

Agenda Item No: 4

Report To: **REGULATORY COMMITTEE**

Date of Meeting: 17 January 2023

Report Title: **PROPOSED FEE LEVELS FOR LICENSING APPLICATIONS - 2023/24**

Report Author: Trevor Ford
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Portfolio Holder: Cllr. Paul Bartlett
Portfolio Holder for: Safety and Wellbeing



Summary: The report proposes fees for licences for 2023/24 (excluding those set by the Licensing Committee)

Key Decision: NO

Significantly Affected Wards: Not applicable

Recommendations: **That the Regulatory Committee :-**

- I. **Recommends the sex establishment fees as given in Appendix A to full council.**
- II. **Recommends the hackney carriage, private hire and operator licence fees in Appendix B to full council.**
- III. **Recommends the scrap metal site and collectors fees as given in Appendix C to full council.**
- IV. **Notes the annual licensing summary in Appendix D.**

Policy Overview: The process of setting the fees for licences 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 relevant costs associated with the service provision.

Legal Implications: *Text agreed by Principal Litigator on 3 Jan 2023* The appropriate setting of fees is necessary to ensure that the Council do not act outside of current legislation and request costs which we are not entitled to recover from licensees. Failure to set fees appropriately opens the Council up to legal challenge.

Equalities Impact Assessment: The setting of fees in relation to these functions is not considered to cause any discrimination. The fees are set in

accordance with government guidance and each application is processed on its individual merits.

**Data Protection
Impact
Assessment:**

N/A

**Risk Assessment
(Risk Appetite
Statement):**

The recommendation does not represent a key decision.

There is a low impact in terms of human rights, the environment, legal and staffing implications.

**Sustainability
Implications:**

N/A

**Other Material
Implications:**

Members should note generally that some licences issued by the Council may be considered possessions and therefore Article 1 to Protocol 1 of the Human Rights Act 1998, the peaceful enjoyment of possessions, is relevant.

**Exempt from
Publication:**

NO

**Background
Papers:**

None

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PROPOSED FEE LEVELS FOR 2023/24 LICENSING APPLICATIONS

1. The report recommends the proposed fees for licences for the financial year 2023/24.
2. The Committee are asked whether to approve the following fees for recommendation to the full council.
 - The sex establishment fees as given in Appendix A.
 - The hackney carriage, private hire and operator licence fees in Appendix B.
 - The scrap metal site and collectors fees as given in Appendix C.

The Committee is also asked to note the annual licensing summary at Appendix D.

Introduction and Background

3. The fees have been determined by examining how long is spent processing an application and who in the authority is likely to carry out the various processes.
4. The type of tasks involved in a premises application for example:
 - Assistance to the applicant (pre-application stage, including telephone advice, sending forms, etc.) and the checking of an application for completeness when received.
 - Checking all required documents have been submitted, processing the application fee, banking processes and reconciling payments.
 - Entering the information into our computer system including scanning if appropriate.
 - Contacting the applicant to clarify the application or chase missing information if required.
 - Assess representations for relevance and undertake informal mediation.
 - Carry out compliance visits and checking the operating licence once issued.
 - Determining the licence, arranging a hearing, holding a hearing and notification of the decision if required.
 - Prepare and issue the licence and update the records/register.
 - Appeal preparation and holding an appeal hearing, if necessary.
5. Sex Establishment Fees

The licensing of sex establishments is governed by the Local Government (Miscellaneous Provisions) Act 1982 Schedule 3. Under these adoptive provisions local authorities can require any sex shops or sex cinemas in their

area to obtain a licence. Ashford Borough Council adopted Schedule 3 effective from 1 May 1983.

Members will be aware that the council carried out a consultation about whether to adopt the relevant provisions of the Local Government (Miscellaneous Provisions) Act 1982, for the licensing of Sexual Entertainment Venues, such as lap dancing clubs. Council adopted the relevant provisions on 17 February 2011.

It is proposed that the fees for the grant of a licence are retained at the existing level, and that renewal or transfer applications rise in line with inflation.

6. Hackney Carriage and Private Hire Fees

Under Local Government (Miscellaneous Provisions) Act 1982, the provisions controlling the levying of fees are:

- Local Government (Miscellaneous Provisions) Act 1982, Schedule 53(2), in respect of drivers licences for both hackney carriages or private hire vehicles; and
- Local Government (Miscellaneous Provisions) Act 1982 Schedule 70 for hackney carriage proprietors' licences, private hire vehicle licences and private hire operators' licences.

