

A guide to licensing fees and levies

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This Practice Note aims to provide practical guidance to those working within a local authority in England or Wales to deal with licensing fees and levies. Local authorities can, of course, be required to administer a range of licences or approvals, from licences for the sale of alcohol and the provision of regulated entertainment, to taxi licences, or licences for street trading.

This Practice Note is not intended to provide detailed advice on the setting and/or recovery of fees under every licence regime, but will give broad guidance on the key issues for consideration.

Licensing fees and levies

Licensing fees essentially fall within three different categories:

- fees which are set by statute and cannot be amended by individual local authorities
- fees which are set locally to cover the cost of administering/managing those regimes
- fees which are set locally but are subject to a cap/maximum limit imposed by statute

Statutory fees

There are a number of licensing regimes where the local authority has no discretion as to the level of fees which it charges in its jurisdiction, because the fee levels are prescribed by the applicable legislation. These include fees for:

- premises licences, club premises certificates, annual fees, temporary event notices and personal licences under the Licensing Act 2003 (LA 2003)

References:
LA 2003

- gaming machine permits and notifications, prize gaming permits and small society lotteries under the Gambling Act 2005 (GA 2005), and

References:
GA 2005

- licences for the sale and storage of fireworks/explosives

Licensing Act 2003

The LA 2003 governs the sale of alcohol, provision of regulated entertainment and the provision of late night refreshment (hot food and/or hot drink between the hours of 23.00 and 05.00 daily)

References:
LA 2003, s 1

Premises licence application fees and annual fees are charged based on the non-domestic rateable value of the premises, with fees determined by the 'band' the rateable value falls into. Where premises are still in the course of construction and do not yet have a rateable value, the fee payable will be the fee applicable to premises in Band 'C'.

References:
LA 2003, s 55

Licensing Act 2003 (Fees) Regulations 2005, SI 2005/79, reg 3

In addition, a 'multiplier' of two or three times the standard fee applies to premises used exclusively or primarily for the supply of alcohol for consumption on the premises where the non-domestic rateable value is £87,001 or higher. This applies to applications for grant or variation of a premises licence and to the annual fee payable.

References:
Licensing Act 2003 (Fees) Regulations 2005, 2005, SI 2005/79, reg 4(2)

There are also additional fees for premises licences for 'exceptionally large' events with over 5000 persons to be on the premises at the same time, unless the premises

is a building and certain conditions, as specified within the regulations, apply. The additional fees are payable for applications for grant or variation and in respect of the annual fee. The additional fees range from £1000 (with an annual fee of £500) for a premises licence where there will be between 5000 and 9999 persons in attendance; to £64000 (with an annual fee of £32000) for events with 90000 persons and over.

References:

Licensing Act 2003 (Fees) Regulations 2005, 2005, SI 2005/79, regs 4(5), 4(4), 5(4), 5(5)

The Guidance to Licensing Authorities issued by the Home Office under the authority of LA 2003, s 182 (Guidance), states that:

References:

LA 2003, s 182

Guidance to Licensing Authorities

‘It should be noted that premises licences for large scale events do not automatically attract the higher fee levels set out in the fee regulations made under the 2003 Act.... Venues that are permanent or purpose built or structurally altered for the activity are exempt from the additional fee’ (para 14.8 of the Guidance)

The type of ‘premises’ where the additional fee might apply is the venue for a music festival, although the regulations are not particularly clear.

Local authorities should also note that the Police Reform and Social Responsibility Act 2011 (PRSRA 2011) includes a power for them to charge a levy on all licensed premises in their area which are authorised to supply alcohol in the ‘levy period’ (which can be between midnight and 6 am). The introduction of a levy would mean that licence holders for all such premises are required to pay an additional amount on an annual basis (unless the licence is varied to remove the additional hours). The annual levy amount is £1493 for premises in the top bracket of rateable value, set under the statute (although it can be up to £4440 for premises used exclusively or primarily for the sale of alcohol in the same bracket).

References:

PRSRA 2011

Gambling Act 2005

There are prescribed statutory fees for applications under the GA 2005 in respect of permits for family entertainment centre gaming machines, club gaming and club machines; prize gaming and licensed premises gaming machines/ notifications (for the provision of gaming machines in premises licensed for the sale of alcohol). There are also

prescribed fees for the registration of a non-commercial society for the purposes of a small society lottery. It should be noted, however, that fees for other licences/permits under the gambling regime are determined locally subject to a national cap, as set out below.

