

REPORT TO LICENSING COMMITTEE AND COUNCIL

Date of Meeting: 31 January 2023 and 21 February 2023

Report of: Service Lead - Environmental Health & Community Safety

Title: Licensing Fees and Charges for 2023/24

Is this a Key Decision?

No

Is this an Executive or Council Function?

Council

1. What is the report about?

- 1.1 The purpose of this report is to establish the licensing fees and charges that should apply for 2023/24 for those activities where the Council has discretion to do so.

2. Recommendations:

- 2.1 That Licensing Committee recommends and Council approves the following:

For the period from 1 April 2023 to 31 March 2024 the fees and charges are set as contained in Appendix B to this report.

3. Reasons for the recommendation:

- 3.1 The statutory principle in relation to the setting of fees is that they should be reasonable and should relate to the costs of performing the function, including staffing, administration, testing, inspections, hearings, regulation and appeals.
- 3.2 The recommendation is made in order to comply with the provisions of the European Services Directive (2006/123/EC) which was incorporated into UK law by the Provision of Services Regulations 2009. The legal requirements were considered by the Supreme Court in the case of R (on the application of Hemming and others) v Westminster City Council [2015] UKSC 25 and [2017] UKSC 50.

4. What are the resource implications including non financial resources.

- 4.1 If there is no increase in fees there is a risk that the Council will not recover all of the costs for services or activities for which it is permitted to charge and will increase the burden on the Council's general fund.
- 4.2 There will be a cost in adoption of fees and charges as some will require public notice to be given. However this cost will be met from the existing budgetary provision.

5. Section 151 Officer comments:

- 5.1 The proposed fees have been built into the Council's provisional 2023-24 budget that will be considered at Council in February 2023.
- 5.2 Any surplus or deficit arising, will be placed in an earmarked reserve, where appropriate, as it is a requirement for the income to be ring-fenced for the service for certain licence fees.

6. What are the legal aspects?

- 6.1 The Licensing Committee's responsibilities are set out in the Council's Constitution and include setting and reviewing licensing fees other than those set by statute.
- 6.2 The power to charge a fee is contained in Schedule 3 Paragraph 19 of the Local Government (Miscellaneous Provisions) Act 1982 which provides local authorities with a wide discretion to set a 'reasonable fee'. Paragraph 19 provides that:

'An applicant for the grant, variation, renewal or transfer of a licence under this Schedule shall pay a reasonable fee determined by the appropriate authority.'

In accordance with this provision, it was established over 30 years ago by the Court of Appeal in the case of *R v Westminster, ex parte Hutton (1985)* that a fee could be charged under paragraph 19 in order to reflect the costs, not only of processing applications, but also of '...inspecting premises after the grant of licences and for what might be called vigilant policing... in order to detect and prosecute those who operated sex establishments without licences'. The Supreme Court has subsequently held in the Hemming case (cited below) that it is open to a licensing authority to require an applicant for the grant or renewal of a licence to pay a fee to cover the running and enforcement costs of a licensing scheme.

- 6.3 Since December 2009, this power has been subject to the provisions of the European Services Directive (2006/123/EC) which was incorporated into UK law by the Provision of Services Regulations 2009. The Regulations state that charges incurred by applicants under an authorisation scheme "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" (effectively the costs to administer the process). In the case of *R (on the application of Hemming and others) v Westminster City Council [2015] UKSC 25*, the Supreme Court held that it remains the case that local authorities can include not only administrative costs, but additionally the costs of regulatory and enforcement costs in the fees charged to licensed operators provided that such costs are reasonable and proportionate.

The licence fee will consist of two parts, A and B as follows:

Part A is to cover the costs of processing the application, namely the costs of the authorisation procedures and formalities. The Part A fee is payable in full on submission of the application and is non-refundable.

Part B is to cover the costs associated with running and enforcing the licensing scheme. The Part B fee would only become payable if a licence is granted, and would need to be paid by the operator before the licence becomes operational.

7. Monitoring Officer's comments:

- 7.1 The Provision of Services Regulations 2009 remain in force following the United Kingdom's departure from the European Union. Accordingly, the principles set out in the Regulations must continue to be followed and as set out in this report.

Simon Copper – Deputy Monitoring Officer.

