 (Fixed Fees) Licence / Club Premises Certificate - Grant Band A Band B Band C Band D Band E ensing Act 2003 fees Licence / Club Premises Certificate - Annual Fee	100.00 190.00 315.00	11 3 4 1	500 2,090 945 1,800 635 5,000	190 315 450 635	12 6 0 3	2,2 1,8 1,9
cens	Sub Total sing Act 2 Premises Other Lice	2003 (Fixed Fees) Licence / Club Premises Certificate - Grant Band A Band B Band C Band D Band D Band E ensing Act 2003 fees Licence / Club Premises Certificate - Annual Fee Band A Band B	100.00 190.00 315.00 450.00 635.00	11 3 4 1 82 410	500 2,090 945 1,800 635 5,000 5,740 73,800	190 315 450 635	12 6 0 3 82 398	2,2 1,8 1,9 10,2 5,7 71,6
cens	Sub Total sing Act 2 Premises Other Lice	Discovering the control of the contr	100.00 190.00 315.00 450.00 635.00 70.00 180.00 295.00	11 3 4 1 82 410 95 16	500 2,090 945 1,800 635 5,000 5,740 73,800 28,025 5,120	190 315 450 635 70 180 295 320	12 6 0 3 82 398 100 25	2,2 1,8 1,9 10,2 5,7 71,6 29,5 8,0
cens	Sub Total sing Act 2 Premises Other Lice Premises	2003 (Fixed Fees) Licence / Club Premises Certificate - Grant Band A Band B Band C Band D Band E ensing Act 2003 fees Licence / Club Premises Certificate - Annual Fee Band A Band B Band C	100.00 190.00 315.00 635.00 70.00 180.00 295.00 320.00	11 3 4 1 82 410 95	500 2,090 945 1,800 635 5,000 5,740 73,800 28,025	190 315 450 635 70 180 295	12 6 0 3 82 398 100	2,2 1,8 1,9 10,2 5,7 71,6 29,5 8,0 25,2
cens	Sub Total sing Act 2 Premises Other Lice Premises	COO3 (Fixed Fees) Licence / Club Premises Certificate - Grant Band A Band B Band C Band D Band E ensing Act 2003 fees Licence / Club Premises Certificate - Annual Fee Band A Band B Band C Band D Band C Band D Licence / Club Premises Certificate - Variation Band A Band B Band A Band B Band A Band B Band C	100.00 190.00 315.00 635.00 70.00 180.00 295.00 320.00 350.00	11 3 4 1 82 410 95 16 68	500 2,090 945 1,800 635 5,000 5,740 73,800 28,025 5,120 23,800 0 570 630	190 315 450 635 70 180 295 320 350 100 190 315	12 6 0 3 82 398 100 25 72 2 3 1	2,2 1,8 1,9 10,2 5,7 71,6 29,5 8,0 25,2
cens	Sub Total sing Act 2 Premises Other Lice Premises	Coos (Fixed Fees) Licence / Club Premises Certificate - Grant Band A Band B Band C Band D Band E Band E Band E Band B Band C Band B Band C Band D Band C Band D Band C Band D Band E Licence / Club Premises Certificate - Variation Band A Band B Band C Band D Band E Band C Band D Band B Band C Band D Band B Band C Band D Band B Band C Band D Band C Band D Band C Band D Band D	100.00 190.00 315.00 450.00 635.00 70.00 180.00 220.00 350.00	11 3 4 1 82 410 95 16 68	500 2,090 945 1,800 635 5,000 5,740 73,800 28,025 5,120 23,800	190 315 450 635 70 180 295 320 350	12 6 0 3 82 398 100 25 72 2 3	5,2,2,2,1,8 1,9,9 10,2 5,7,71,6,29,5,8,0,25,2,2 2,5,3

Total income 331,727 379,976