

TONBRIDGE & MALLING BOROUGH COUNCIL



EXECUTIVE SERVICES

Chief Executive

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NB - This agenda contains proposals, recommendations and options. These do not represent Council policy or decisions until they have received proper consideration through the full decision making process.

Contact: Committee Services
committee.services@tmbc.gov.uk

11 March 2014

To: MEMBERS OF THE LICENSING AND APPEALS COMMITTEE
(Copies to all Members of the Council)

Dear Sir/Madam

Your attendance is requested at a meeting of the Licensing and Appeals Committee to be held in the Civic Suite, Gibson Building, Kings Hill, West Malling on Wednesday, 19th March, 2014 commencing at 7.30 pm

Yours faithfully

JULIE BEILBY

Chief Executive

A G E N D A

PART 1 - PUBLIC

1. Apologies for Absence
2. Declarations of Interest
3. Minutes

5 - 6

To confirm as a correct record the Minutes of the meeting of Licensing and Appeals Committee held on Wednesday, 4 December 2013.

4. Minutes of Panel 7 - 12

To receive the Minutes of the following meetings of the Licensing and Appeals Committee sitting as a Panel:

Minutes – 11 December 2013

Minutes – 29 January 2014

Minutes – 4 March 2014

Matters for recommendation to the Council

5. Adoption of Byelaws to Regulate Acupuncture, Tattooing, Semi-Permanent Skin Colouring, Cosmetic Piercing and Electrolysis 13 - 22
6. Review of Part of the Hackney Carriage and Private Hire Policy 2013 23 - 30

Decisions to be taken under Delegated Powers

7. Review of Fees and Charges 2014/15 - Licensing Fees 31 - 42
8. Unmet Demand Survey - Hackney Carriage Vehicles 43 - 50
9. Review of Hackney Carriage Fares 51 - 58
10. Home Office Consultation on Licensing Act 2003 Fees 59 - 110
11. Urgent Items

Any other items which the Chairman decides are urgent due to special circumstances and of which notice has been given to the Chief Executive.

Matters for consideration in Private

12. Exclusion of Press and Public

The Chairman to move that the press and public be excluded from the remainder of the meeting during consideration of any items the publication of which would disclose exempt information.

PART 2 - PRIVATE

13. Urgent Items

Any other items which the Chairman decides are urgent due to special circumstances and of which notice has been given to the Chief Executive.

MEMBERSHIP

Cllr C Brown (Chairman)
Cllr A W Allison (Vice-Chairman)

Cllr Mrs J A Anderson
Cllr Ms J A Atkinson
Cllr J A L Balcombe
Cllr O C Baldock
Cllr Mrs P Bates
Cllr Mrs B A Brown
Cllr M A Coffin

Cllr Mrs F A Kemp
Cllr S M King
Cllr M Parry-Waller
Cllr M Taylor
Cllr D J Trice
Cllr Mrs C J Woodger

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TONBRIDGE AND MALLING BOROUGH COUNCIL

LICENSING AND APPEALS COMMITTEE

Wednesday, 4th December, 2013

Present: Cllr C Brown (Chairman), Cllr A W Allison (Vice-Chairman), Cllr Mrs J A Anderson, Cllr Ms J A Atkinson, Cllr J A L Balcombe, Cllr O C Baldock, Cllr Mrs P Bates, Cllr Mrs F A Kemp, Cllr S M King, Cllr M Parry-Waller, Cllr A K Sullivan, Cllr D J Trice and Cllr Mrs C J Woodger.

An apology for absence was received from Councillor Mrs B Brown.

PART 1 - PUBLIC

**LA
13/088** **DECLARATIONS OF INTEREST**

There were no declarations of interest made in accordance with the Code of Conduct.

**LA
13/089** **MINUTES**

RESOLVED: That the Minutes of the meeting of the Licensing and Appeals Committee held on 17 September 2013 be approved as a correct record and signed by the Chairman.

**LA
13/090** **MINUTES**

RESOLVED: That the Minutes of the meetings of the Licensing and Appeals Committee sitting as a Panel held on 6 November, 15 November and 18 November 2013 be received and noted.

MATTERS FOR RECOMMENDATION TO THE COUNCIL

**LA
13/091** **REVIEW OF PART OF THE HACKNEY CARRIAGE AND
PRIVATE HIRE POLICY 2013 - PROBATIONARY BADGES**

Further to Minute No LA 13/074, the Director of Central Services and Monitoring Officer submitted details of the responses received to consultation on proposed changes to the current Hackney Carriage and Private Hire Policy in respect of the requirements for probationary drivers. The Committee was pleased to note the support received from sixty Hackney Carriage Drivers to the proposed changes.

RECOMMENDED: That the proposed changes to the Hackney Carriage and Private Hire Policy, as set out at Annex 1 to the report, be approved subject to the incorporation of the additional changes set out at Annex 3 to the report.

***Referred to Council**

**DECISIONS TAKEN UNDER DELEGATED POWERS IN
ACCORDANCE WITH PARAGRAPH 3, PART 3 OF THE
CONSTITUTION**

**LA
13/092**

FACE TO FACE CHARITABLE COLLECTIONS

The report of the Director of Central Services and Monitoring Officer set out details of a proposed agreement with the Public Fundraising Regulatory Association (PFRA) to regulate 'face-to-face' direct debit charitable street collectors (otherwise known as 'Chuggers') in Tonbridge High Street through the provision of a Site Management Agreement.

RESOLVED: That the Borough Council enter into a Site Management Agreement (SMA) with the Public Fundraising Regulatory Association (PFRA), as set out at Annex 1 to the report, to provide voluntary controls on the activities of face-to-face direct debit charitable street collectors in Tonbridge.

MATTERS FOR CONSIDERATION IN PRIVATE

**LA
13/093**

EXCLUSION OF PRESS AND PUBLIC

There were no matters considered in private.

The meeting ended at 1957 hours

TONBRIDGE AND MALLING BOROUGH COUNCIL

LICENSING AND APPEALS PANEL

Wednesday, 11th December, 2013

Present: Cllr C Brown (Chairman), Cllr Mrs P Bates and Cllr Mrs F A Kemp.

Together with representatives of the Licensing Authority.

PART 1 - PUBLIC

LA **DECLARATIONS OF INTEREST**

13/094

There were no declarations of interest made.

MATTERS FOR CONSIDERATION IN PRIVATE

LA **EXCLUSION OF PRESS AND PUBLIC**

13/095

The Chairman moved, it was seconded and

RESOLVED: That as public discussion would disclose exempt information the following matter be considered in private.

PART 2 - PRIVATE

DECISIONS TAKEN UNDER DELEGATED POWERS IN ACCORDANCE WITH PARAGRAPH 3, PART 3 OF THE CONSTITUTION

LA **APPLICATION FOR A PROBATIONARY PRIVATE HIRE DRIVER'S LICENCE - CASE NO 15/2013**

13/096

(Reason: LGA 1972 Sch 12A Para 1 - Information relating to an individual)

The Panel gave consideration to the report of the Director of Central Services and Monitoring Officer regarding an application for a Probationary Private Hire Driver's Licence. The Panel was advised that the application was for a Probationary Hackney Carriage Driver's Licence as set out in Annex 1 to the report. The Panel noted that information received from the Disclosure and Barring Service (DBS) had revealed a number of matters which were material to the applicant's fitness to act as a licensed driver.

The Panel listened carefully to the representations made by the applicant, had regard to the report of the Director of Central Services and Monitoring Officer and found that the applicant was a 'fit and

proper person' to hold a probationary licence. The Panel advised the applicant that he would need to undertake a 'Street Knowledge' Test, that the probationary licence would be issued for a period of six months and that any full licence would be subject to scrutiny by the Licensing and Community Safety Manager. The Panel therefore

RESOLVED: That the application for a Probationary Hackney Carriage Driver's Licence be approved subject to the following condition:-

The Applicant will meet the Licensing and Community Safety Manager of Tonbridge and Malling Borough Council six months from the date of issue of the full driver's licence to ensure that he remains a 'fit and proper person' to hold a licence.

The meeting ended at 1027 hours
having commenced at 1005 hours

TONBRIDGE AND MALLING BOROUGH COUNCIL

LICENSING AND APPEALS PANEL

Wednesday, 29th January, 2014

Present: Cllr Mrs J A Anderson (Chairman), Cllr O C Baldock and Cllr Mrs C J Woodger.

Together with representatives of the Licensing Authority.

PART 1 - PUBLIC

**LA
14/001** **DECLARATIONS OF INTEREST**

There were no declarations of interest made.

MATTERS FOR CONSIDERATION IN PRIVATE

**LA
14/002** **EXCLUSION OF PRESS AND PUBLIC**

The Chairman moved, it was seconded and

RESOLVED: That as public discussion would disclose exempt information the following matter be considered in private.

PART 2 - PRIVATE

**DECISIONS TAKEN UNDER DELEGATED POWERS IN
ACCORDANCE WITH PARAGRAPH 3, PART 3 OF THE
CONSTITUTION**

**LA
14/003** **APPLICATION FOR A PROBATIONARY PRIVATE HIRE DRIVER'S
LICENCE - CASE NO 01/2014
(Reason: LGA 1972 Sch 12A Para 1 - Information relating to an
individual)**

The Panel gave consideration to the report of the Director of Central Services and Monitoring Officer regarding an application for a Probationary Private Hire Driver's Licence. The Panel was reminded that the applicant had submitted an application for a private hire driver's licence which had been refused at a meeting of the Panel held on 7 November 2012 and noted that the applicant had failed to disclose that the previous application had been refused. Attention was drawn to Section 11.8.7 of the Council's Hackney Carriage and Private Hire Licensing Policy which advised that, where an application had been refused, a further application would not normally be considered for a period of two years from the date of refusal.

The Panel listened carefully to the representations made by the applicant and the prospective Mentor for the probationary licence, had regard to the report of the Director of Central Services and Monitoring Officer and the requirements of Section 51 of the Local Government (Miscellaneous Provisions) Act 1976 which stated that a licence should not be granted unless the licensing authority was satisfied that the applicant was a fit and proper person to hold a driver's licence.

The applicant was reminded that his previous application in 2012 had been refused following information received from the Driving and Vehicle Licensing Agency (DVLA) which showed that, at that time, he had 9 points on his Driving Licence. The Panel expressed extreme concern about the applicant's conduct towards the licensing officer following the previous hearing as noted in the transcript of a telephone conversation held on 12 November 2012. As a result of the above the Panel did not consider the applicant to be a fit and proper person to hold a Probationary Private Hire Driver's Licence. The Panel therefore

RESOLVED: That the Applicant was not a fit and proper person to hold a Probationary Private Hire Driver's Licence at this time and, therefore, the application be refused in accordance with s.51(1)(a) of the Local Government (Miscellaneous Provisions) Act 1976.

The Panel commented that the Applicant would be free to make a further application at any time after 7 November 2014 without prejudice.

The meeting ended at 1036 hours
having commenced at 1000 hours

TONBRIDGE AND MALLING BOROUGH COUNCIL

LICENSING AND APPEALS PANEL

Tuesday, 4th March, 2014

Present: Cllr C Brown (Chairman), Cllr O C Baldock and Cllr Mrs C J Woodger
Together with representatives of the Licensing Authority.

PART 1 - PUBLIC

LA 14/4 DECLARATIONS OF INTEREST

There were no declarations of interest made in accordance with the Code of Conduct

LA 14/5 EXCLUSION OF PRESS AND PUBLIC

The Chairman moved, it was seconded and

RESOLVED: That as public discussion would disclose exempt information, the following matters be considered in private.

PART 2 - PRIVATE

**DECISIONS TAKEN UNDER DELEGATED POWERS IN
ACCORDANCE WITH PARAGRAPH 3, PART 3 OF THE
CONSTITUTION**

LA 14/6 LEGAL PROCEEDINGS UNDER LICENSING ACT 2003

(Reason: LGA 1972 Sch 12A Paragraph 5 – Legal Advice)

The report of the Director of Central Services set out details of action taken following an appeal to the Magistrate's Court by the licensee of the Somerhill Public House in respect of a decision made by the Licensing and Appeals Committee, sitting as a Panel, on 5 August 2013.

The Director of Central Services explained that, as the legal proceedings had commenced, any revised decision arising from further negotiation between the licensee, Kent Police and the licensing authority could only be agreed by way of a Consent Order issued by the Court and signed by all parties. He further explained that the Council's Constitution did not provide an express power to the Director of Central Services to dispose of legal proceedings.

RESOLVED: That the Director of Central Services be authorised to sign the Consent Order, as set out at Annex 1 to the report, and settle the current court proceedings.

The meeting ended at 10.13 am

TONBRIDGE & MALLING BOROUGH COUNCIL

LICENSING AND APPEALS COMMITTEE

19 March 2014

Report of the Director of Central Services & Monitoring Officer

Part 1- Public

Matters for Recommendation to Council

1 ADOPTION OF BYELAWS TO REGULATE ACUPUNCTURE, TATTOOING, SEMI-PERMANENT SKIN COLOURING, COSMETIC PIERCING AND ELECTROLYSIS

1.1 Purpose of report

- 1.1.1 The purpose of this report is to recommend that the Council passes a resolution to adopt a new single consolidated set of byelaws, produced by the Department of Health, to regulate acupuncture, tattooing, semi-permanent skin-colouring, cosmetic piercing and electrolysis.
- 1.1.2 The byelaws would require persons conducting any of the above activities to register themselves and their premises, and in carrying out the activities observe criteria relating to hygiene of premises, practitioners and equipment.

1.2 Background

- 1.2.1 The Council resolved to adopt the provisions of the Local Government (Miscellaneous Provisions) Act 1982 in respect of skin piercing in 1985 and three separate sets of byelaws were adopted under section 236 of the Local Government Act 1972 to control the hygiene of premises, practitioners and equipment for persons undertaking the following within the Borough:
- acupuncture
 - tattooing and
 - ear piercing and electrolysis
- 1.2.2 Public demand for body piercing has increased significantly over the past 20 years. Industry practices have also changed and practitioners have adopted new cosmetic techniques, for example semi-permanent skin colouring. These activities cannot be regulated under the existing byelaws.

- 1.2.3 In response to these changes, section 120 and schedule 6 of the Local Government Act 2003 amended section 15 of the Local Government (Miscellaneous Provisions) Act 1982. The new legislation updated the law to allow for these new practices. The Council did not adopt a new byelaw at that time, instead opting to await for the production of model byelaws. It is these that are now available and that it is proposed the Council adopts.
- 1.2.4 There are advantages to both customer business and the Council from the adoption of these consolidated byelaws. Implementation of the byelaws reduces the risk to the public of contracting blood borne viruses such as HIV and Hepatitis B and C. In addition, a single set of byelaws will benefit business as the process of registration will be simplified, particularly for those conducting more than one type of cosmetic skin piercing activity.