8. Report details:

- 8.1 Exeter City Council has statutory responsibility for the administration and enforcement of a wide range of licences, registrations 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.
- 8.2 The basis in setting such fees is generally to ensure full cost recovery, or as close to it as possible. Numerous legal cases over the years have confirmed that licensing fees may not be used to generate a profit for councils, and that fees should be reviewed annually to ensure that neither a significant surplus nor deficit is created. Surpluses or deficits may be carried forward to future years to be redistributed (within the ring-fenced licensing budget), or recouped, as applicable.
- 8.3 Many licensing schemes fall within the definition of 'services', under the EU Services Directive, as incorporated by the Provision of Services Regulations 2009. For such schemes, 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 *R (on the application of Hemming (t/a Simply Pleasure Ltd)) v Westminster City Council*. Fees must reflect administrative, policy and compliance costs, but cannot include the costs of enforcement action against unlicensed operators.
- 8.4 Appendix A summarises the Council's powers to set its fees in respect of licensing applications, and any limitations on those powers.
- 8.5 A notice of any variation to vehicles and operator's licence fees will be advertised in a local paper and will be deposited at the council offices for a period of 28 days. Any objections received within 28 days of publication of the notice and not withdrawn will

be considered at a meeting of the Licensing Committee on 21 March 2023. If there are no objections to the variation in fees they will come into effect on 1 April 2023.

- 8.6 One change to this year's fee structure is the addition of charges relating to the classification of films by the Licensing Authority. Under the Licensing Act 2003 the definition of film has been expanded to mean any exhibition of moving pictures, including feature films, adverts and trailers. This definition also now covers the showing of a video and other visual image media, including non-live digital exhibitions of plays, operas and pop concerts.
- 8.7 Where a licensed premise intends to show films, the Licensing Act 2003 requires a mandatory condition to be placed on the Premises Licences or Club Premises Certificates which restricts the admission of children (persons aged under 18) to the exhibition of any film/s in accordance with either the British Board of Film Classification (BBFC) or any recommendation made by this Licensing Authority.
- 8.8 The licensing authority considers the classification system process used by the BBFC and its guidance to be nationally understood. It will therefore use the general principles of their guidance and their processes as its benchmark for determining its recommendation on the restriction of access of children to the film(s).

9. How does the decision contribute to the Council's Corporate Plan?

- 9.1 The appropriate setting of Licensing Fees will contribute to a healthy and safe city, and lend support to a robust, business friendly economy.

10. What risks are there and how can they be reduced?

- 10.1 The proposed fees have been calculated on a cost recovery basis, and projections show that if the revised fees are adopted the costs of administering licensing schemes should be recovered.

11. Equality Act 2010 (The Act)

- 11.1 Under the Act's Public Sector Equalities Duty, decision makers are required to consider the need to:
- eliminate discrimination, harassment, victimisation and any other prohibited conduct;
 - advance equality by encouraging participation, removing disadvantage, taking account of disabilities and meeting people's needs; and
 - foster good relations between people by tackling prejudice and promoting understanding.
- 11.2 In order to comply with the general duty authorities must assess the impact on equality of decisions, policies and practices. These duties do not prevent the authority from reducing services where necessary, but they offer a way of developing proposals that consider the impacts on all members of the community.
- 11.3 In making decisions the authority must take into account the potential impact of that decision in relation to age, disability, race/ethnicity (includes Gypsies and Travellers), sex and gender, gender identity, religion and belief, sexual orientation, pregnant

women and new and breastfeeding mothers, marriage and civil partnership status in coming to a decision.

- 11.4 In recommending this proposal potential impact has been identified on people with protected characteristics as determined by the Act and an Equalities Impact Assessment has been included in the background papers for Member's attention.

12. Carbon Footprint (Environmental) Implications:

- 12.1 No direct carbon/environmental impacts arising from the recommendations.

13. Are there any other options?

- 13.1 The Licensing Committee could decide to maintain fees and charges at the 2022/23 levels, however the service would not be recovering the full cost incurred to the authority for delivering the individual licence areas.

Report of: Simon Lane - Service Lead Environmental Health and Community Safety

Local Government (Access to Information) Act 1972 (as amended)

Background papers used in compiling this report:-

The Gambling Act 2005.
Guidance issued under Section 25 of the Gambling Act 2005
The Police Reform and Social Responsibility Act 2011
The Licensing Act 2003
Guidance issued under Section 182 of the Licensing Act 2003
Local Government (Miscellaneous Provisions) Act 1982
Local Government (Miscellaneous Provisions) Act 1976
Scrap Metal Dealers Act 2013

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