References:

Gambling Act 2005 (Family Entertainment Centre Gaming Machine) (Permits) Regulations 2007, SI 2007/454

Gambling Act 2005 (Club Gaming and Club Machine Permits) Regulation 2007, SI 2007/1834, regs 8

Gambling Act 2005 (Prize Gaming) (Permits) Regulations 2007, SI 2007/455, reg 3

Gambling Act 2005 (Licensed Premises Gaming Machine Permits (England and Wales) Regulations 2007, SI 2007/1833, reg 3

Gaming Machines in Alcohol Licensed Premises (Notification Fee) (England and Wales) Regulations 2007, SI 2007/1832

Small Society Lotteries (Registration of Non-Commercial Societies) Regulations 2007, SI 2007/2328, regs 3(1)(b), 5

Fireworks and explosives

Fees for firework licences (authorising the supply of fireworks) are set under the Fireworks Regulations 2004, SI 2004/1836. In addition to a licence for the sale of fireworks, to run wholesale or retail premises that store fireworks of up to 2000kg (net explosives content) in England, Scotland and Wales, operators must be licensed with either the fire service or Trading Standards. The fee payable will depend on the required minimum separation distance and the duration of the licence.

References:

Fireworks Regulations 2004, SI 2004/1836

Explosives Regulations 2014, SI 2014/1638, Sch 13

To store or sell more than 2000kg (net explosives content) operators would require a licence from the Health and Safety Executive.

Locally set fees

Fees for licences can be set locally where the relevant statute allows local authorities to determine fees to enable them to recover their reasonable cost in carrying out its licensing functions under the relevant regime. Licensing fees falling within this category include licences for:

- drivers of hackney carriages or private hire vehicles, except in London where fees are payable to Transport for London and are set by the legislation for private hire vehicle drivers

References:

MPCA 1869

LG(MP)A 1976, s 53(2)

The Private Hire Vehicles (London PHV Driver's Licences) Regulations 2003

- vehicle and operators' licences for hackney carriages, private hire vehicles and private hire operators

References:

MPCA 1869, s 6(5)

LG(MP)A 1976, s 70

- the approval of premises as venues for marriage and civil partnerships

References:

Marriages and Civil Partnerships (Approved Premises) Regulations 2005, SI 2005/3168, reg 12

- various permissions in connection with keeping/breeding/selling animals see further below
- scrap metal dealers (site and collection licences)

References:

SMDA 2013

- sex establishments, including sex shops, sex cinemas, hostess bars and sexual entertainment venues)

References:

LG(MP)A 1976

- caravan sites

References:

CSCDA 1960, s 3

The powers to set licence fees locally in connection with the keeping/breeding/selling of animals are contained within the relevant legislation. This includes legislation governing licences for:

- animal boarding establishments (for example kennels or catteries)

References:

ABEA 1963, s 1(2)

- the keeping of dangerous wild animals (such as wild cats, primates, wild boar, wolves, marsupials)

References:

DWAA 1976, s 1

- breeding and selling dogs

References:

BDA 1973

BDA 1991

- exhibiting and training performing animals

References:

PA(R)A 1925, s 1

- keeping pet shops

References:

PAA 1951, s 1

- keeping riding establishments

References:

REA 1964, s 1

- operating zoos

References:

Zoo Licensing Act 1981, s 1

Within London, there are further categories of licence for which fees are not governed by statute but are set locally, including licences for:

- auction premises

References:

GLC(GP)A 1984, s 26

- public exhibitions or displays (this does not include exhibitions of boxing or wrestling or films, which are of course covered by the LA 2003), and

References:

GLC(GP)A 1966, s 21

- special treatments, which may include treatments such as massage, manicure, acupuncture, tattooing, cosmetic piercing, chiropody, light, electric or other special treatment of a like kind or vapour, sauna or other baths

References:

LLAA 1991

Outside of London, local authorities may require licences for massage and special treatments, street trading, charity street collections or markets if the council has chosen to adopt the requirement for a licence. In those circumstances, the fee payable will also be determined by the local authority.

References:

LG(MP)A 1982

Capped fees

The Gambling (Premises Licence Fees)(England and Wales) Regulations 2007, SI 2007/479 include provisions on licence fees which can be set locally, but subject to a national cap, for the following authorisations:

References:

Gambling (Premises Licence Fees)(England and Wales) Regulations 2007, SI 2007/479

- casino premises licences

- bingo premises licences
- betting premises licences (for tracks and other venues)
- family entertainment centre premises licences, and
- adult gaming centre premises licences

The regulations deal with fees for new licences, provisional statements, transfers, variations, notifications of change of circumstances and annual fees and the Schedule to the Gambling (Premises Licence Fees)(England and Wales) Regulations 2007, SI 2007/479 contains a table clearly setting out the maximum fees that may be charged for each application for each type of licence.