1.3 Legal Implication

- 1.3.1 The Department of Health has provided model byelaws and guidance on applications to the Secretary of State for Health for confirmation of the byelaws. The guidance includes a model Council resolution which has been adapted for this report and a model newspaper notice which officers also intent to use. The Council will have to publish its intention to adopt the new legislation in the local press before it applies to the Secretary of State to confirm the byelaws.

1.4 Financial and Value for Money Considerations

- 1.4.1 Councils are allowed to charge a one off fee for registration, on a cost recovery basis. The fee applicable to this registration is currently £162.

1.5 Risk Assessment

- 1.5.1 The only way the Council can effectively control skin piercing is by adopting the byelaws. If the model byelaws are not adopted the Council will not be able to regulate hygiene practices and reduce the risk of infection in premises and by operatives offering body piercing and semi-permanent skin colouring procedures.

1.6 Equality Impact Assessment

- 1.6.1 See 'Screening for equality impacts' table at end of report

1.7 Recommendations

- 1.7.1 In recommending that the Council passes the resolution, committee shall ensure that regulation of acupuncture and cosmetic skin piercing in the Borough is consistent and up to date. There shall be an increased level of public health protection and business shall benefit from the simplification of legal requirements.
- 1.7.2 Members are asked to recommend to Council that

(a) the Council passes a resolution to adopt model byelaws for the regulation of skin piercing activities in accordance with section 15 of the Local Government (Miscellaneous Provisions) Act 1982 as amended by section 120 of the Local Government Act 2003 and to authorise the Director of Central Services to apply to the Secretary of State for confirmation and

(b) the relevant registration requirements shall come into effect from the date on which the byelaws referred to above are confirmed by the Secretary of State and the current byelaws revoked.

Background papers:

contact: Cliff Cochrane

Model byelaws

Adrian Stanfield

Director of Central Services & Monitoring Officer

Screening for equality impacts:		
Question	Answer	Explanation of impacts
a. Does the decision being made or recommended through this paper have potential to cause adverse impact or discriminate against different groups in the community?	No	
b. Does the decision being made or recommended through this paper make a positive contribution to promoting equality?	N/A	
c. What steps are you taking to mitigate, reduce, avoid or minimise the impacts identified above?		

In submitting this report, the Chief Officer doing so is confirming that they have given due regard to the equality impacts of the decision being considered, as noted in the table above.

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TONBRIDGE AND MALLING BOROUGH COUNCIL

BYELAWS

Acupuncture, tattooing, semi-permanent skin-colouring, cosmetic piercing and electrolysis

Byelaws for the purposes of securing the cleanliness of premises registered under sections 14(2) or 15(2) or both of the Local Government (Miscellaneous Provisions) Act 1982 and fittings in such premises and of persons registered under sections 14(1) or 15(1) or both of the Act and persons assisting them and of securing the cleansing and, so far as appropriate, sterilization of instruments, materials and equipment used in connection with the practice of acupuncture or the business of tattooing, semi-permanent skin-colouring, cosmetic piercing or electrolysis, or any two or more of such practice and businesses made by Tonbridge and Malling Borough Council in pursuance of sections 14(7) or 15(7) or both of the Act.

Interpretation

1.—(1) In these byelaws, unless the context otherwise requires—

“The Act” means the Local Government (Miscellaneous Provisions) Act 1982;

“client” means any person undergoing treatment;

“hygienic piercing instrument” means an instrument such that any part of the instrument that touches a client is made for use in respect of a single client, is sterile, disposable and is fitted with piercing jewellery supplied in packaging that indicates the part of the body for which it is intended, and that is designed to pierce either—

- (a) the lobe or upper flat cartilage of the ear, or
- (b) either side of the nose in the mid-crease area above the nostril;

“operator” means any person giving treatment, including a proprietor;

“premises” means any premises registered under sections 14(2) or 15(2) of the Act;

“proprietor” means any person registered under sections 14(1) or 15(1) of the Act;

“treatment” means any operation in effecting acupuncture, tattooing, semi-permanent skin-colouring, cosmetic piercing or electrolysis;

“the treatment area” means any part of premises where treatment is given to clients.

(2) The Interpretation Act 1978 shall apply for the interpretation of these byelaws as it applies for the interpretation of an Act of Parliament.

2.—(1) For the purpose of securing the cleanliness of premises and fittings in such premises a proprietor shall ensure that—

- (a) any internal wall, door, window, partition, floor, floor covering or ceiling is kept clean and in such good repair as to enable it to be cleaned effectively;
- (b) any waste material, or other litter arising from treatment is handled and disposed of in accordance with relevant legislation and guidance as advised by the local authority;
- (c) any needle used in treatment is single-use and disposable, as far as is practicable, or otherwise is sterilized for each treatment, is suitably stored after treatment and is

disposed of in accordance with relevant legislation and guidance as advised by the local authority;

- (d) any furniture or fitting in premises is kept clean and in such good repair as to enable it to be cleaned effectively;
- (e) any table, couch or seat used by a client in the treatment area which may become contaminated with blood or other body fluids, and any surface on which a needle, instrument or equipment is placed immediately prior to treatment has a smooth impervious surface which is disinfected—
 - (i) immediately after use; and
 - (ii) at the end of each working day.
- (f) any table, couch, or other item of furniture used in treatment is covered by a disposable paper sheet which is changed for each client;
- (g) no eating, drinking, or smoking is permitted in the treatment area and a notice or notices reading “No Smoking”, and “No Eating or Drinking” is prominently displayed there.

(2)(a) Subject to sub-paragraph (b), where premises are registered under section 14(2) (acupuncture) or 15(2) (tattooing, semi-permanent skin-colouring, cosmetic piercing and electrolysis) of the 1982 Act, a proprietor shall ensure that treatment is given in a treatment area used solely for giving treatment;

(b) Sub-paragraph (a) shall not apply if the only treatment to be given in such premises is ear-piercing or nose-piercing using a hygienic piercing instrument.

(3)(a) Subject to sub-paragraph (b), where premises are registered under section 15(2) (tattooing, semi-permanent skin-colouring and cosmetic piercing) of the 1982 Act, a proprietor shall ensure that the floor of the treatment area is provided with a smooth impervious surface;

(b) Sub-paragraph (a) shall not apply if the only treatment to be given in such premises is ear-piercing or nose-piercing using a hygienic piercing instrument.

3.—(1) For the purpose of securing the cleansing and so far as is appropriate, the sterilization of needles, instruments, jewellery, materials and equipment used in connection with treatment—

- (a) an operator shall ensure that—
 - (i) any gown, wrap or other protective clothing, paper or other covering, towel, cloth or other such article used in treatment—
 - (aa) is clean and in good repair and, so far as is appropriate, is sterile;
 - (bb) has not previously been used in connection with another client unless it consists of a material which can be and has been adequately cleansed and, so far as is appropriate, sterilized.
 - (ii) any needle, metal instrument, or other instrument or equipment used in treatment or for handling such needle, instrument or equipment and any part of a hygienic piercing instrument that touches a client is sterile;
 - (iii) any jewellery used for cosmetic piercing by means of a hygienic piercing instrument is sterile;
 - (iv) any dye used for tattooing or semi-permanent skin-colouring is sterile and inert;
 - (v) any container used to hold dye for tattooing or semi-permanent skin-colouring is either disposed of at the end of each treatment or is cleaned and sterilized before re-use.
- (b) a proprietor shall provide—
 - (i) adequate facilities and equipment for—
 - (aa) cleansing; and
 - (bb) sterilization, unless only pre-sterilized items are used.
 - (ii) sufficient and safe gas points and electrical socket outlets;

- (iii) an adequate and constant supply of clean hot and cold water on the premises;
- (iv) clean and suitable storage which enables contamination of the articles, needles, instruments and equipment mentioned in paragraphs 3(1)(a)(i), (ii), (iii), (iv) and (v) to be avoided as far as possible.

4.—(1) For the purpose of securing the cleanliness of operators, a proprietor—

- (a) shall ensure that an operator—
 - (i) keeps his hands and nails clean and his nails short;
 - (ii) keeps any open lesion on an exposed part of the body effectively covered by an impermeable dressing;
 - (iii) wears disposable examination gloves that have not previously been used with another client, unless giving acupuncture otherwise than in the circumstances described in paragraph 4(3);
 - (iv) wears a gown, wrap or protective clothing that is clean and washable, or alternatively a disposable covering that has not previously been used in connection with another client;
 - (v) does not smoke or consume food or drink in the treatment area; and
- (b) shall provide—
 - (i) suitable and sufficient washing facilities appropriately located for the sole use of operators, including an adequate and constant supply of clean hot and cold water, soap or detergent; and
 - (ii) suitable and sufficient sanitary accommodation for operators.

(2) Where an operator carries out treatment using only a hygienic piercing instrument and a proprietor provides either a hand hygienic gel or liquid cleaner, the washing facilities that the proprietor provides need not be for the sole use of the operator.

(3) Where an operator gives acupuncture a proprietor shall ensure that the operator wears disposable examination gloves that have not previously been used with another client if—

- (a) the client is bleeding or has an open lesion on an exposed part of his body; or
- (b) the client is known to be infected with a blood-borne virus; or
- (c) the operator has an open lesion on his hand; or
- (d) the operator is handling items that may be contaminated with blood or other body fluids.

5. A person registered in accordance with sections 14 (acupuncture) or 15 (tattooing, semi-permanent skin-colouring, cosmetic piercing and electrolysis) of the Act who visits people at their request to give them treatment should observe the requirements relating to an operator in paragraphs 3(1)(a) and 4(1)(a).

6. The byelaws relating to tattooing that were made by Tonbridge and Malling Borough Council on the 9th day of August 1985 and the byelaws made by Tonbridge and Malling Borough Council relating to ear piercing and electrolysis and acupuncture made on 18th day of October 1985 and were confirmed by the Secretary of State for Social Services on 19th December 1985 are revoked.

COUNCIL'S SIGNATURE

COUNCIL'S SEAL

The foregoing byelaws are hereby confirmed by the Secretary of State for Health
on _____ and shall come into operation on _____

Member of the Senior Civil Service

Department of Health

NOTE – THE FOLLOWING DOES NOT FORM PART OF THE BYELAWS

Proprietors shall take all reasonable steps to ensure compliance with these byelaws by persons working on premises. Section 16(9) of the Local Government (Miscellaneous Provisions) Act 1982 provides that a registered person shall cause to be prominently displayed on the premises a copy of these byelaws and a copy of any certificate of registration issued to him under Part VIII of the Act. A person who contravenes section 16(9) shall be guilty of an offence and liable on summary conviction to a fine not exceeding level 2 on the standard scale (see section 16(10)).

Section 16 of the Local Government (Miscellaneous Provisions) Act 1982 also provides that any person who contravenes these byelaws shall be guilty of an offence and liable on summary conviction to a fine not exceeding level 3 on the standard scale. If a person registered under Part VIII of the Act is found guilty of contravening these byelaws the Court may, instead of or in addition to imposing a fine, order the suspension or cancellation of the person's registration. A court which orders the suspension of or cancellation of a person's registration may also order the suspension or cancellation of the registration of the premises in which the offence was committed if such premises are occupied by the person found guilty of the offence. It shall be a defence for the person charged under the relevant sub-sections of section 16 to prove that he took all reasonable precautions and exercised all due diligence to avoid commission of the offence.

Nothing in these byelaws extends to the practice of acupuncture, or the business of tattooing, semi-permanent skin-colouring, cosmetic piercing or electrolysis by or under the supervision of a person who is registered as a medical practitioner, or to premises in which the practice of acupuncture, or business of tattooing, semi-permanent skin-colouring, cosmetic piercing or electrolysis is carried out by or under the supervision of such a person.

Nothing in these byelaws extends to the practice of acupuncture by or under the supervision of a person who is registered as a dentist, or to premises in which the practice of acupuncture is carried out by or under the supervision of such a person.

The legislative provisions relevant to acupuncture are those in section 14. The provisions relevant to treatment other than acupuncture are in section 15.

The key differences in the application of requirements in respect of the various treatments are as follows:

*The references in the introductory text to provisions of section 14 (acupuncture) of the Local Government (Miscellaneous Provisions) Act 1982 **only apply to acupuncture.***

*The references in the introductory text to provisions of section 15 (tattooing, semi-permanent skin-colouring, cosmetic piercing and electrolysis) of the Local Government (Miscellaneous Provisions) Act 1982 **do not apply to acupuncture.***

*The references in paragraph 1(1) in the definition of "premises" to provisions of section 14 (acupuncture) **only apply to acupuncture.***

*The references in paragraph 1(1) in the definition of "premises" to provisions of section 15 (tattooing, semi-permanent skin-colouring, cosmetic piercing and electrolysis) **do not apply to acupuncture.***

*The requirement in paragraph 2(2) that treatment is given in a treatment area used solely for giving treatment **applies to acupuncture, tattooing, semi-permanent skin-colouring, cosmetic piercing and electrolysis but not to ear-piercing or nose-piercing using a hygienic piercing instrument.***

*The requirement in paragraph 2(3) that the floor of the treatment area be provided with a smooth impervious surface **applies to tattooing, semi-permanent skin-colouring and cosmetic piercing but not to acupuncture or electrolysis or ear-piercing or nose-piercing using a hygienic piercing instrument.***

*The requirements relating to dye or a container used to hold dye used for treatment in paragraphs 3(1) (a) (iv) and (v) **apply to tattooing and semi-permanent skin-colouring.***

*The requirement in paragraph 4(1)(a)(iii) that an operator wears disposable examination gloves that have not previously been used with another client **does not apply to acupuncture otherwise than in the circumstances described in paragraph 4(3).***

*The provisions of paragraph 4(2) in relation to washing facilities **apply to cosmetic piercing using only a hygienic piercing instrument.***

*The exception whereby the byelaws do not apply to treatment carried out by or under the supervision of a **dentist** applies only to **acupuncture (see section 14(8) of the Act).***

TONBRIDGE & MALLING BOROUGH COUNCIL

LICENSING & APPEALS COMMITTEE

19 March 2014

Report of the Director of Central Services and Monitoring Officer

Part 1- Public

Matters for Recommendation to Council

1 REVIEW OF PART OF THE HACKNEY CARRIAGE AND PRIVATE HIRE POLICY 2013

1.1 Summary

- 1.1.1 Hackney carriage and private hire vehicles have a specific role to play in an integrated transport system. They are able to provide services in situations where public transport is either not available or outside “normal” hours of operation such as in the evenings or at weekends or for those with mobility difficulties
- 1.1.2 The current Hackney Carriage and Private Hire Policy was approved by Full Council on the 16 April 2013 and is published covering the years 2013 – 2016.
- 1.1.3 Appendix 1 of the current policy “Good conduct for licensed drivers” has been rewritten to reflect the focus on the aspiration to achieve high level of customer service
- 1.1.4 The proposed changes will go out for public consultation for just over six weeks from the 1 April 2014 until the 16 May 2014. The proposed changes are shown in **Annex A**

1.2 Background

- 1.2.1 Public safety is paramount consideration when processing prospective candidate by ensuring only fit and proper persons are licensed to be entrusted to drive members of the public safely, professionally and courteously to and from their required destinations.
- 1.2.2 Hackney carriages and private hire licensed drivers undertake great numbers of school contracts with Kent County Council transporting young children, people with special needs and vulnerable adults

1.2.3 Licensing Services works within a multi cultural dynamic customer facing environment where we need to ensure that every applicant knows what is expected from them.

