

**Agenda Item No:** 4  
**Report To:** LICENSING AND HEALTH & SAFETY  
COMMITTEE



**Date:** 25<sup>th</sup> January 2008

**Report Title:** PROPOSED FEE LEVELS FOR 2008/9 FOR  
GAMBLING ACT 2005 RELATED APPLICATIONS

**Report Author:** Head of Environmental Services

<b>Summary:</b>	<b>The report proposes fees for premises licences and temporary use notices in connection with premises used for gambling for the financial year 2008/9.</b>
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**Key Decision:** NO

**Affected Wards:** Not applicable

**Recommendations:** That the Licensing and Health & Safety Committee recommends the fees used for gambling applications and notices as given in Appendix A to the Executive.

**Policy Overview:** The process of setting the fees for premises licence applications and temporary use notices for premises used for gambling is essential to ensure that operational costs are recovered and that Council budgetary objectives are met.

**Financial Implications:** The process of setting the fees is necessary to ensure that fees are set at a level that will enable the authority to recover the costs associated with the service provision.

**Risk Assessment** YES

**Other Material Implications:** Members should note generally that premises licences and temporary use notices issued under the authority of the Gambling Act 2005 may be considered possessions and therefore Article 1 to Protocol 1 of the Human Rights Act 1998, the peaceful enjoyment of possessions, is relevant.

**Exemption Clauses:** Not applicable

**Background Papers:** None

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**Report Title: PROPOSED FEE LEVELS FOR 2007/8 FOR  
GAMBLING ACT 2005 RELATED APPLICATIONS**

**Purpose of the Report**

1. The report recommends the proposed fees for premises licence fees and temporary use notices for premises used for gambling for the financial year 2007/8.

**Issue to be Decided**

2. Whether to approve the fees in Appendix A for recommendation to the Executive.

**Background**

3. The Gambling Act 2005 Section 212 gives the Secretary of State power to make regulations prescribing the fees payable to the licensing authority. It also gives her the power to devolve to licensing authorities, in England and Wales, the freedom to set fees for premises licence applications, subject to any constraints she may prescribe. The Government has decided that for England and Wales, licensing authorities will determine their own fees for gambling premises licences and temporary use notices but that the Secretary of State will prescribe the maximum fee payable for each category of licence.
4. After consulting widely and obtaining and considering information from licensing authorities and the gambling industry, the Department for Culture Media and Sport (DCMS) has prescribed maximum fees for each type of premises and each type of application for which a fee is payable. The maximum levels have been included in Appendix A in brackets for comparison purposes.
5. Local authorities are able to set fees for premises licences from within fee bands prescribed by DCMS. Each premises type will have separate fee bands.
6. There will be an initial fee to cover the cost of application and an annual "maintenance" fee.
7. The DCMS has asked Licensing Authorities to set fees to ensure full cost recovery and that the fee levels represent fairness and value for money for the gambling industry. All licensing authorities must set their fees upon a cost recovery basis only (Gambling Act Section 212 (2)(d)) and will be required to review their fee levels on an annual basis to ensure this.
8. The DCMS believe this approach will ensure fairness and value for money, while also allowing licensing authorities to fully recover the costs associated with premises licensing.
9. It was recognised that for the initial fees setting exercise (i.e. 2007/08 (Minute No. LHS 606/04/2007refers)), costs could only be estimated as we had limited information on how long it would take to process applications. The authority

only started dealing with applications mid 2007 and the majority were covered by transitional processes. Until such time as we have been processing applications and renewals for a full year our ability to accurately estimate costs remains somewhat uncertain.

10. At the time of preparing this report, income received from the gambling provisions amounted to £11,690. During the first year of applications the income is expected to be significantly higher than in subsequent years, as there were one off fees associated with the transition period.
11. Expenditure is currently £3079, but this figure does not include staffing costs. The full picture of the costs associated with applications under the Gambling Act will not be known until the end of year accounts.
12. As the costs associated the applications are yet to be confirmed and income levels remain unclear, it is proposed that no changes are made to the fees associated with premises licence applications for 2008/9.
13. The power to set fees is held by the Council, so it is appropriate that the Licensing, Health and Safety Committee recommend the fees to the Executive.
14. Fees must be set for all types of premises licences:
  - Casinos
  - Bingo
  - Betting (off-course)
  - Tracks (on-course betting)
  - Adult Gaming Centres
  - Family Entertainment Centres
15. The fees must be determined for the different classes of premises as set-out in the fees regulations (See Gambling Act 2005 Section 212(2)(b) and SI 2007 / 479 paragraph 3) and cannot be based, for example, upon premises size, rateable value, etc.