It is proposed to adjust the hackney and private hire fees generally in line with inflation, except for the following fees;

- i. Drivers licence fees – These fees are proposed to increase 7% above inflation to take into account the increased costs associated with driver regulation, benchmarking of driver fees across Kent, and rebalancing the costs associated with enforcement.
- ii. Vehicle licence fees – These fees are proposed to remain at the same fee level. This is based on a review of the current fee levels, based upon benchmarking with other Kent authorities, and taking into account rebalancing the costs associated with enforcement.
- iii. Operator fees – These fees are variable, but for the 1-3 vehicle category the fees are proposed to increase 19% above inflation. This increase is based upon a review of the current fees, benchmarking against other Kent authorities, rebalancing of the costs associated with enforcement, and the increased regulation on operators associated with the DfT's statutory standards requirements for operators.
- iv. Transfer fees – It is proposed to increase these fees 5% above inflation to rebalance this fee, which were kept artificially low over a number of years to promote the replacement of vehicles to newer vehicles. The rebalancing will ensure appropriate cost recovery associated with this work.

The proposed licence fees are set out at Appendix B.

7. Scrap Metal Dealers Fees

The Scrap Metal Dealers Act 2013 provides regulation of the sector, creating a more robust, local authority run licensing regime that supports legitimate

dealers whilst providing the powers to effectively tackle unscrupulous operators.

Schedule 1(6) of the 2013 Act provides that an application must be accompanied by a fee set by the local authority. In setting a fee, the authority must have regard to any guidance issued from time to time by the Secretary of State with the approval of the Treasury.

The power to set fees has been passed to individual local authorities, so that any fees levied in each local area are set by reference to the actual costs to each authority. A licence fee can only be used to pay for the cost associated with the licensing process. In effect, each local authority must ensure that the income from fees charged for each service, application, variation and renewal do not exceed the costs of providing the service.

It is proposed that an increase broadly in line with inflation be made to the fees this year. These are set out at Appendix C.

Proposal/Current Position

8. The fees as recommended by the Regulatory Committee will be presented to Council on 2 March 2023.

Implications and Risk Assessment

9. As previously stated the recommendations do not represent key decisions. The consideration assessment indicates low impact in terms of human rights, legal and staffing implications.
10. The process of setting the proposed licence fees is essential to ensure that operational costs are recovered. If no decision is taken, the council budgetary objectives are unlikely to be met.
11. If trade bodies or applicants believe 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.
12. 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. For example:
 - *R v Manchester City Council ex parte King (The Times, 3 April 1991)* – established that local authorities may only charge reasonable fees for licences and not use them to raise revenue;and
 - *R v Westminster City Council ex parte Hutton (1985) LGR* – established the need to only take into account relevant material when setting the fees

13. Licence fees must be set at a level proportionate to the effective cost of the licensing procedure and must not be used as an economic deterrent or to raise funds. Councils must set fees that cover the costs directly associated with the licensing function. It is important therefore that council's fees are defensible and based on actual costs incurred.

Equalities Impact Assessment

14. The setting of fees in relation to these functions is not considered to cause any discrimination. The fees are set in accordance with Government guidance and each application is processed on its individual merits.

Consultation Planned or Undertaken

15. The fees that require formal consultation will be subject to public notices prior to implementation on 1 April 2023.

Other Options Considered

16. The need to ensure fees cover local authority costs means that whilst various changes have been considered, the process is not open to other options

Reasons for Supporting Option Recommended

17. Whilst the current state of the economy impacts on a number of industries, the costs of administering the licensing regime in relation these areas continue to be affected by inflationary cost increases such as the cost of living increases on salaries and back office costs.
18. It is however worth noting, that whilst licensing fees are set/adjusted annually, the council are able to consider the actual income and expenditure across a number of years, and can adjust fees in future years to 'correct' for any unexpected income or losses. As such should the fees proposed result in any unexpected 'excess' income then it will be possible to correct for this as part of future fee setting.
19. Accordingly, the recommended option is supported to ensure effective recovery of the costs incurred in processing and regulating the aforementioned licensing regimes.

Next Steps in Process

20. The hackney carriage and private hire licence fees are subject to a public consultation in accordance with Section 70 of the Local Government (Miscellaneous Provisions) Act 1976. A public notice will be placed in the local press. If no objections are received in response to the public notice the fee structure would be adopted from 1 April 2023. If relevant objections are

received in response to the public notice, these would be reported back to the Regulatory Committee.