1.2.4 The following process steps enabled development of this amended policy

Draft consultation agreed at the Licensing Committee	9 March 2014
Public Consultation	1 April 2014 until 16 May 2014
Licensing Committee agrees the policy and recommends to Full Council for adoption	17 June 2014
Full Council adopt policy	TBC
New Policy comes into force	TBC

1.3 Legal Implications

1.3.1 Under the Act, the Licensing Authority Statement of Policy will last for a maximum of three years and is required for adopted by Full Council on the recommendation of the Licensing and Appeals Committee.

1.4 Financial and Value for Money Considerations

1.4.1 Fee levels for licences are set by the Licensing Authority.

1.5 Risk Assessment

1.5.1 The introduction of a policy should provide a transparent and consistent basis for decision making. This in turn should reduce the risks of decisions being challenged in the Courts Recommendations

1.6 Equality Impact Assessment

1.6.1 See 'Screening for equality impacts' table at end of report

1.7 Recommendations

1.7.1 Members are **RECOMMENDED** that the draft policy be sent out for consultation

Background papers:

contact: Anthony Garnett

Nil

Adrian Stanfield

Report of the Director of Central Services and Monitoring Officer

Screening for equality impacts:		
Question	Answer	Explanation of impacts
a. Does the decision being made or recommended through this paper have potential to cause adverse impact or discriminate against different groups in the community?	No	All applications made are decided on their own merits and on a case by case basis. Application are open to all groups in the community to apply
b. Does the decision being made or recommended through this paper make a positive contribution to promoting equality?	Yes	Increased emphasis on disabled access vehicles
c. What steps are you taking to mitigate, reduce, avoid or minimise the impacts identified above?		

In submitting this report, the Chief Officer doing so is confirming that they have given due regard to the equality impacts of the decision being considered, as noted in the table above.

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Appendix I – Good conduct for licensed drivers

17 APPENDIX I

17.1 Code of good conduct for licensed drivers

- 17.1.1 In order to promote its licensing objectives as regards hackney carriage and private hire licensing, the Council has adopted the following Code of Good Conduct, which should be read in conjunction with the other statutory and policy requirements set out in this document.

17.2 Responsibility to the Trade

- 17.2.1 Licence holders shall endeavour to promote the image of the hackney carriage and private hire trade by:

- a) complying with this Code of Conduct
- b) complying with the Council's Hackney Carriage and Private Hire Licensing Policy
- c) behaving in a civil, orderly and responsible manner at all times.

17.3 Responsibility to Clients and high level of customer service

- a) ensure you are courteous at all times when talking to anyone, especially customers.
- b) be polite, helping customers with their baggage or shopping
- c) maintain their vehicles in a safe and satisfactory condition at all times
- d) keep their vehicles clean and suitable for hire to the public at all times
- e) attend punctually when undertaking pre-booked hiring
- f) assist, where necessary, passengers' ingress to and egress from vehicles
- g) ensure you have change with you – (a fare may well require change).

17.4 Responsibility to Residents

- a) avoid being nuisance to residents when picking up or waiting for a fare.
- b) not sound the vehicle's horn illegally
- c) keep the volume of all audio equipment and two-way radios to a minimum
- d) switch off the engine if required to wait
- e) take whatever additional action is necessary to avoid disturbance to residents in the neighbourhood

17.5 At hackney carriage ranks, in addition to the requirements above:

- a) rank in an orderly manner and proceed along the rank in order and promptly using both lanes, leaving no gaps.
- b) The hackney carriage at top of rank will take the customer to any destination within the Borough regardless of how short the journey may be.
- c) no driver to tell a customer that the minimum fare is higher than the current fare chart minimum fare.

17.6 at private hire offices:

- a) not undertake servicing or repairs of vehicles
- b) not allow volume of all audio equipment and two-way radios to unduly disturb residents of the neighbourhood
- c) take whatever additional action is necessary to avoid disturbance to residents in the neighbourhood, which might arise from the conduct of their business.

17.7 General

17.7.1 Drivers shall:

- a) pay attention to personal hygiene and dress, so as to present a professional image to the public
- b) drive with care and due consideration for other road users and pedestrians and, in particular, shall not use a hand held mobile phone whilst driving
- c) obey all Traffic Regulation Orders and directions at all time
- d) not smoke at any time when inside the vehicle
- e) not consume alcohol immediately before, or at any time whilst driving or being in charge of a hackney carriage or private hire vehicle (any amount of alcohol can affect a drivers' judgement)
- f) not drive while having misused legal or illegal drugs (any amount of drugs can affect a drivers' judgement). If a driver properly uses prescription drugs that make him drowsy he should not drive
- g) fulfil their responsibility to ensure compliance with legislation regarding the length of working hours
- h) not eat in the vehicle in the presence of customers

17.8 Disciplinary Hearings

17.8.1 Drivers should be aware of the powers the Council has to take action, by way of suspension, revocation or refusal to renew a driver's licence where:

- a) the driver has been convicted, since the grant of the licence, of an offence involving dishonesty, indecency or violence
- b) the driver has been convicted of an offence under any legislation relating to hackney carriage or private hire regulation
- c) the driver has breached any requirements of the Council's Hackney Carriage and Private Hire Licensing Policy
- d) there is a breach of condition of this code

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TONBRIDGE & MALLING BOROUGH COUNCIL

LICENSING & APPEALS COMMITTEE

19 March 2014

Report of the Director of Central Services and Monitoring Officer

Part 1- Public

Delegated

1 REVIEW OF FEES AND CHARGES 2014/15 - LICENSING FEES

1.1 Executive Summary

- 1.1.1 The review of fees and charges for 2013/14 was last undertaken by the Finance and Property Advisory Board on the 9 January 2013.
- 1.1.2 The responsibility for setting the licensing fees and charges for 2014/15 is with the Licensing & Appeals Committee.
- 1.1.3 The review has been carried out by the Licensing and Community Safety Manager and the report sets out the recommended changes to the existing fee structure.
- 1.1.4 The levels of fees that may be charged for delivery of the licensing function are subject to a number of external constraints. For example,
 - (a) Fees for gambling licences have to be set within the parameters established by the law, and our fees are already set at the maximum permissible levels.
 - (b) Fees for alcohol and entertainment licensing i.e. the Licensing Act 2003 are also fixed by the Government.

This report therefore focuses on the fees to be charged for hackney carriage and private hire licensing, together with the other miscellaneous licences/ registrations handled by the licensing service.

- 1.1.5 A table showing the existing and proposed fees is attached as **Annex 1**.

1.2 Hackney Carriage & Private Hire

- 1.2.1 Fee levels for hackney carriage and private hire licensing are subject to various statutory controls. Whilst these controls provide the Council with some discretion as to the level of fee, the cost of a licence must be related to the overall cost of the licensing scheme itself.

- 1.2.2 Section 53 of the Local Government (Miscellaneous Provisions) Act 1976 provides that, in respect of hackney carriage and private hire drivers, the Council may charge 'such a fee as they consider reasonable with a view to recovering the costs of issue and administration'.
- 1.2.3 For vehicle (both hackney carriage and private hire) and private hire operators' licences, fee levels are governed by s70 of the 1976 Act. This section allows the Council to charge such fees as may be sufficient in aggregate to cover in whole or in part –
- (a) the reasonable cost of carrying out inspections of hackney carriages/ private hire vehicles for the purpose of determining whether any such licence should be granted or renewed;
 - (b) the reasonable cost of providing hackney carriage stands;
 - (c) any other reasonable administrative or other costs in connection with the above and with the control and supervision of hackney carriage and private hire vehicles.
- 1.2.4 The cost for an Operator's licence remains fixed as it is still presently high compared with other authorities in Kent.

Fee model

- 1.2.5 The fee model sheets for the main Taxi fee increase show officer cost and time in the validating, processing, issuing and enforcement cost where applicable. These sheets are shown as **Annex 2**.

New Supplier for plates and holders

- 1.2.6 The licensing team has changed supplier for Plates and Holders which has resulted in a cost reduction of plates and holders for the majority of items purchased.

1.3 Other licensing & registration fees

- 1.3.1 A review has also been undertaken of the fees charged for a number of miscellaneous licences/ consents, including street trading, animal welfare and acupuncture/ tattooing etc. The proposed fees for 2014/15 are also contained in the table at **Annex 1**.

1.4 Legal Implications

1.4.1 As set out above.

1.5 Financial and Value for Money Considerations

1.5.1 As set out above.

1.6 Risk Assessment

1.6.1 The recommended fee levels have been calculated in order to ensure that the service remains self financing, whilst at the same time not making a profit. This will minimise the risk of a challenge being made by a third party.

1.7 Equality Impact Assessment

1.7.1 See 'Screening for equality impacts' table at end of report

1.8 Recommendations

2 It is RECOMMENDED that the proposed scale of fees for licences, consents and registrations set out in Annex 1 of this report be adopted with effect from the 1 April 2014.

2.1.1

Background papers:

contact: Anthony Garnett 6151

Nil

Adrian Stanfield

Director of Central Services and Monitoring Officer

Screening for equality impacts:		
Question	Answer	Explanation of impacts
a. Does the decision being made or recommended through this paper have potential to cause adverse impact or discriminate against different groups in the community?	No	The charges detailed in this report are payable by all members of the community.
b. Does the decision being made or recommended through this paper make a positive contribution to promoting equality?	No	As above.
c. What steps are you taking to mitigate, reduce, avoid or minimise the impacts identified above?		

In submitting this report, the Chief Officer doing so is confirming that they have given due regard to the equality impacts of the decision being considered, as noted in the table above.

Licensing Fee Review for 2014/2015 – Recommended changes

Registration/Licence Type	Current Fee 2013/14	Proposed Fee 2014/15	Notes
Driver licences			
Probationary Badge – Hackney Carriage/Private Hire	30.00	35.00	
Hackney Carriage/Private Hire Licence (3 years)	173.00	177.00	
Dual Hackney Carriage/Private Hire Licence (3 years)	300.00	200.00	
Vehicle licences			
Hackney Carriage – new (1 year)	236.25	230.00	
Hackney Carriage – renewal (1 year)	195.00	199.00	
Private Hire – new (1 year)	223.50	222.00	
Transfer of vehicle licence			
Transfer within 6 months	58.00	59.50	
Plate exemption certificate	41.00	42.00	
Private Hire Operators			
3 Year Licence and renewal (up to 4 vehicles)	320.00	320.00	
Plus per vehicle (over 4 vehicles)	80.00	80.00	
Insurance plates			
Hackney Carriage Vehicle (first month)	60.00	60.00	
Hackney Carriage Vehicle (for each additional month)	18.00	18.00	
Private Hire Vehicle (first month)	46.00	46.00	
Private Hire Vehicle (for each additional month)	16.00	16.00	
Administration charges			
General	40.00	40.00	
Lost badges etc	20.00	20.00	
Change of name and address	10.50	10.50	
Plates			
Hackney Carriage pack (plates, holders, door insignia)	41.25	31.00	
Private Hire pack (plates, holders)	28.50	23.00	

Registration/Licence Type	Current Fee 2013/14	Proposed Fee 2014/15	Notes
External Licence Plate and holder	19.00	19.00	
External Licence Plate only	10.00	6.50	
External Licence Plate holder only	9.00	12.50	
Internal Plate and Holder	9.50	4.00	
Internal Plate only	8.00	2.00	
Internal Plate Holder only	1.50	2.00	
Door Insignia (per pair)	7.75	8.00	
Pleasure Boats and Boatmen			
Pleasure boats – 1 year (multi-seated)	157.00	160.00	
Pleasure boats – 1 year (other)	31.00	31.50	
Boatmen – 1 year	31.00	31.50	
Animal welfare licences			
Animal welfare/boarding	257.00	262.00	
Breeding and sale of dogs	200.00	204.00	
Pet shop	247.00	252.00	
Riding establishments	339.00	345.00	
Dangerous wild animals	772.00	772.00	
Zoo	731.00	731.00	
Street trading consents - Tonbridge street Trading Control Area:			
Fixed pitch – annual consent	1200.00	1224.00	
Fixed pitch – occasional consent	309.00	315.00	
Other - annual consent	1096.00	1117.00	
Other - occasional consent	56.00	57.00	
Other licences/registrations			
Acupuncture, tattooing, ear piercing and electrolysis (one registration only required)	162.00	165.00	
Sex Establishments: sex shop or sex cinema	2000.00	2000.00	

	LM					LO					total TMBC
	LM	LO	legal	COM	Fin	LM	LO	legal	COM	Fin	
Driver badge renewals	← Officer rates per hour										
LM											
LO											
Legal TMB											
Committee											
Fin											
telephone costs											4
Documents cost											6
Financial admin											6
production of information											
documentation / awareness											
	Time					Cost					
Assistance to applicant		0.1	0.31			£6.46	£9.56	£0.00	£0.00		£16.02
Check information		0.13	0.3			£0.00	£0.00	£0.00	£0.00		£0.00
Medical/DBS/DVLA checks		0.25	0.25			£8.40	£9.25	£0.00	£0.00		£17.65
process application fee			0.2		0.1	£16.16	£7.71	£0.00	£0.00		£23.87
load application onto computer		0.1	0.35			£0.00	£6.17	£0.00	£0.00		£6.17
Print card / paper licence			0.3			£6.46	£10.79	£0.00	£0.00		£17.25
contact applicant to clarify details						£0.00	£9.25	£0.00	£0.00		£9.25
Office - overheads						£0.00	£0.00	£0.00	£0.00		£0.00
representations											£54.50
negotiation						£0.00	£0.00	£0.00	£0.00		£0.00
Inspection visit						£0.00	£0.00	£0.00	£0.00		£0.00
Enforcement						£0.00	£0.00	£0.00	£0.00		£0.00
determine application						£0.00	£0.00	£0.00	£0.00		£0.00
sub total		0.58	1.71	0	0	£37.49	£52.72	£0.00	£0.00		£168.41
hearing to be arranged		2.2	0.5			£142.19	£15.42	£0.00	£0.00		£157.60
determine application - Hearing		3	1	3	3	£193.89	£30.83	£210.48	£126.42		£561.62
notify relevant persons		0.5	0.5	0.03	0.03	£32.32	£15.42	£2.10	£1.26		£51.10
application granted		0.75	0.25			£48.47	£7.71	£0.00	£0.00		£56.18
update register			0.25			£0.00	£7.71	£0.00	£0.00		£7.71
hearing & Members allowance											
sub total						£454.35	£129.79	£212.58	£127.68		£826.50
application rejected - prepare for an appeal		20	2	12	1	£1,292.60	£61.66	£841.92	£42.14		£2,238.32
appeal hearing (1st Meeting / PTR)			0	13	0	£0.00	£0.00	£912.08	£0.00		£912.08
post appeal hearing			2.5	2	0	£0.00	£77.08	£140.32	£0.00		£217.40
total		27.03	8.71	30.03	4.03	£1,746.95	£268.53	£2,106.90	£169.82		£3,367.80
						£413.25	£1,683.90				