Fees must be set by each licensing authority for the following:

- Application for (new) premises licence
  - Application to vary a premises licence
  - Application to transfer the licence (Sections 188 and 189)
  - Application for re-instatement of the premises licence (Sections 195 & 196)
  - Application for a provisional statement
  - Application for a premises licence for a premises which already has a provisional statement
  - Fee to accompany a request for a copy of the premises licence (Sections 190)
  - Fee to accompany a notification of change of circumstances (only relevant change is that of address - Section 186)
16. Start-up costs cannot be included in the calculations for setting premises licence fees. The Secretary of State wrote to all Chief Executives of local authorities to inform them that provision had been made in the Revenue

Support Grant (RSG), as part of the EPCS (Environmental, Protective and Cultural Services) settlement, for the start-up costs related to the Gambling Act 2005.

17. Members will recall that the Gambling Act 2005 gives licensing authorities the power to allow temporary gambling in unlicensed premises, by means of a Temporary Use Notice (a "TUN"). TUNs are a new concept under this Act, an equivalent notice did not exist under the previous legislation.
18. In brief, the Act allows unlicensed premises to be used for the purposes of gambling for not more than 21 days in a period of 12 months. TUNs must be given 3 months prior to the event and can only be given by a person who holds an operating licence issued by the Gambling Commission.
19. The only permitted activity allowed under a TUN is the providing of facilities in respect of any form of equal chance gaming where those participating in the gaming are taking part in a competition which is intended to produce a single, overall winner. The reference to providing facilities for equal chance gaming does not include providing such facilities in circumstances where any person participating in the gaming does so by means of a gaming machine.
20. In making an application, as well as serving Notice on the Licensing Authority, the applicant must also serve a copy upon the following Responsible Authorities:
  - The Gambling Commission
  - The Chief Officer of Police
  - Her Majesty's Revenue and Customs
21. A set of premises may be subject to more than one TUN over a period of time, as long as the Notices, collectively, do not exceed 21 days in a 12 month period.
22. If a TUN is given and the total period which the Notice is to take effect exceeds 21 days, the Licensing Authority must issue a counter notice stating that the TUN will not have any effect.
23. If a Notice is given, and only part of the period of the Notice would exceed the 21 day limit, then the Licensing Authority must give a counter notice specifying the period to be excluded from the TUN. Where there is a choice as to which period to exclude, the Licensing Authority shall consult the person who gave the TUN before issuing a counter notice containing the excluded period.
24. The three Responsible Authorities, who are given a copy of the Notice, have 14 days from the date that the Notice was given to the Licensing Authority to raise any objections. The objection must be sent to the person who submitted the Notice and a copy sent to the Licensing Authority; the Responsible Authority must state their reasons for objection. If an objection is received, the Licensing Authority shall hold a hearing, unless all the parties involved agree in writing that a hearing is unnecessary.
25. The Licensing Authority may determine that the TUN should not have effect, or should only have effect with modifications. The principles it must apply in

reaching a view are those it applies when determining premises licence applications. If the Authority concludes that the Notice should not have effect, or should only have effect with modifications, it must serve a counter-notice upon the person who served the Notice. The counter-notice may provide that the TUN will:

- not have effect
- have effect only in respect of specific activities
- only have effect in relation to an activity at specified times of the day
- be subject to a specified condition

26. Section 227 of the Act sets out the provisions relating to the endorsement of TUNs. If there are no objections to a Notice by the end of the 14 day period, the Notice must be endorsed by the Licensing Authority and returned to the person giving the Notice as soon as reasonably practicable. If an objection is pending, then the authority must endorse and return the Notice as soon as reasonably practicable after the proceedings have been completed (provided a counter-notice has not been issued). The endorsement of the Notice must be in such a manner as prescribed by the Secretary of State.