21. All other fees, not subject to public consultation, will be recommended to full council, and once agreed come into effect on the 1 April 2023

Conclusion

22. The impact of these changes on income to the council must be carefully monitored. Annual reviews of fees must be continued to ensure that relevant costs are recovered and raising excessive revenue is avoided. The fees have been increased broadly in line with inflation, except where the specific circumstances dictate otherwise.
23. A licensing summary for the period 1 January 2022 to 31 December 2022 has been prepared and is set out at Appendix D.

Portfolio Holder's Views

24. "It remains appropriate to set fees at the correct level to ensure the effective regulation of licensed trades, and to protect the public from potential adverse harms. I therefore recommend these inflationary fee amendments, including those additionally adjusted to ensure that the fees are suitably balanced."

Councillor Paul Bartlett

Contact and Email

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APPENDIX A: PROPOSED SEX ESTABLISHMENT LICENCE FEES 2023/24

APPENDIX B: PROPOSED HACKNEY CARRIAGE AND PRIVATE HIRE LICENSING FEES 2023/24

APPENDIX C: PROPOSED SCRAP METAL, SITE & COLLECTORS LICENSING FEES 2023/24

APPENDIX D: LICENSING SUMMARY 2022

APPENDIX A: RECOMMENDED SEX ESTABLISHMENT LICENCE FEES FOR 2023/24

	CURRENT FEES 2022/23	PROPOSED FEES 2023/24
Grant	£3499	£3499
Transfer	£334	£387
Renewal	£334	£387

**APPENDIX B: PROPOSED HACKNEY CARRIAGE AND PRIVATE HIRE
LICENSING FEES 2023/24**

	CURRENT FEES 2022/23	PROPOSED FEES 2023/24
Private Hire & Hackney Carriage Drivers Licence (for 1 year)	£74.00	£92.00
Private Hire & Hackney Carriage Drivers Licence (for 3 years)	£153.00	£190.00
Additional driver's licence (adding a licence)	£32.00	£37.00
Hackney Carriage Knowledge Test & Re-test	£61.00	£71.00
Replacement badge / Licence	£13.00	£15.00
Vehicle Licence - New or Renewal (including vehicle plate) for 1 year	£346 - New £305 - Renewal	£346 - New £305 - Renewal
Vehicle Plate Internal / External	£22.00	£26.00
Transfer of Vehicle Licence (with or without vehicle plate)	£38.00	£46.00
<i>Vehicle Inspection - Test Fee (set by contract)</i>	<i>£32.00</i>	<i>£32.00</i>
<i>Vehicle Inspection - Missed Appointment (set by contract)</i>	<i>No Charge</i>	<i>No Charge</i>
Private Hire Operators Licence - New or Renewal (for 5 years)	1-3 vehicles: £147 4-10 vehicles: £483 11-20 vehicles: £960	1-3 vehicles: £200 4-10 vehicles: £590 11-20 vehicles: £1114
To increase number of vehicles licensed during duration of Operators Licence	1-3 : £145.00 4-10 : £334.00 11-20 : £483.00	1-3 : £200.00 4-10 : £415.00 11-20 : £560.00
Fee for Returned (Bounced) Cheques	£18.00	£22.00

APPENDIX C: RECOMMENDED SCRAP METAL DEALERS FEES FOR 2023/24

	CURRENT FEES 2022/23	PROPOSED FEES 2023/24
Grant Site Licence	£354	£411
Grant Collectors Licence	£237	£275
Renewal Site Licence	£237	£275
Renewal Collectors Licence	£118	£137
Variation	£89	£103
Replacement Licence	£12.50	£14.50

APPENDIX D:

LICENSING ANNUAL SUMMARY 2022 (Excluding Licensing Act and Gambling Act applications)

Licences/Permissions issued

Licence/Permission Type	Number Issued
Taxi	
Vehicles – new, renewal, transfers	341
Drivers / Operators – new, renewals	176
Scrap Metal Dealers Act 2013	
Site licences	6
Collectors licences	8
Other	
Sexual Entertainment Venues	0
Publicity Displays / Town Centre	47
Skin Piercing (premises and practitioners)	40
Animal Licensing	31
House to House	14
Street Collections	25
Street Trading	42
TOTAL LICENCES/PERMISSIONS ISSUED	730

Issued between 1 January 2022 and 31 December 2022