Proposed fee

£168.41

£8.27

£176.68

round up

↓

£177.00

Vehicles -new - Hackney		LM	LO	← Officer rates per hour					LM	LO	legal	COM	Fin	total
		Legal TMB	Committee	Fin									TMBC	
		LM	LO	legal	COM	Fin	LM	LO	legal	COM	Fin			
telephone costs													4	
Documents cost													6	
Financial admin													6	
production of information														
documentation / awareness														
		Time					Cost							
Assistance to applicant		0.1	0.315				£6.46	£9.71	£0.00	£0.00	£0.00		£16.17	
							£0.00	£0.00	£0.00	£0.00			£0.00	
Check information		0.15	0.35				£9.69	£10.79	£0.00	£0.00			£20.49	
Pairing up garage documentation			0.2				£0.00	£6.17	£0.00	£0.00			£6.17	
process application fee			0.2			0.1	£0.00	£6.17	£0.00	£0.00			£6.17	
load application onto computer		0.1	0.35				£6.46	£10.79	£0.00	£0.00			£17.25	
Printplates / paper licence		0.1	0.36				£6.46	£11.10	£0.00	£0.00			£17.56	
contact applicant to clarify details							£0.00	£0.00	£0.00	£0.00			£0.00	
Office - overheads													£54.50	
Cost of plates							£0.00	£0.00	£0.00	£0.00			£31.00	
negotiation							£0.00	£0.00	£0.00	£0.00			£0.00	
inspection visit							£0.00	£0.00	£0.00	£0.00			£0.00	
Enforcement		0.3	0.3				£19.39	£9.25	£0.00	£0.00			£28.64	
determine application							£0.00	£0.00	£0.00	£0.00			£0.00	
sub total		0.75	2.075	0	0		£48.47	£63.97	£0.00	£0.00			£221.65	
hearing to be arranged		2.2	0.5				£142.19	£15.42	£0.00	£0.00			£157.60	
determine application - Hearing		3	1	3	3		£193.89	£30.83	£210.48	£126.42			£561.62	
notify relevant persons		0.5	0.5	0.03	0.03		£32.32	£15.42	£2.10	£1.26			£51.10	
application granted		0.75	0.25				£48.47	£7.71	£0.00	£0.00			£56.18	
update register			0.25				£0.00	£7.71	£0.00	£0.00			£7.71	
hearing & Members allowance														
sub total							£465.34	£141.05	£212.58	£127.68			£826.50	
application rejected - prepare for an appeal		20	2	12	1		£1,292.60	£61.66	£841.92	£42.14			£2,238.32	
appeal hearing (1st Meeting / PTR)			0	13	0		£0.00	£0.00	£912.08	£0.00			£912.08	
post appeal hearing			2.5	2	0		£0.00	£77.08	£140.32	£0.00			£217.40	
total		27.2	9.075	30.03	4.03		£1,757.94	£279.78	£2,106.90	£169.82			£3,367.80	
							£413.25	£1,683.90						

Proposed fee: £221.65

+ £8.27

£229.92

round up

↓

£230.00

1%

Vehicles -new - Private Hire

LM
LO

Legal TMB
Committee
Fin



Officer rates per hour

	LM	LO	legal	COM	Fin	LM	LO	legal	COM	Fin	total TMB
telephone costs											4
Documents cost											6
Financial admin											6
production of information documentation / awareness											
	Time					Cost					
Assistance to applicant	0.1	0.315				£6.46	£9.71	£0.00	£0.00		£16.17
						£0.00	£0.00	£0.00	£0.00		£0.00
Check information	0.15	0.35				£9.69	£10.79	£0.00	£0.00		£20.49
Pairing up garage documentation		0.2				£0.00	£6.17	£0.00	£0.00		£6.17
process application fee		0.2			0.1	£0.00	£6.17	£0.00	£0.00		£6.17
load application onto computer	0.1	0.35				£6.46	£10.79	£0.00	£0.00		£17.25
Printplates / paper licence	0.1	0.36				£6.46	£11.10	£0.00	£0.00		£17.56
contact applicant to clarify details						£0.00	£0.00	£0.00	£0.00		£0.00
Office - overheads											£54.50
Cost of plates						£0.00	£0.00	£0.00	£0.00		£23.00
negotiation						£0.00	£0.00	£0.00	£0.00		£0.00
inspection visit						£0.00	£0.00	£0.00	£0.00		£0.00
Enforcement	0.3	0.3				£19.39	£9.25	£0.00	£0.00		£28.64
determine application						£0.00	£0.00	£0.00	£0.00		£0.00
sub total	0.75	2.075	0	0		£48.47	£63.97	£0.00	£0.00		£213.65
hearing to be arranged	2.2	0.5				£142.19	£15.42	£0.00	£0.00		£157.60
determine application - Hearing	3	1	3	3		£193.89	£30.83	£210.48	£126.42		£561.62
notify relevant persons	0.5	0.5	0.03	0.03		£32.32	£15.42	£2.10	£1.26		£51.10
application granted	0.75	0.25				£48.47	£7.71	£0.00	£0.00		£56.18
update register		0.25				£0.00	£7.71	£0.00	£0.00		£7.71
hearing & Members allowance											
sub total						£465.34	£141.05	£212.58	£127.68		£826.50
application rejected - prepare for an appeal	20	2	12	1		£1,292.60	£61.66	£841.92	£42.14		£2,238.32
appeal hearing (1st Meeting / PTR)		0	13	0		£0.00	£0.00	£912.08	£0.00		£912.08
post appeal hearing		2.5	2	0		£0.00	£77.08	£140.32	£0.00		£217.40
total	27.2	9.075	30.03	4.03		£1,757.94	£279.78	£2,106.90	£169.82		£3,367.80
						£413.25	£1,663.90				

Proposed fee

£213.65

£8.27

£221.92

round up

£222.00

Vehicles - renewals

LM
LO

← Officer rates per hour

Legal TMB
Committee
Fin

	LM	LO	legal	COM	Fin	LM	LO	legal	COM	Fin	total TMB
telephone costs											4
Documents cost											6
Financial admin											6
production of Information documentation / awareness											
	Time					Cost					
Assistance to applicant	0.1	0.315				£6.46	£9.71	£0.00	£0.00		£16.17
						£0.00	£0.00	£0.00	£0.00		£0.00
Check information	0.15	0.35				£9.69	£10.79	£0.00	£0.00		£20.49
Pairing up garage documentation		0.2				£0.00	£6.17	£0.00	£0.00		£6.17
process application fee		0.2			0.1	£0.00	£6.17	£0.00	£0.00		£6.17
load application onto computer	0.1	0.35				£6.46	£10.79	£0.00	£0.00		£17.25
Printplates / paper licence	0.1	0.35				£6.46	£10.79	£0.00	£0.00		£17.25
contact applicant to clarify details						£0.00	£0.00	£0.00	£0.00		£0.00
Office - overheads											£54.50
representations						£0.00	£0.00	£0.00	£0.00		£0.00
negotiation						£0.00	£0.00	£0.00	£0.00		£0.00
inspection visit						£0.00	£0.00	£0.00	£0.00		£0.00
Enforcement	0.3	0.3				£19.39	£9.25	£0.00	£0.00		£28.64
determine application						£0.00	£0.00	£0.00	£0.00		£0.00
sub total	0.75	2.065	0	0		£48.47	£63.66	£0.00	£0.00		£190.34
hearing to be arranged	2.2	0.5				£142.19	£15.42	£0.00	£0.00		£157.60
determine application - Hearing	3	1	3	3		£193.89	£30.83	£210.48	£126.42		£561.62
notify relevant persons	0.5	0.5	0.03	0.03		£32.32	£15.42	£2.10	£1.26		£51.10
application granted	0.75	0.25				£48.47	£7.71	£0.00	£0.00		£56.18
update register		0.25				£0.00	£7.71	£0.00	£0.00		£7.71
hearing & Members allowance											
sub total						£465.34	£140.74	£212.58	£127.68		£826.50
application rejected - prepare for an appeal	20	2	12	1		£1,292.60	£61.66	£841.92	£42.14		£2,238.32
appeal hearing (1st Meeting / PTR)		0	13	0		£0.00	£0.00	£912.08	£0.00		£912.08
post appeal hearing		2.5	2	0		£0.00	£77.08	£140.32	£0.00		£217.40
total	27.2	9.065	30.03	4.03		£1,757.94	£279.47	£2,106.90	£169.82		£3,367.80
							£413.25	£1,683.90			

Proposed fee

£190.34

£8.27

£198.61

round up

£199.00

1%

**Private Hire -
Operators Licences**

LM
LO

← Officer rates per hour

Legal TMB
Committee
Fin

	LM	LO	legal	COM	Fin	LM	LO	legal	COM	Fin	total TMB 4 6 6
telephone costs											
Documents cost											
Financial admin											
production of information documentation / awareness											
	Time					Cost					
Assistance to applicant	0.1	0.315				£8.46	£9.71	£0.00	£0.00		£18.17
						£0.00	£0.00	£0.00	£0.00		£0.00
Check information	0.15	0.35				£9.69	£10.79	£0.00	£0.00		£20.49
Pairing up garage documentation process application fee		0.2			0.1	£0.00	£8.17	£0.00	£0.00		£8.17
load application onto computer	0.1	0.3				£8.46	£9.25	£0.00	£0.00		£15.71
Printplates / paper licence	0.2	0.51				£12.93	£15.72	£0.00	£0.00		£28.65
contact applicant to clarify details						£0.00	£0.00	£0.00	£0.00		£0.00
Office - overheads											£54.50
Cost of plates						£0.00	£0.00	£0.00	£0.00		£0.00
negotiation						£0.00	£0.00	£0.00	£0.00		£0.00
inspection visit						£0.00	£0.00	£0.00	£0.00		£0.00
Enforcement	1.53	1.53				£98.88	£47.17	£0.00	£0.00		£146.05
determine application						£0.00	£0.00	£0.00	£0.00		£0.00
sub total	2.08	3.205	0	0		£134.43	£98.81	£0.00	£0.00		£311.45
hearing to be arranged	2.2	0.5				£142.19	£15.42	£0.00	£0.00		£157.60
determine application - Hearing	3	1	3	3		£193.89	£30.83	£210.48	£128.42		£561.62
notify relevant persons	0.5	0.5	0.03	0.03		£32.32	£15.42	£2.10	£1.28		£51.10
application granted	0.75	0.25				£48.47	£7.71	£0.00	£0.00		£56.18
update register		0.25				£0.00	£7.71	£0.00	£0.00		£7.71
hearing & Members allowance											
sub total						£551.29	£175.89	£212.58	£127.88		£828.50
application rejected - prepare for an appeal	20	2	12	1		£1,292.60	£61.66	£841.92	£42.14		£2,238.32
appeal hearing (1st Meeting / PTR)		0	13	0		£0.00	£0.00	£912.08	£0.00		£912.08
post appeal hearing		2.5	2	0		£0.00	£77.08	£140.32	£0.00		£217.40
total	28.53	10.205	30.03	4.03		£1,843.89	£314.62	£2,106.90	£169.82		£3,367.80
							£413.25	£1,683.90			

Proposed fee

£311.45
£8.27
£319.71

round up

£320.00

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TONBRIDGE & MALLING BOROUGH COUNCIL

LICENSING & APPEALS COMMITTEE

19 March 2014

Report of the Director of Central Services and Monitoring Officer

Part 1- Public

Delegated

1 UNMET DEMAND SURVEY – HACKNEY CARRIAGE VEHICLES

1.1 Executive Summary

- 1.1.1 Over the last few years the number of licensed hackney carriage vehicles working out of Tonbridge Waterloo rank has grown resulting in very long waiting times queuing on the rank waiting for a fare. As of the 1 March 2014 Tonbridge & Malling currently has 180 hackney carriage vehicles licensed.
- 1.1.2 The neighbouring Licensing Authorities of Tunbridge Wells Borough Council and Maidstone have a fixed limit as to the number of Hackney Carriage Vehicles that are allowed to be licensed. Sevenoaks District Council does not have a restriction, however you need a station permit to work on the main Sevenoaks Station rank.
- 1.1.3 The situation at Waterloo Road is further exacerbated by the economic climate where drivers are working longer hours and some hackney carriage vehicles are being worked longer with multiple drivers.
- 1.1.4 Before a Licensing Authority can restrict the number of hackney carriage vehicles to be licensed a detailed robust survey has to be commissioned to determine to assess hackney carriage services throughout the Borough.
- 1.1.5 To gauge opinion from the current licensed hackney carriage drivers and dual badge holders a questionnaire was sent out asking them if they would like an Unmet Demand Survey to be undertaken. It was clearly pointed out to all respondents of the questionnaire that this survey would have to be paid for by the hackney carriage and dual drivers through their fees.
- 1.1.6 As of the 5 March the licensing team have received back 57 (25.56%) responses from 223 that were sent out. 45 (79%) want a survey to be commissioned against 12 (21%) who do not.

1.2 Background

1.2.1 Under the Transport Act 1985, Local Authorities are only able to limit the number of Hackney Carriage Proprietors licences issued if there is no '*significant unmet demand*'. The existence of the concept of 'significant unmet demand' must be determined through robust statistical analysis as any decision to limit the number of licences may be open to detailed scrutiny by the Courts should the Committee's decision be challenged. Such surveys are normally conducted every three/four years.

1.2.2 A refusal to grant a Hackney Carriage Proprietor's licence, on the grounds of the numbers of Hackney Carriages within the area could only be justified if the Council could demonstrate that there is no significant demand which remains unmet for Hackney Carriage vehicle services.

1.2.3 Significant unmet demand is made up of two components:

Patent demand – which is directly observable from observing queues and waiting time and the ranks; and

Latent demand – calculated using data from the rank observations and public attitude information gleaned from the survey.