27. There are two circumstances where a Licensing Authority may charge a fee in connection with a TUN:

- a person who gives a TUN under section 219 of the Act must pay a fee; and
- a person who applies for a new endorsed copy of a TUN where the original has been lost or stolen may be required to pay a fee.

28. Both of these fees are prescribed by the Secretary of State (in Statutory Instrument No. 3157 / 2007). The DCMS have taken the same approach for prescribing fees for a TUN as for all other Gambling Premise Licence fees, i.e. they have set the maximum fees permitted and have left it to Licensing Authorities to fix their fees on the basis of actual cost recovery.

29. The maximum permitted fees they have allowed for are as follows:

- for giving a TUN under section 219 of the Act £500
- for requesting a copy of a TUN £ 25

30. The process of dealing with a TUN is not as involved as issuing a Gambling Premises Licence in that a Notice may attract representations, but only from a limited number of Responsible Authorities and not from interested parties. Although there may be a requirement for a hearing and an appeal, there are only a limited number of aspects that a Licensing Authority should check. These being:

- that the person giving a TUN holds an operating licence which allows the operator to carry out the type of gambling in the Notice
- that the gambling offered is a permitted activity
- that the number of days notified does not exceed the number of days permitted.

31. The following fees and charges are proposed:

- for giving a TUN under section 219 of the Act £200

- for requesting a copy of a TUN £25.00

## **Fees and Income**

32. The fees have been calculated by examining how long is spent processing an application and who in the authority is likely to carry out the various processes. The hourly rates of staff, including on costs for various members of staff were provided by our finance section. Then these hourly rates are fed in to a spreadsheet produced by the DCMS to calculate costs for each type of activity. For each application the processes involved are identified and the costs of each process are calculated and entered in to the spreadsheet provided by the Local Authorities Coordinators of Regulatory Services (LACORS), which produces an average cost for each type of application and an annual fee.
33. The type of tasks involved in a non-fast track premises application for example, include, assistance to applicant (pre-application stage, include telephone advice, sending forms, etc), the checking of an application for completeness when received, checking all required documents are attached, processing the application fee, check, process, bank and reconcile payments, entering the information into our computer system including scanning if appropriate, contacting the applicant to clarify application or chase missing information if required, assess representations for relevance, undertake informal mediation, undertaking site visits where necessary, checking operating licence once issued, determining the licence, arranging a hearing, holding a hearing, notification of the decision, prepare and issue the licence, update the records/register (including the notification of Gambling Commission), appeal preparation and holding an appeal hearing.
34. The costs associated with appeals and hearings have been estimated. An assessment has also been made as to the likelihood of these events occurring and this has been taken into account in the fee calculations. The risk of appeals and hearings occurring has been based on assumptions gathered through training on the Gambling Act 2005 and from the authority's experience of the frequency of hearings and appeals under the Licensing Act 2003.
35. Local authorities already issue a number of permits or registrations for activities under existing gambling legislation. Under the Gambling Act 2005, the Licensing Authority will be responsible for dealing with the following permits and registrations:
  - Unlicensed Family Entertainment Centre Gaming Machine Permits
  - Registration of small lottery licences
  - Club Gaming Permits
  - Club Gaming Machine Permits
  - Licensed Premises Gaming machine Permits
  - Prize Gaming Permits

Unlike premises licence fees, permit fees are prescribed by the Government and therefore licensing authorities have no discretion in this matter

## **Risk Assessment**

36. The process of setting the proposed fees for premises licence fees for premises used for gambling is essential to ensure that operational costs are recovered and if no decision is taken, the Council budgetary objectives are unlikely to be met.
37. If the gambling industry believes the authority's fees are at a level which is greater than the costs of the statutory functions then it would be open to them to undertake judicial review proceedings. Should this arise, the authority would need to evidence how it arrived at the fee levels to demonstrate that they have been calculated on a cost recovery basis only.
38. Case law relating to fee levels in various licensing areas has agreed a general principle that licensing fees should not be used as a method of creating revenue and so setting a fee level that would result in an excess of revenue would leave the authority open to legal challenge.