The fees for Temporary Use Notices under the GA 2005 are also subject to a cap.

References:

Gambling Act 2005 (Temporary Use Notices) Regulations 2007, SI 2007/3157

It should be noted that the basis of charging fees under the LA 2003 may change to a 'capped fee' in future. The Police Reform and Social Responsibility Act 2011 (PRSRA 2011) allows for fees to be set locally on cost recovery basis, subject to a national cap. However, the relevant sections are not yet in force and there has been no determination of the cap level to date. The government announced in February 2015, in its response to a consultation document, that it had decided not to introduce locally set fees at that time, but was inviting local government to provide evidence of costs in licensing functions.

References:

PRSRA 2011

What does a local authority need to consider?

Local authorities firstly need to consider whether the legislation governing the licence regime allows them to set the fee for the licence. Clearly, where licence fees are governed by statute (for example fees under the LA 2003) local authorities must charge and administer fees in accordance with the provisions of the relevant legislation.

Where fees can be set by local authorities under the legislation, with or without a cap prescribed by the relevant legislation, the local authority will need to consider the effect of the European Services Directive 2006/123/EC Directive), which was given effect in the UK in 2009 under the Provision of Services Regulations 2009, SI 2009/2999.

References:

European Services Directive 2006/123/EC

Provision of Services Regulations 2009, SI 2009/2999

The European Services Directive 2006/123/EC aims to remove barriers to trade in services in the EU, by simplifying administrative procedures for service providers, enhancing the rights of consumers and businesses receiving services

and fostering co-operation among EU countries.

Among other matters, the European Services Directive 2006/123/EC requires that the fee which may be charged by points of single contact should be proportionate to the cost of the procedures and formalities with which they deal.

Provision of Services Regulations 2009, SI 2009/2999, Pt 3 sets out the duties of competent authorities in relation to the provision of services in the UK, including dealing with authorisation schemes. In particular, Provision of Services Regulations 2009, SI 2009/2999, reg 18 requires that the formalities required for an authorisation scheme must not be dissuasive; and furthermore that any charges provided for by a competent authority 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.

The decision in *Hemming (t/a Simply Pleasure Ltd)* considered the effect of these provisions on licence fees charged for sexual entertainment venues. Local authorities will also need to consider a number of earlier cases dealing with the appropriate level of fee for a licence, ranging from fees for street trading licences, to fees charged for taxi licences which will have relevance to all licensing authority fees set locally.

References:

Hemming (t/a Simply Pleasure Ltd) v Westminster City Council [2015] UKSC 25

R v Manchester City Council, ex p King (1991) 89 LGR 696, DC (not available in Lexis®Library)

R (on the application of Davies) v Crawley Borough Council [2001] 46 EGCS 178, QBD (not available in Lexis®Library)

Local authorities should also take into account guidance from the Local Government Association on setting fees. Among other things, the current guidance reminds local authorities:

- full details of fees should be easily accessible online, including the ability to make electronic payments
- councils should be able to separate the cost of processing an initial application from those associated with on-going administration, because the cost of on-going administration cannot be charged to unsuccessful applicants
- fees must not be used to make a profit or act as an economic deterrent to deter certain business types from operating in an area; Fees must be regularly and robustly reviewed to ensure they remain reasonable and proportionate, and
- it is helpful to give an indication of how the fee level has been calculated, the review process and the route for challenge to ensure transparency

The guidance also includes a checklist of what elements might be included in the calculation of a licence fee, including both initial application costs and further compliance costs. However, authorities should note that the guidance pre-dated the Supreme Court decision in the *Hemming* case.

Where the legislation prescribes a maximum fee limit, for example for various premises licences under the GA 2005, the local authority will, of course, need to ensure that it does not exceed those fees.

In respect of any late night levy under the LA 2003, the Late Night Levy (Application and Administration) Regulations 2012, SI 2012/2730, which came into force on 31 October 2012, prescribe a number of matters relating to the introduction and administration of the late night levy. Any local authority considering introducing a levy will need to ensure they consider and are compliant with the provisions of these regulations.

References:

Late Night Levy (Application and Administration) Regulations 2012, SI 2012/2730

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