Unmet Demand Survey

1.2.4 The key elements of an Unmet Demand Survey are to:

Review of relevant policies:

Extensive rank observations and audits

On street interviews

Consultation

Benchmarking_against other authorities

1.2.5 The research will focus on:

customer need and expectation

the existence and significance of unmet demand

service quality

safety

vehicle types

vehicle designs

accessibility

1.2.6 Target groups include:

customers

potential customers

individuals

groups

organisations on whom the hackney carriage service impacts

managers with whom the hackney carriage trade interacts.

Numbers of taxis in Kent

1.2.7 The following numbers are taken from the Department for Transport statistics

1 March 2013	Hackney Carriage Vehicles			Private Hire		
	Wheelchair accessible	Other taxis	Total HCV	Wheelchair accessible	Other taxis	Total PHV Operators
Ashford	18	57	75	0	111	47
Canterbury	163	89	252	..	169	50
Dartford	87	0	87	2	128	19
Dover	10	59	69	16	117	34
Gravesham	4	222	226	1	54	19
Maidstone	48	0	48	0	223	70
Sevenoaks	4	199	203	10	88	39
Shepway	15	253	268	..	24	51
Swale	40	124	164	7	49	26
Thanet	28	80	108	19	442	40
Tonbridge & Malling	1	189	190	15	245	76
Tunbridge Wells	16	88	104	2	139	54

Tonbridge & Malling	Hackney Carriage Vehicles			Private Hire		
	Wheelchair accessible	Other taxis	Total HCV	Wheelchair accessible	Other taxis	Total PHV Operators
1 March 2013	1	189	190	15	245	76
1 March 2014	1	179	180	15	248	65

1.3 Consultation with the Trade

1.3.1 In discussions with Hackney Carriage Drivers on the 14 January 2014, 18 February 2014 and 21 February 2014 the request for a limit on the number of Hackney Carriage Vehicles was made.

1.3.2 On Friday 21 February 2014 the Team sent out a letter and voting form to all Hackney Carriage Drivers and Dual Driver badge holders to ask if they wanted an Unmet Demand Survey. A copy of the letter is attached as **Annex 1**

Letters sent out	replies	%
223	57	25.56%

1.3.3 As of the 5 March the licensing team have received back 57 (25.56%) responses from 223 that were sent out. 45 (79%) want a survey to be commissioned against 12 (21%) who do not.

Reply	replies	%
Yes	45	79 %
No	12	21 %

1.4 Legal Implications

1.4.1 Under the Transport Act 1985, Local Authorities are only able to limit the number of Hackney Carriage Proprietors licences issued if there is no '*significant unmet demand*'. The existence of the concept of 'significant unmet demand' must be determined through robust statistical analysis as any decision to limit the number of licences may be open to detailed scrutiny by the Courts should the Committee's decision be challenged.

1.5 Financial and Value for Money Considerations

- 1.5.1 The Council would pay for the study to be undertaken and would levy an amount to each Hackney Carriage Drivers and Dual Drivers fees to recover the cost, which would be approximately £10,000.

1.6 Risk Assessment

- 1.6.1 There are no relevant issues

1.7 Equality Impact Assessment

- 1.7.1 See 'Screening for equality impacts' table at end of report

1.8 Recommendations

- 1.8.1 That the Licensing and Appeals Committee considers the request from the Hackney Carriage and Dual drivers for an Unmet Demand Survey to be undertaken and that the results of the Survey be discussed at a future meeting.

Background papers:

contact: Anthony Garnett

Nil

Adrian Stanfield

Central Services Director and Monitoring Officer

Screening for equality impacts:		
Question	Answer	Explanation of impacts
a. Does the decision being made or recommended through this paper have potential to cause adverse impact or discriminate against different groups in the community?	No	
b. Does the decision being made or recommended through this paper make a positive contribution to promoting equality?	No	
c. What steps are you taking to mitigate, reduce, avoid or minimise the impacts identified above?		

In submitting this report, the Chief Officer doing so is confirming that they have given due regard to the equality impacts of the decision being considered, as noted in the table above.

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Gibson Building, Gibson Drive ANNEX 1
Kings Hill, West Malling
Kent ME19 4LZ

Switchboard 01732 844522
Minicom 01732 874958 (text only)
Web Site <http://www.tmbc.gov.uk>
Email licensing.services@tmbc.gov.uk

Hackney Carriage Proprietor / Driver

Contact Licensing
Direct line 01732 876368
Email licensing.services@tmbc.gov.uk
Fax 01732 876397
Your ref
Our ref Unmet Demand
Date 24th February 2014

Dear Sir/Madam

Number of Hackney Carriage Vehicles

Following discussions with Hackney Carriage Proprietors and drivers at the recent trade meetings there was concern over the number of licensed Hackney Carriage Vehicles operating with Tonbridge & Malling Borough Council (TMBC).

Under the Transport Act 1985, Local Authorities are only able to limit the number of Hackney Carriage Proprietors licences issued if there is no 'significant unmet demand'. The existence of the concept of 'significant unmet demand' must be determined through robust statistical analysis as any decision to limit the number of licences may be open to detailed scrutiny by the Courts should the Committee's decision be challenged. Such surveys are normally conducted every three years.

The effect of the above is that a refusal to grant a Hackney Carriage Proprietor's licence, on the grounds of the numbers of Hackney Carriages within the area could only be justified if the Council could demonstrate that there is no significant demand which remains unmet for Hackney Carriage vehicle services.

Significant unmet demand is made up of two components:

- Patent demand – which is directly observable from observing queues and waiting time and the ranks; and
- Latent demand – calculated using data from the rank observations and public attitude information gleaned from the survey.

A survey will cost between £8,000 - £14,000 to be completed and will have to be paid for out of future fees. This would result in an additional fee tariff of between £7-11 a year.

As a result I need to understand how many licence holders would like to invest in an Unmet Demand Survey to be carried out in Tonbridge & Malling Borough Council area. I will then report the finding to the Licensing and appeal Committee for consideration.

Director of Central Services and Monitoring Officer: Adrian Stanfield LL.B (Hons) Solicitor

Question 1	Please tick ✓		
Do you want Tonbridge & Malling Borough Council to commission an Unmet Demand Survey?	Yes		No

Proposed new fare increase.

Following discussions with Hackney Carriage Proprietors and drivers at the recent trade meetings there was support for a Fare Increase from those present. I need you to answer the following questions. The results will then be presented before the Licensing and Appeals Committee for their consideration. If the Licensing and Appeals Committee agrees a fare increase a public notice will be published and there will be a fourteen day period whereby objections can be raised.

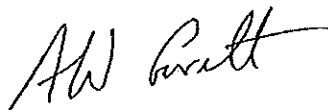
Question 2	Please tick ✓		
Do you want a fare increase?	Yes		No

Question 3
What fare increase do you want considered?

Driver Badge Number	Signature
Drivers Name	

Please return to the licensing team at Tonbridge and Malling Borough Council in the pre-paid envelope by Monday 3 March 2014. All papers will be available for inspection.

Yours faithfully



Anthony Garnett

Licensing and Community Safety Manager

TONBRIDGE & MALLING BOROUGH COUNCIL

LICENSING & APPEALS COMMITTEE

19 March 2014

Report of the Director of Central Service and Monitoring Officer

Part 1- Public

Delegated

1 REVIEW OF HACKNEY CARRIAGE FARES

1.1 Background

1.1.1 At meetings with the Taxi trade w/c 17 February 2014 there was a request to review the hackney carriage fares.

1.1.2 The current maximum fares are attached at **Annex 1**.

1.1.3 In accordance with our commitment to review the maximum fares on an annual basis (agreed by this Committee on 21 September 2010), Members are invited to consider whether any increase in the maximum fares is now appropriate.

1.1.4 The Licensing Team sent out a letter and voting form to all Hackney Carriage Drivers and Dual Driver badge holders to ask if they wanted a fare increase.

223 voting forms were sent out resulting in a return of 50 forms (22.42%). The 50 forms were made up of 30 (13.45% of all drivers) in favour of an increase and 20 (8.97% of all drivers) against.

1.2 Requirement to set fees

1.2.1 The Council is empowered to set maximum hackney carriage fares. It is important to note that these are the maximum fares that may be charged, and indeed it is an offence to charge more than the fare shown on the meter. No driver is required to charge the maximum fares and indeed many accept a lower rate.

1.2.2 These fares do not apply to private hire work (journeys which are pre-booked) or to journeys which extend outside the Borough, although in the latter case an agreement to pay more than the metered fare must be made in advance of the hiring commencing.

1.3 Comparison with other Kent Authorities

- 1.3.1 Below is a table showing other Kent authorities' standard tariffs. All operate a time and distance tariff, so waiting time would be payable (if applicable) in addition to the fares set out below. Higher tariffs are also in operation for each authority for journeys between 11.30/ 12.00 midnight and 6.00am, bank holidays and Christmas/ New Year.

Region	2 Miles	Last Reviewed
Dartford	£6.60	2012
Maidstone	£6.60	2013
Tunbridge Wells	£6.60	2011
Gravesham	£6.40	2012
Sevenoaks	£6.32	2011
Swale	£6.30	2013
Tonbridge and Malling	£6.30	2013
Ashford	£6.20	2013
Shepway	£6.20	2012
Canterbury	£6.00	2008
Dover	£6.00	2012
Medway	£5.80	2012
Thanet	£5.00	2007

Ref: <http://www.phtm.co.uk/file/taxi-fare-league-tables/taxi-fares-league-table-march-2014.pdf>

1.4 Consultation with the Trade

- 1.4.1 In discussions with Hackney Carriage Drivers on the 14 January 2014, 18 February 2014 and 21 February 2014 the request for a fare increase was made
- 1.4.2 On Friday 21 February 2014 the Team sent out a letter and voting form to all Hackney Carriage Drivers and Dual Driver badge holders to ask if they wanted a fare increase.

Letters sent out	replies	%
223	56	25.11%

223 voting forms were sent out resulting in a return of 50 forms (22.42%). The 50 forms were made up of 30 (13.45% of all drivers) in favour of an increase and 20 (8.97% of all drivers) against.

Reply	replies	%
Yes	33	59 %
No	23	41 %

1.5 Fuel costs

- 1.5.1 When determining the level of fares, paragraph 5.1.2 of our Hackney Carriage and Private Hire licensing policy provides that consideration will be given as to what it is reasonable to expect the travelling public to pay as well as the need to give drivers an incentive to provide a cost-effective service at the times it is needed.
- 1.5.2 1.5.2 A key cost for the taxi trade is the price of fuel.
- 1.5.3 According to the most recent AA fuel price report (December 2013), the UK average price of unleaded fuel is 131.20 pence per litre (South East 131.3). Diesel prices are 138.6 pence per litre (South East 138.7), giving a price difference of 7.4 pence per litre between unleaded and diesel.
- 1.5.4 By way of comparison, the fuel prices in March 2013 the UK average price of unleaded fuel is 139.9 pence per litre (South East 140.5). Diesel prices are 146.4 pence per litre (South East 147.1), giving a price difference of 6.5 pence per litre between unleaded and diesel.

1.6 Conclusions

- 1.6.1 These are undoubtedly challenging financial times, not only for the taxi trade, but also for their customers. The current rate of inflation (Consumer Prices Index – Jan 2014 is 1.9% (Jan 2013 is 2.7%).
- 1.6.2 The current maximum fares within Tonbridge and Malling remain competitive with other authorities within Kent. Broadly speaking, our maximum fares fall within the centre range for Kent authorities.

1.7 Proposed Fare Increase for discussion -

	Current	Proposal
FLAG	£2.90 (up to .55 of a mile / FLAG (968 yards))	£3.00 (up to .55 of a mile / FLAG (968 yards))
each subsequent 155 yards	£.0.20 (each subsequent 155 yards whilst in motion, 40 seconds whilst stationary or a combination of both))	£.0.20 (each subsequent 149.79 yards whilst in motion, 40 seconds whilst stationary or a combination of both))
1 Mile	£4.10	£4.20
2 Mile	£6.30	£6.60
Extra Charges <ul style="list-style-type: none"> • For hiring beginning between 00:00 hours and 06:00 on any day • at any time on a bank or public holiday except Christmas Day or Easter Sunday • between 18:00 and 24:00 hours on Christmas Eve • between 18:00 and 24:00 hours on New Year's Eve 	50% of the above rate of fare	50% of the above rate of fare
For hiring beginning at any time on Christmas Day or Easter Sunday:	100% of the above rate of fare	100% of the above rate of fare (add New Years Day)
For hiring's on Saturdays & Sundays per fare beginning between 06:00 hours and 24:00 hours.	£0.50 surcharge on each fare	£0.50 surcharge on each fare
For the carriage of more than four passengers up to the maximum capacity of the carriage	50% of the above rate of fare	50% of the above rate of fare
Vehicle spoilage charge	£100.00	£100.00
Congestion charges, tolls and car parking	Congestion charges, tolls and car parking incurred during hiring	Congestion charges, tolls and car parking incurred during hiring

1.8 Legal Implications

- 1.8.1 Any proposal to vary the table of fares is subject to consultation. Under the Local Government Act 1976 – Section 65, any fares approved by the Council must be advertised via a public notice in a local newspaper. Any relevant objections received would need to be reported back to Members for consideration.

1.9 Financial and Value for Money Considerations

- 1.9.1 It should be noted that the tariff is the maximum fare that can be charged and discounts can be given, should the driver wish.

1.10 Risk Assessment

- 1.10.1 Approval of a new maximum fare, below the expectation of the hackney carriage trade, may result in dissatisfaction from the trade. Increasing the maximum fare may result in complaints from members of the public.

1.11 Equality Impact Assessment

- 1.11.1 See 'Screening for equality impacts' table at end of report

1.12 Recommendations

- 1.12.1 Members are invited to consider increasing the Hackney Carriage Fares as detailed in section 1.56 of the report. In the event that Members are minded to approve an increase in the maximum fares, it is recommended that any change take effect from 7th January 2013 to allow for the statutory public consultation period. If any relevant objections are received during the period these will be reported to the Committee so that Members may consider whether to proceed with the proposed increase.

1.12.2

Background papers:

Nil

contact: Anthony Garnett
Adrian Stanfield

Adrian Stanfield
Central Services Director and Monitoring Officer

Screening for equality impacts:		
Question	Answer	Explanation of impacts
a. Does the decision being made or recommended through this paper have potential to cause adverse impact or discriminate against different groups in the community?	No	A full equality impact assessment has been carried out. The Hackney Carriage and Private Hire Vehicles are used by all members of the public.
b. Does the decision being made or recommended through this paper make a positive contribution to promoting equality?	N/A	
c. What steps are you taking to mitigate, reduce, avoid or minimise the impacts identified above?		