## **Consultation**

39. The report has been reviewed by legal services.

## **Implications Assessment**

40. As previously stated the recommendation does not represent a key decision. The consideration assessment indicates low impact in terms of human rights, legal and staffing implications. Note that the recommendation has been made with reference to key stakeholders.

## **Handling**

41. The fees as recommended by the Licensing and Health & Safety Committee will be presented to the Executive on 7<sup>th</sup> February 2008 and the Full Council on 21<sup>st</sup> February 2008. This will allow the authority to publish and apply the fees by the 1<sup>st</sup> April 2008.

## **Conclusion**

42. The impact on income to the Council of these changes must be carefully monitored and annual reviews of fees must be continued to ensure that the service remains self-financing but avoids raising excessive revenue.

## **Portfolio Holder's Views**

43. None received.

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## APPENDIX A: RECOMMENDED PREMISES LICENCE FEES

Premises Type	New Application (£)	Annual Fee (£)
New Small Casino	<b>6285</b> (8000)	<b>3575</b> (5000)
New Large Casino	<b>7540</b> (10000)	<b>7215</b> (10000)
Regional Casino	<b>11880</b> (15000)	<b>11140</b> (15000)
Bingo Club	<b>2160</b> (3500)	<b>670</b> (1000)
Betting Premises (excluding Tracks)	<b>2160</b> (3000)	<b>430</b> (600)
Tracks	<b>1690</b> (2500)	<b>670</b> (1000)
Family Entertainment Centres	<b>1690</b> (2000)	<b>580</b> (750)
Adult Gaming Centre	<b>1690</b> (2000)	<b>670</b> (1000)
Temporary Use Notices	<b>200</b> (500)	<b>N/A</b>

	Application to Vary £	Application to Transfer £	Application for Re-Instatement £	Application for Provisional Statement £	Licence Application (provisional Statement holders) £	Copy Licence £	Notification of Change £
New Small Casino	<b>2580</b> (4000)	<b>1500</b> (1800)	<b>1260</b> (1800)	<b>6285</b> (8000)	<b>2240</b> (3000)	<b>25</b> (25)	<b>50</b> (50)
New large Casino	<b>3410</b> (5000)	<b>1760</b> (2150)	<b>1985</b> (2150)	<b>7540</b> (10000)	<b>3700</b> (5000)	<b>25</b> (25)	<b>50</b> (50)
Regional Casino	<b>5570</b> (7500)	<b>4055</b> (6500)	<b>4055</b> (6500)	<b>11880</b> (15000)	<b>5785</b> (8000)	<b>25</b> (25)	<b>50</b> (50)
Bingo Club	<b>1475</b> (1750)	<b>820</b> (1200)	<b>820</b> (1200)	<b>2160</b> (3500)	<b>890</b> (1200)	<b>25</b> (25)	<b>50</b> (50)
Betting Premises (excluding Tracks)	<b>1245</b> (1500)	<b>820</b> (1200)	<b>820</b> (1200)	<b>2160</b> (3000)	<b>890</b> (1200)	<b>25</b> (25)	<b>50</b> (50)
Tracks	<b>1130</b> (1250)	<b>820</b> (950)	<b>820</b> (950)	<b>1690</b> (2500)	<b>890</b> (950)	<b>25</b> (25)	<b>50</b> (50)
Family Entertainment Centres	<b>760</b> (1000)	<b>820</b> (950)	<b>820</b> (950)	<b>1690</b> (2000)	<b>735</b> (950)	<b>25</b> (25)	<b>50</b> (50)
Adult Gaming Centre	<b>760</b> (1000)	<b>820</b> (1200)	<b>820</b> (1200)	<b>1690</b> (2000)	<b>890</b> (1200)	<b>25</b> (25)	<b>25</b> (25)
Temporary Use Notices	<b>N/A</b>	<b>N/A</b>	<b>N/A</b>	<b>N/A</b>	<b>N/A</b>	<b>25</b> (25)	<b>N/A</b>

Ashford Borough Council's Licensing Authority proposes the following fees as shown in bold type in the table above. For ease of reference the maximum fees identified by DCMS that could be charged are shown in brackets.