In submitting this report, the Chief Officer doing so is confirming that they have given due regard to the equality impacts of the decision being considered, as noted in the table above.

Hackney Carriage Authorised Maximum Fares from 7 January 2013



Fares for time and distance

Standard Charges

For the first 0.55 miles whilst in motion, the first 9 minutes and 40 seconds whilst stationary or a combination of both £2.90

For each subsequent 155 yards whilst in motion, 40 seconds whilst stationary or a combination of both £0.20

1st Extra Charges

- for hiring beginning between 00:00 hours and 06:00 hours on any day
 - For any hiring beginning on any bank or public holiday except Christmas Day or Easter Sunday
 - For any hiring beginning Christmas Eve between 18:00 and 24:00
 - For any hiring beginning New Year's Eve between 18:00 and 24:00
- Additional 50% of the above Standard Charges

For hiring beginning at any time on Christmas Day or Easter Sunday

Additional 100% of the above Standard Charges

Note: - only one 1st Extra Charge may be applied at any one time

2nd Extra Charges

For any hiring beginning on either Saturday or Sunday between 06:00 and 24:00

Additional £0.50

For the carriage of more than four passengers up to the licensed passenger carrying capacity of the vehicle

Additional 50% of the above Standard Charges

Recommended vehicle spoilage charge £100

Any Congestion Charges, Road Tolls or Car Parking charges, incurred as a result of a passengers instruction may be added to the fare

Issued by The Licensing Department, Tonbridge & Malling Borough Council
Telephone 01732 876368, Email: licensing.services@tmbc.gov.uk

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TONBRIDGE & MALLING BOROUGH COUNCIL

LICENSING & APPEALS COMMITTEE

19 March 2014

Report of the Director of Central Services

Part 1- Public

Delegated

1 HOME OFFICE CONSULTATION ON LICENSING ACT 2003 FEES

1.1 Background

- 1.1.1 The fee regime for licensing under the Licensing Act 2003 (the “2003 Act”) was set nationally by Regulations produced in 2005 and has not been amended since then.
- 1.1.2 The government is revisiting the basis upon which fees are set and is proposing to introduce locally-set fees, subject to a national maximum cap. It has issued a consultation, attached at Annex 1 to this report, seeking views on a number of areas.
- 1.1.3 The consultation sets out a number of principles that Government sees as fundamental to any locally set fee:
- It should achieve cost recovery;
 - The regime should avoid cross-subsidisation, excessive cost or “gold plating”;
 - There will be a maximum nationally set cap which “*should not prevent licensing authorities in areas with the highest actual costs from recovering these costs*”; and
 - Any locally set fee should be based on evidence
- 1.1.4 The consultation seeks views, primarily from licensing authorities and licensees, on the following areas:
- Whether there is any evidence to support the continued use of non-domestic rateable value as a means for setting fees (the government seems opposed to this basis of assessment);
 - Whether there is any evidence linking premises authorised to provide licensable activities to a late terminal hour and/or used exclusively or

primarily for the sale of alcohol for consumption on the premises to increased cost, and the practicality of using this as a criterion for setting a variable fee;

- Whether there are any alternative options which should be available for the setting of fees which would satisfy the principles outlined above;
- Whether the proposed maximum cap would be sufficient to enable cost recovery (as to the amount of that proposed cap, see the table at page 25 of the consultation document annexed to this report);
- Whether, prior to setting fees, a licensing authority should be required to publish the proposed fee levels, basis of calculation, measures taken to keep costs down and to invite comments from interested parties;
- Whether the proposed changes present any risk of excessive costs or “gold plating” (i.e. activities which go beyond the duties on licensing authorities under the 2003 Act); and
- Whether there should be a single national payment date for annual fees

1.1.5 The consultation deadline closes on 10th April 2014

1.2 Legal Implications

1.2.1 The Government plans to introduce new Regulations which will change the way in which licensing fees for activities under the 2003 Act will be set.

1.2.2 The way in which government envisages this coming forward is with locally-set fees. This will enable TMBC to set fees which are more appropriate locally.

1.2.3 The precise details of the Regulations are not known so it is difficult at this stage to advise whether there will be any specific legal implications of the new Regulations.

1.2.4 It seems likely that new policies will be required for the setting of fees (see “Policy Implications” section below), and that some level of public consultation on those fees would likely be necessary also.

1.3 Financial and Value for Money Considerations

1.3.1 The proposed locally-set fees regime is aimed at achieving “cost recovery”.

1.3.2 The projected income for the year 2013/14 is £97,400 for fees under the Licensing Act 2003.

1.4 Risk Assessment

1.4.1 No specific risks are identified arising from the consultation document.

1.5 Equality Impact Assessment

1.5.1 See 'Screening for equality impacts' table at end of report

1.6 Policy Considerations

1.6.1 Setting the Council's own fees is likely to require new policies to be put in place. The consultation envisages that any locally set fees will be based on evidence, and therefore it is likely that an evidence gathering exercise will need to be carried out before any such policy is put into place.

1.7 Recommendations

1.7.1 That the Director of Central Services be authorised to prepare and submit a response to the consultation.

Background papers:

"A Consultation on fees under the Licensing Act 2003",
Home Office, February 2014

contact: Anthony Garnett
Kevin Toogood

Adrian Stanfield
Director of Central Services

Screening for equality impacts:		
Question	Answer	Explanation of impacts
a. Does the decision being made or recommended through this paper have potential to cause adverse impact or discriminate against different groups in the community?	No	The government is seeking responses to its consultation on how licensing fees will be set. Whilst the Council's response to the consultation may have some influence, any impact which may arise will be a consequence of new Government Regulation (which in itself will have to go through a consideration of equality impacts) and not the Council's response.

Screening for equality impacts:		
Question	Answer	Explanation of impacts
b. Does the decision being made or recommended through this paper make a positive contribution to promoting equality?	No	[Please explain your answer]
c. What steps are you taking to mitigate, reduce, avoid or minimise the impacts identified above?	N/A	

In submitting this report, the Chief Officer doing so is confirming that they have given due regard to the equality impacts of the decision being considered, as noted in the table above.



Home Office

A consultation on fees under the Licensing Act 2003

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Ministerial foreword

The Coalition Government is committed to cutting red tape in the licensing regime for responsible businesses. For example, we have already significantly reduced the burden of licensing regulation on live music, and have recently brought forward further proposals for the further deregulation of entertainment. We are also giving local government powers to remove licensing burdens on late night refreshment providers and reducing the burden of the personal licence regime.

However, the Coalition Government is very clear about its commitment to curbing excessive drinking and the problems it causes, especially the alcohol-related crime and disorder that costs around £11 billion annually in England and Wales. We have legislated to rebalance the Licensing Act in favour of local communities, ensuring that local authorities have significantly enhanced powers to tackle alcohol-related crime and disorder. For example, we have introduced the late night levy, giving licensing authorities the power to ensure that businesses selling alcohol late at night contribute to the police costs and wider council spending it causes. We have enabled licensing authorities to prevent alcohol sales late at night in problem areas through Early Morning Alcohol Restriction Orders (EMROs). We have also lowered the evidence threshold for decision-making, making it easier for licensing authorities and the police to refuse, revoke or impose conditions on licences.



Norman Baker


As part of our proposals to rebalance the Licensing Act, we also recognised arguments from some licensing authorities that they face significant deficits in carrying out their licensing functions, given that fee levels have been unchanged since they were set in 2005. We therefore introduced provisions in the Police Reform and Social Responsibility Act 2011 to enable locally-set fees based on cost recovery. We could have set fees centrally, but we recognise that costs vary for legitimate reasons in different areas, so that raising fees to recover costs in one area would mean fee payers paying too much in another.

Locally-set fees cannot be used to raise extra revenue. Nor are they tools to tackle crime. The late night levy, EMROs, and other strengthened licensing powers can be used for these purposes. Fees must be based on recovering the costs that licensing authorities incur in carrying out their licensing functions. Fee payers need to know that locally-set fees will be set transparently and be based on evidence. However, we do not wish to impose excessive duties or complex processes that will increase the costs of the licensing system for everyone. Therefore, we are seeking views on how to create a proportionate system of fees that follows these principles.

Additionally, we will introduce caps on the level of each fee to reassure fee payers. We are consulting on the level of each cap. I emphasise that the caps are intended to represent the maximum costs of licensing authorities. They will not be a “guide” to fee levels. Nor should they prevent licensing authorities from recovering legitimate costs.

Alongside this consultation, we are conducting a survey of the costs incurred by licensing authorities in performing each licensing function. The information will be important to us in developing the details of the regime. In addition, the information required to complete the survey will form a vital part of the calculations necessary to set fees locally in due course. I therefore urge all licensing authorities to complete and return the survey.

We look forward to hearing the views of all those with an interest as part of this consultation.

A handwritten signature in black ink that reads "Norman Baker". The signature is written in a cursive, flowing style.

Norman Baker MP
Minister of State for Crime Prevention

1. Introduction

- i. The regulatory regime of the Licensing Act 2003 (“the 2003 Act”) affects hundreds of thousands of businesses and many millions of us as workers, residents and consumers. It regulates the sale of alcohol, the provision of late night refreshment and regulated entertainment in England and Wales, and therefore influences activities that are central to many people’s lives. For instance, community pubs are often at the heart of neighbourhoods, providing employment and a focus for community engagement and social life. Licensable activities also support profitable industries which enhance the economy and promote growth. The majority of people who take part in regulated activities do so in an entirely responsible way. Nevertheless, these activities can sometimes have a less positive side, from which the licensing regime is designed to protect the public. Many agencies, such as the police, have a role. However, licensing functions under the 2003 Act are primarily implemented by local authorities – in their capacity as “licensing authorities” - and this role is funded through fees.
- ii. Licensing fees are intended to recover the costs that licensing authorities incur in implementing the 2003 Act, within the context of the transparency and accountability mechanisms to which licensing authorities are subject (see Chapter 8). Fees levels were set nationally in 2005, but have not been revised since then¹. The Police Reform and Social Responsibility Act 2011 (“the 2011 Act”) introduced a power for the Home Secretary to prescribe in regulations that these fee levels should instead be set by individual licensing authorities.
- iii. Fees are payable to licensing authorities by holders of licences and certificates, and those making applications or issuing notices². Those paying fees, therefore, come from a wide variety of groups. They include businesses that sell alcohol and provide late night refreshment, not-for-profit organisations (including private members’ clubs, such as political or British Legion clubs) and individuals (such as personal licence applicants). In addition over 120,000 Temporary Event Notices (TENs) are given each year by a variety of businesses, not-for-profit groups and individuals to authorise licensable activities on an occasional basis.

Scope of this consultation

- iv. This consultation invites views on a number of specific aspects of the regulations that will introduce locally-set fees under the 2003 Act. These are:
 - The future of the current variable fee “bands” based on the national non-domestic rateable value (NNDR) of the premises.
 - Whether the basis on which fees are determined should include new discretionary mechanisms to apply different fee amounts depending on whether or not premises are:
 - authorised to provide licensable activities until a late terminal hour and/or
 - used exclusively or primarily for the sale of alcohol for consumption on the premises.
 - If licensing authorities are able to apply different fee amounts, whether they should have further discretion to exclude certain classes of premises from liability for the higher amount.

¹ Licensing Act 2003 (Fees) Regulations 2005 (S.I. 2005/79). The only substantive amendment has been the addition of new fees for new processes, such as for an application for a “minor variation”.

² A full list of the fees is available in Chapter 7.

- The proposed cap levels that will apply to each fee category.
 - What guidance will be needed on setting fees and on efficiency and the avoidance of “gold-plating” (by which we mean activities that go beyond the duties of the 2003 Act and are not justified by proportionality).
 - Whether there should be a single annual fee date.
 - The transition process to locally set fees.
- v. This consultation is primarily aimed at fee payers and licensing authorities, although we welcome responses from all those who have an interest.

Legal context

- vi. The power to make fees regulations is set out in primary legislation³. These provisions are designed to reflect wider Government policy on fees, in particular, the need to distinguish “fees” from “taxation”. The primary legislation enables licensing authorities to charge different amounts for different “classes of case” (or criteria) specified in the regulations, but does not enable them to introduce new “classes of case” themselves.
- vii. In other words, the legislation enables the Home Secretary to prescribe that licensing authorities set fee levels, but not that they determine their own fee structure. This will be specified in regulations and will therefore remain the same across England and Wales. This fee structure is one of the issues on which we are consulting.
- viii. The primary legislation enables the Home Secretary to apply constraints on licensing authorities’ power to determine the amount of any fee. The Government has signalled its intention to use this power to set caps on fee levels. Chapter 7 seeks views on proposed caps.
- ix. It should also be noted that these regulations cannot introduce new circumstances where a fee becomes payable⁴. For example, they cannot add a fee for applications for review.
- x. There are a number of objectives that have shaped our approach to the consultation. These are set out below.

Cost recovery

- xi. As described above, licensing authorities should, as nearly as possible, achieve cost recovery for the discharge of functions under the 2003 Act⁵. Cost recovery is best achieved by setting fees locally because the variations in actual costs between licensing authority areas make it difficult to achieve a close approximation to cost recovery with nationally-set fees. Locally-set fees should remove unintended public subsidy of the administration of the 2003 Act when a licensing authority’s costs are higher than current fee income. This should benefit tax payers. It should also mean that fee payers do not pay more than the licensing authority’s costs in areas with lower costs.
- xii. Alongside this consultation, the Government is seeking further evidence on variations in costs between licensing authority areas. An estimate of licensing authority costs, based on a small initial survey, is reflected in the accompanying Impact Assessment. We would welcome estimates of the costs of administering the 2003 Act from all licensing authorities to fully

³ This will be sections 197A and 197B of the 2003 Act (see Appendix A).

⁴ A list of fee categories is contained in Chapter 7.

⁵ Chapter 8 of this consultation contains a description of the licensing authority costs.

assess the likely impact of locally-set fees and to ensure that costs reported are nationally representative. This will enable the Impact Assessment to be revised at final proposal stage, taking into account evidence received from the consultation. Further information about the cost survey is available at www.gov.uk/government/consultation/locally-set-licensing-fees.

Avoiding cross-subsidisation

- xiii. Fees (unlike taxes) must avoid “cross-subsidisation”. This is where one class (or type) of fee payer is charged at higher than cost-recovery so that another class can be charged less. An example might be charging big firms more as an economic deterrent, or so that charities or small firms can be charged less. This could be regarded as an unfair form of taxation on those that are charged more.
- xiv. Evidence suggests that the current sources of fee income are not properly aligned to licensing authority costs, either in terms of categories of fees (such as TENs or annual fees) or between the ‘classes’ of fee payers (for example at present the fee amount charged for an application for a premises licence is higher for premises with higher non-domestic rateable value, but the evidence does not support such variations in costs within licensing authority areas). This is discussed further in the impact assessment published alongside this consultation at www.gov.uk/government/consultation/locally-set-licensing-fees and in Chapter 5.
- xv. This consultation therefore contains proposals to change the basis on which variable fee amounts may be chargeable locally, with the intention that licensing authorities can reduce cross-subsidisation in their areas in efficient and practical ways.

Caps

- xvi. As mentioned above, the Government has signalled its intention to set a “cap” (or highest permitted fee level) for each fee category. The caps are intended to reassure fee payers that locally-set fees are not a blank cheque for local government. They should not prevent licensing authorities in areas with the highest actual costs from recovering these costs, and should not be treated as indicative fee levels. It is expected that, in all but the most exceptional cases in the highest cost areas, fee levels set by licensing authorities will be well below the caps. This consultation invites views on the levels of the caps. This consultation also seeks views on the other potential mechanisms by which fee payers could be reassured that the fee levels they are paying are fair.

Single national payment date for annual fees

- xvii. Annual fees for premises licences and club premises certificates are currently paid on the anniversary of the date on which the licence or certificate was granted. Holders of premises licences, particularly operators who hold multiple licences granted at different times, have argued that it would be more efficient for them to be able to pay all their annual fees on the same date.
- xviii. This consultation therefore seeks views on whether there should be a single national payment date for annual fees. However, it is not proposed to implement this change at the same time as the regulations governing locally-set fees are introduced, because it would increase the complexity of the forthcoming change to the fees regime.

Out of scope

Additions to or exemptions from fees

- xix. The only basis on which licensing authorities will be able to charge fees is cost recovery. The regulations cannot enable fees to be charged for processes or activities for which fees are not already chargeable, nor can they exempt premises or activities from the licensing regime. The Government is looking more widely at how to reduce the burdens on businesses and not-for-profit groups affected by the 2003 Act. Recent Government consultations on its Alcohol Strategy and on regulated entertainment have invited views on a number of de-regulatory proposals, alongside proposals to tackle alcohol-related harms.
- xx. In the case of regulated entertainment, the Government has proposed changes that will see many activities removed from the scope of licensing entirely⁶. This will mean, for example, that many temporary events that formerly required a TEN (such as community concerts) will not require one in future. Likewise, many licences or certificates that authorise regulated entertainment only will not be required in the future. The Government intends to align the introduction of locally-set fee levels locally with these changes, so that operators whose activities are set to be de-regulated (subject to Parliamentary approval) will not be subject to locally-set fees in the interim.
- xxi. Following the consultation on the Alcohol Strategy, the Government has brought forward proposals to:
- simplify the system of personal licences;
 - introduce a new form of authorisation, the “community and ancillary sales notice” (CAN), which will reduce the burdens on community groups that sell small amounts of alcohol and on businesses, such as small accommodation providers, that only sell limited amounts of alcohol alongside a wider services; and
 - enable licensing authorities to de-regulate late night refreshment in their area⁷.

These proposals (as in the case of the CAN) are expected to result in new lighter touch processes with correspondingly low fees or (in the case of late night refreshment) exemptions from the licensing regime.

- xxii. As a consequence of the principles of cost recovery and the avoidance of cross-subsidisation, this consultation does not propose any nationally-imposed exemptions from the requirement to pay fees where activities remain within the licensing regime. Therefore, exemptions from fees such as those currently applicable to community premises and similar premises that hold a licence only for regulated entertainment, are not proposed. It should be emphasised that the Government’s de-regulatory proposals for entertainment will exempt the types of premises and activities that the fee exemption is currently intended to benefit from the requirement to hold a licence.

6 E.g. “Consultation on a proposal to use a Legislative Reform Order to make changes to entertainment licensing”: <https://www.gov.uk/government/consultations/legislative-reform-order-changes-to-entertainment-licensing>

7 “Consultation on delivering the Government’s policies to cut alcohol fuelled crime and anti-social behaviour”. The Government’s response was published on 17 July 2013: <https://www.gov.uk/government/consultations/alcohol-strategy-consultation>

Large events

xxiii. The “additional fees” for large event fees are not addressed in the current consultation. The Government intends to revisit this topic after licensing authorities have developed expertise in setting fees under the 2003 Act. In the meantime, fees for large events will remain as they are.

Impact Assessment

xxiv. An Impact Assessment has been prepared to accompany this consultation, available at www.gov.uk/government/consultations/locally-set-licensing-fees. In addition to seeking views on the proposals, the Government is also seeking views on the Impact Assessment.

2. About this consultation

Geographical Scope

This consultation applies to England and Wales. We continue to work with the Welsh Government on these proposals.

Impact Assessment

A consultation stage impact assessment is published alongside this consultation document.

Who is this consultation aimed at?

We are particularly keen to hear from everyone who will be affected by these measures, especially those who pay licensing fees (such as those who own or work in pubs, clubs, supermarkets and shops, or issue Temporary Event Notices); and licensing authorities, although we will welcome responses from all those with an interest.

Duration

The consultation runs for eight weeks from 13 February 2014 until 10 April 2014.

Enquiries:

AlcoholStrategy@homeoffice.gsi.gov.uk

How to respond:

Information on how to respond to this consultation can be found on the Home Office website at www.gov.uk/government/consultations/locally-set-licensing-fees

All responses will be treated as public, unless the respondent states otherwise.

Responses can be submitted online through the Home Office website. Alternatively you can submit responses by email at AlcoholStrategy@homeoffice.gsi.gov.uk or by post by sending responses to:

Alcohol Fees Consultation,
Drugs and Alcohol Unit,
Home Office,
4th Floor Fry Building,
2 Marsham Street,
London,
SW1P 4DF

If responding by email or by post, please follow the word limits in the consultation for each question. If you wish to provide additional information, please do so in an annex to your response, which can be emailed to the address above.

Additional ways to become involved:

Please contact the Home Office (as above) if you require information in any other format, such as Braille, large font or audio. The Department is obliged to both offer, and provide on request, these formats under the Equality Act 2010. We can also offer a version of the consultation in Welsh on request.

After the consultation:

Responses will be analysed and a 'Response to the Consultation' document will be published. This will explain the Government's final policy intentions.

Background

Getting to this stage:

The Government published its "Rebalancing the Licensing Act" consultation in July 2010. Following this, the Police Reform and Social Responsibility Act 2011 introduced the necessary power for the Home Secretary to prescribe that the level of fees under the 2003 Act are set by the authority to which they are payable, based on cost recovery.

3. Information about you

The following questions ask for some information about you. The purpose of these questions is to provide some context on your consultation responses and to enable us to assess the impact of the proposals on different groups of people. By providing these responses you are giving your consent for us to process and use them in accordance with the Data Protection Act 1998.

Company Name or Organisation (if applicable):

Which of the following best describes you or the professional interest you represent? Please select one box from the list below:

Individual involved in licensed premises	<input type="checkbox"/>
Individual involved in or managing club premises	<input type="checkbox"/>
Small or medium sized enterprise involved in licensed premises (up to 50 employees)	<input type="checkbox"/>
Large business involved in licensed premises (more than 50 employees)	<input type="checkbox"/>
Business or trade body involved in the production of alcohol	<input type="checkbox"/>
Trade body representing licensed premises	<input type="checkbox"/>
Association representing club premises	<input type="checkbox"/>
Person or organisation specialising in licensing law	<input type="checkbox"/>
Voluntary or community organisation	<input type="checkbox"/>
Licensing authority <i>[If you are from a licensing authority please specify which licensing authority in the box below:]</i>	<input type="checkbox"/>
Licensing authority officer	<input type="checkbox"/>
Local Government (other)	<input type="checkbox"/>
Police and Crime Commissioner	<input type="checkbox"/>
Police force	<input type="checkbox"/>
Police officer <i>[If you are from a police force specify which police force in the box below]</i>	<input type="checkbox"/>
Bodies representing public sector professionals (e.g. Local Government Association, Institute of Licensing)	<input type="checkbox"/>
Central Government	<input type="checkbox"/>
Member of the public	<input type="checkbox"/>
Other <i>[specify in the box below]</i>	<input type="checkbox"/>

4. Consultation principles, confidentiality and disclaimer

Consultation Principles

- 4.1 The Government has recently introduced a more proportionate and targeted approach to consultation, so that the type and scale of engagement is proportionate to the potential impacts of the proposal. The emphasis is on understanding the effects of a proposal and focusing on real engagement with key groups rather than following a set process. The key Consultation Principles are:
- departments will follow a range of timescales rather than defaulting to a 12-week period, particularly where extensive engagement has occurred before;
 - departments will need to give more thought to how they engage with and consult with those who are affected;
 - consultation should be 'digital by default', but other forms should be used where these are needed to reach the groups affected by a policy; and the principles of the Compact between Government and the voluntary and community sector will continue to be respected.

The full consultation guidance is available at:

<http://www.cabinetoffice.gov.uk/sites/default/files/resources/Consultation-Principles.pdf>

Responses: Confidentiality & Disclaimer

- 4.2 The responses you send us may be passed to colleagues within the Home Office, the Government or related agencies. The Department will process your personal data in accordance with the Data Protection Act 1998 (DPA) and in the majority of circumstances this will mean that your personal data will not be disclosed to third parties.
- 4.3 Responses to this consultation may be published as part of the analysis of the consultation, or subject to publication or disclosure in accordance with the access to information regimes. These are primarily the Freedom of Information Act 2000 (FOIA), the Data Protection Act 1998 (DPA) and the Environmental Information Regulations 2004.
- 4.4 Please tick the box below if you want your response to be treated as confidential. Please be aware that, under the FOIA, there is a statutory Code of Practice with which public authorities must comply and which deals, among other things, with obligations of confidence.
-
- 4.5 If you have ticked the box, it would be helpful if you could explain to us why you regard your response as confidential. If we receive a request for disclosure of your response we will take full account of your explanation, but we cannot give an assurance that confidentiality can be maintained in all circumstances. An automatic confidentiality disclaimer generated by your IT system will not, of itself, be regarded as binding on the Department.
-

5. Variable fee amounts: the national non-domestic rateable value “bands”

Introduction

- 5.1 It is the Government's intention that cost recovery is achieved without cross-subsidisation. Therefore, unless there is evidence that one class (or type) of fee payer leads to higher average costs to the licensing authority than others, everyone should pay the same.
- 5.2 The current fee regulations prescribe different fee amounts for the “main fees”⁸ depending on the national non-domestic rateable value (NNDR) “band” of the premises (see the existing fees at Appendix B). NNDR represents the open market annual rental value of a business or non-domestic property - the rent the property would let for if it were offered on the open market.
- 5.3 The “bands” are:
- Band A: no NNDR to £4,300;
 - Band B: £4,301 to £33,000;
 - Band C: £33,001 to £87,000;
 - Band D: £87,001 to £125,000; and
 - Band E: £125,001 and above.
- 5.4 The fee amounts charged increase substantially for premises in higher bands. For example, the fee for an application for a premises licence is £100 for premises in Band A and £635 for premises in Band E. The only basis on which the Government would propose retaining the use of such bands under a system of locally-set fees would be if the higher bands were, on the basis of local evidence, related to higher costs to the licensing authority.
- 5.5 As described in the Impact Assessment, a study of licensing authority costs by the Home Office (referred to as the LA Sample survey) did not support NNDR as a criterion for variable costs because the costs incurred by premises within each band in an area were not significantly linked to cost differences for the licensing authority. This means, therefore, that retention of the bands would not assist in reducing cross-subsidisation. As noted in the Impact Assessment, however, it would add marginally to the cost of setting fees because of the need to determine costs for the members of each NNDR band.

8 The “main fees” are the fees paid in respect of: applications for new premises licences and club premises certificates; applications for full variations to premises licences and club premises certificates; and annual fees in respect of premises licences and club premises certificates.

The Government therefore proposes to abandon the use of NNDR as a criterion for variable fee amounts.

Consultation Question 1:

Do you agree or disagree that the use of national non-domestic rateable value bands as a criterion for variable fee amounts should be abandoned?

Agree	<input type="checkbox"/>
Disagree	<input type="checkbox"/>
Don't know	<input type="checkbox"/>

Consultation Question 2:

If you disagree, please provide evidence that higher national non-domestic rateable value is consistently linked to higher average costs to the licensing authority within individual licensing authority areas, keeping your views to a maximum of 200 words.

6. Variable fee amounts: alternative classes

6.1 This chapter focuses on alternative classes (or types) of premises in respect of which licensing authorities may be able to apply different fee amounts across their area for the “main fees”⁹, if the Government does move away from the use of NNDR bands. There are a number of different options to consider. The Government could prescribe that there be a ‘flat’ fee for the main fees in each area. However, some licensing authorities may consider that this would neither reflect costs nor reduce cross-subsidisation. For example, they may have evidence that, in their area, licensed restaurants or premises that close early consistently result in lower costs than premises used mostly for drinking or those which open until late.

Principles of alternative classes

- 6.2 The proposed discretion to charge different fee amounts for different classes of premises should enable licensing authorities to more closely achieve the objective of the avoidance of cross-subsidisation in their respective areas. These ‘classes’ would only be implemented locally as the basis for variable fee amounts if there was evidence that (and to the extent that) they were linked to costs in that area. They would apply throughout the licensing authority’s area.
- 6.3 Any classes proposed must of course be compatible with the fees provisions in the 2003 Act. In addition, they should also be practical and efficient to implement locally so that they do not significantly increase licensing authority costs.

Alternative classes proposed in pre-consultation discussions

- 6.4 During pre-consultation discussions, local government representatives and fee payers proposed a variety of different approaches. These included methods that seek to place a larger proportion of the fee burden on existing premises perceived as problematic or high risk. Proposals include basing the “main fees” on
- risk assessment of each premises; and
 - “polluter pays” approaches, with payments for interventions (such as inspections) or different amounts dependent on whether there were problems during the year.
- 6.5 A common feature of these methods is that they would require classification of premises in categories that are currently not a formal part of the licensing regime. They would therefore be likely to result in additional costs and burdens (for example, in conducting a risk assessment). They may also increase the likelihood of dispute between licensing authorities and fee payers about the classification that emerged or whether premises were at fault for an incident that led to the assessed risk increasing. Furthermore, they may involve retrospective decisions that could not apply to applications or variation applications. For these reasons, the Government is not proposing these mechanisms.

⁹ The “main fees” are the fees paid in respect of: applications for new premises licences and club premises certificates; applications for full variations to premises licences and club premises certificates; and annual fees in respect of premises licences and club premises certificates.

- 6.6 The proposed criteria on which we are consulting are whether or not premises are:
- authorised to provide licensable activities until a late terminal hour and/or
 - used exclusively or primarily for the sale of alcohol for consumption on the premises.

These are described in more detail below. However, in Question 18 below, we invite evidence in support of other alternative classes (or types) of premises that are consistently linked to higher or lower average costs to the licensing authority within individual licensing authority areas.

Inter-relationship between the classes

- 6.7 Subject to local evidence of costs, the intention is that a licensing authority will be able to apply neither, only one, or both of the criteria cumulatively; or both of the criteria in combination:
- If neither criterion were applied, there would be a flat rate for all premises.
 - If one was applied (for example, late terminal hour), then this would divide premises into two classes, those that were and were not authorised to provide licensable activities at that hour. Those that were authorised to open later would pay an additional amount.
 - If both criteria were applied, premises that had a late terminal hour and were used primarily for drinking would pay each additional amount cumulatively.
 - To provide additional flexibility for licensing authorities, we also propose that licensing authorities would be able to specify that a higher fee amount would apply only to premises to which both criteria applied in combination. This option is explained in more detail below.

Relationship with caps

- 6.8 We intend that the cap (see Chapter 7) is the highest permitted fee for that fee category. Premises subject to any higher fee amount will still be subject to the cap.

Discretion to vary fee amounts on the basis of late terminal hour

- 6.9 Premises could be charged more or less for the main fees dependent on whether or not the latest time that they are authorised to carry on licensable activities is beyond a set time in the evening. (The exact time is considered further below, paragraph 6.12).
- 6.10 Discussions with licensing authorities suggest that it is likely that premises open late may, in some areas, give rise to higher costs to the licensing authority. This could be as a result of, for example, heightened concern about noise nuisance (which may lead to more representations and applications for review) or the increased costs of inspection late at night.

Consultation Question 3:

Do you agree or disagree that the criterion of whether or not a premises is authorised to provide licensable activities to a late terminal hour is linked to costs?

Agree	<input type="checkbox"/>
Disagree	<input type="checkbox"/>
Don't know	<input type="checkbox"/>

Consultation Question 4:

If you agree, please provide evidence for your answer in the box below, keeping your views to a maximum of 200 words.

6.11 “Late terminal hour” is a readily understood concept in the current regime, therefore making dispute less likely and implementation relatively simple. It is important that any class that is specified in the regulations does not itself risk incurring costs (such as those arising from a dispute about liability to pay a fee or its amount).

Consultation Question 5:

Do you agree or disagree that the criterion of whether or not a premises is authorised to provide licensable activities to a late terminal hour is sufficiently practical to implement?

Agree	
Disagree	
Don't know	

Consultation Question 6:

If you do not agree, please state your reasons in the box below, keeping your views to a maximum of 200 words.

6.12 We intend that the terminal hour which triggers the higher fee amount would be set locally but within prescribed criteria set out in regulations. We propose that it should be within the period midnight to 6am. (This is the same time period to which the Late Night Levy and Early Morning Alcohol Restrictions Orders may apply).

Consultation Question 7:

Do you agree or disagree that the licensing authority should be able to determine the hours during which the higher fee is payable within the boundaries of midnight to 6am?

Agree	<input type="checkbox"/>
Disagree	<input type="checkbox"/>
Don't know	<input type="checkbox"/>

Consultation Question 8:

If you disagree, please state the hours during which you think licensing authorities should be able to determine that a higher fee is payable.

	From	To
Select hours	<input type="text"/>	<input type="text"/>

6.13 We propose that licensing authorities that impose higher fees for premises that open later have discretion to exclude premises that are authorised to open late only on certain nights per year from the class of premises with a late terminal hour. This could mean that premises that are only authorised to open late on special occasions, such as, for example, New Year's Eve or St. Patrick's Day, would be excluded from the class of premises paying a higher fee amount.

Consultation Question 9:

Do you agree or disagree that licensing authorities that impose higher fees for premises which open later should have discretion to exclude premises that are authorised to open late only on certain nights per year?

Agree	<input type="checkbox"/>
Disagree	<input type="checkbox"/>
Don't know	<input type="checkbox"/>

Consultation Question 10:

Please state your reasons, keeping your views to a maximum of 200 words.

Discretion to vary fee amounts dependent on whether the premises is primarily used for drinking

- 6.14 Premises could be charged more or less depending on whether or not they are exclusively or primarily used for the sale of alcohol for consumption on the premises. This proposal is similar to the “multiplier”, used as part of the current fee structure, except that it would not be restricted to premises with high rateable value. Also, the amount by which the fee differed would not be a prescribed multiple of the standard fee, but would be determined by the licensing authority to reflect cost differences.
- 6.15 It is likely that premises that operate in this way, in some areas, give rise to higher costs to the licensing authority, given, for example, heightened concern about crime and disorder (which may lead to more representations and applications for review).

Consultation Question 11:

Do you agree or disagree that the criterion of whether or not a premises is used primarily for the sale of alcohol for consumption on the premises is linked to costs?

Agree	<input type="checkbox"/>
Disagree	<input type="checkbox"/>
Don't know	<input type="checkbox"/>

Consultation Question 12:

Please provide evidence for your answer in the box below, keeping your views to a maximum of 200 words.

- 6.16 “Whether a premises is used exclusively or primarily for the consumption of alcohol for consumption on the premises” is an existing concept in the current regime, used in both the fees regulations, and in relation to whether unaccompanied children are allowed on premises.¹⁰ However, there are mixed views on whether this criterion presents practical challenges. Some licensing officers report that all the premises in their area that should pay the current “multiplier” do so, other licensing officers report that there is significant difficulty in applying the definition. For example, they report that there are premises which they consider should pay it, but which (for example) also provide some degree of refreshment or entertainment. It is important that any criterion which is set down in the regulations does not itself result in costs (such as those arising from a dispute about liability to pay a fee).

¹⁰ Section 145 of the 2003 Act.

Consultation Question 13:

Do you agree or disagree that the criterion of whether or not premises are exclusively or primarily used for the sale of alcohol for consumption on the premises is sufficiently practical to implement?

Agree	<input type="checkbox"/>
Disagree	<input type="checkbox"/>
Don't know	<input type="checkbox"/>

Consultation Question 14:

If you do not agree, please state your reasons in the box below, keeping your views to a maximum of 200 words.

Relationship between the criteria: a combined class

6.17 As set out in paragraph 6.7, the Government proposes to give licensing authorities flexibility in the application of these two criteria. This includes the proposal that licensing authorities should additionally have discretion to apply higher amounts only to premises where the two criteria are both applicable. If this discretion were exercised, premises would only be charged a higher amount in that area if they were used primarily for the sale of alcohol for consumption on the premises and open to a late terminal hour. This would, in effect, enable licensing authorities to divide premises into two classes – those that were in the combined class and those that were not.

6.18 The benefit of this combined class would be that licensing authorities could exclude from any higher fee amount premises that were open late or used primarily for drinking, but which local evidence shows were not associated with higher average costs. This is an alternative solution to the problem described in paragraph 6.19 and 6.20 below. For example, premises such as accommodation providers, theatres and cinemas and community premises, as well as other relevant premises, could be excluded from any higher amount if this option were exercised in a locality. This alternative approach could be considerably simpler to implement than discretionary exclusions, as estimates of costs would not need to be made for each class of potentially excluded premises.

Consultation Question 15:

Do you agree or disagree that there should be discretion to apply higher fee amounts only where both criteria apply in combination?

Agree	<input type="checkbox"/>
Disagree	<input type="checkbox"/>
Don't know	<input type="checkbox"/>

Discretionary exclusions from classes of premises subject to a higher fee amount

6.19 Alternatively, it has been suggested that licensing authorities that introduce different fee amounts should be able to exclude certain types of premises from the higher amount, if these types are not associated with higher costs¹¹. The types of premises could potentially be similar to those available to licensing authorities as discretionary exemptions from the late night levy, such as: accommodation providers; theatres and cinemas; bingo halls; community amateur sports clubs; and community premises.

6.20 This would require the regulations to specify each premises type that could be excluded. As with the other proposed classes, the only basis on which a licensing authority would be able to exclude these classes of premises from higher fee amounts would be evidence linking them to lower costs. Therefore, licensing authorities would need to classify premises into these classes and estimate costs for each one. Given the possibility of dispute about classification, and increased complexity in determining costs, the “combined” criterion proposed above (see paragraph 6.17-6.18) may achieve the intended objective in a simpler and more cost-efficient way.

Consultation Question 16:

Do you agree or disagree that, if a licensing authority has determined that different fee amounts should apply, it should have discretion to exclude certain types of premises from that higher fee amount?

Consultation Question 17:

If discretion to exclude certain types of premises from a higher fee amount were available, what types of premises should be specified in the regulations as potentially excluded classes? Please give reasons for your answer, keeping your views to a maximum of 200 words.

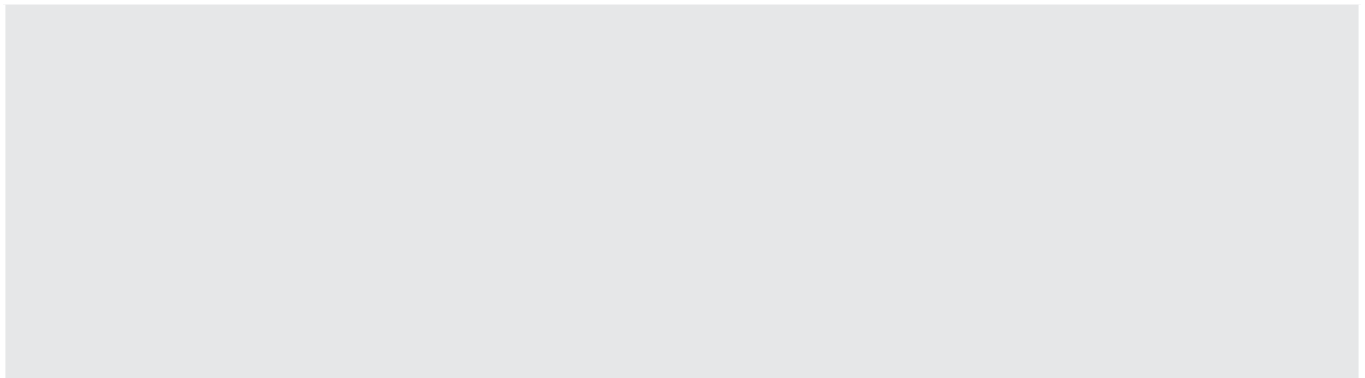
¹¹ Premises excluded from the higher fee amount would instead be subject to the lower fee amount. They would not be exempt from paying a fee at all.

Other Alternative Options

6.21 As discussed above, a range of different approaches to variable fees have been proposed during pre-consultation discussions. Subject to any proposals meeting the constraints imposed by the fees provisions in the 2003 Act and being practical, efficient and cost effective to implement locally, we are interested in what alternative options should be available for licensing authorities to apply different fee amounts in their area.

Consultation Question 18:

Are there alternative options that should be available to licensing authorities to apply different fee amounts in their area? Please specify and set out your evidence in the box below, keeping your views to a maximum of 200 words.



7. Caps

Introduction

- 7.1 The Government has committed to set “caps” (the highest permitted fee level) for each fee category. The consultation invites views on proposed cap levels. These caps will provide reassurance to fee payers that fees cannot be set at excessive levels to, for example, generate income or be used as an economic deterrent to the undertaking of licensable activities. The Government does not intend to set caps at levels that will prevent cost recovery, however, as costs that are incurred in the discharge of functions under the 2003 Act ought to be recovered. The implementation and level of the cap will be subject to periodic review, in consultation with licensing authorities, and to exceptional review, if there is a case to do so.
- 7.2 It is important to note that the caps are not recommended fee levels: locally-set fee levels should be based on local evidence of what is required for cost recovery in that fee category, and it would be unlawful to merely set them at the level of the cap or at a proportion of the cap, without regard to costs. The caps represent, therefore, an upper limit on the highest costs of licensing authorities in exceptional circumstances. As described in Chapter 8, licensing authorities should continually drive efficiency, whilst ensuring effective delivery of the licensing regime.
- 7.3 The evidence from the LA Sample Survey (described in the Impact Assessment published alongside this consultation) and discussions with licensing authorities indicates that the costs of particular fee categories vary greatly in different licensing authorities. This is particularly true of processes, such as applications for new licences, which can result in hearings. (This could be due, for example, to a greater likelihood of residents’ concerns in one area than another). Similar considerations apply to other duties of licensing authorities that can result in a hearing, such as how often they have received objection notices from the police to an application to vary a licence to specify a new Designated Premises Supervisor, or how often they have received representations on applications to vary licences¹².
- 7.4 Variable costs can apply to other processes. For example, in the case of applications for a minor variation, licensing authorities may decide to invite views from responsible authorities, and be required to consider residents’ representations. The case of TENs is addressed separately below.
- 7.5 The result of these variations in average costs is that areas with the highest costs in any fee category deviate very greatly from the mean. The caps proposed in the consultation are therefore much higher than the estimated average future fee levels and are expected to far exceed cost recovery fee levels in most areas. Chapter 8 provides more information on mechanisms that will guard against “gold plating” and excessive costs, and invites views on practical ways to improve efficiency.

¹² The processes that can potentially result in the need for a hearing (or, in the case of an annual fee, a review) administered by the licensing authority are 19(a) to 19(l) in the list below.

- 7.6 The caps proposed in Table 1 below are based upon the highest reported costs in each fee category¹³ in the LA Sample Survey (see the Impact Assessment accompanying this consultation). Outliers were excluded where, after discussion with licensing authorities that provided data, it appeared that the high estimates may not have been related to legitimate high costs. Outliers¹⁴ were, therefore, excluded for data quality purposes (for example, to exclude calculation errors or anomalies caused by the small sample size), and not to exclude high cost authorities.
- 7.7 For some rare processes, such as applications for a provisional statement and for the grant of a certificate; and applications to remove the requirement for a designated premises supervisor, insufficient information was available to estimate average costs to licensing authorities. In these cases, it was assumed that highest average costs are similar to related processes¹⁵. The costs survey that accompanies this consultation will seek further data on licensing authority costs to augment the LA Sample Survey.

Consultation Question 19:

Do you agree or disagree that the proposed cap levels will enable your licensing authority to recover costs?

Table 1: proposed cap levels

Question	Fee Category	Proposed cap	Current fee or maximum fee (for information only)	Agree/ disagree/ don't know
processes that can result in hearings or include review hearings				
19 (a)	Application for the grant of a premises licence	£2,400	£1,905*	
19 (b)	Application for a provisional statement	£2,400	£315	
19 (c)	Application to vary a premises licence	£2,400	£1,905*	
19 (d)	Application to vary premises licence to specify designated premises supervisor	£105	£23	
19 (e)	Application to vary a premises licence to remove requirement for a designated premises supervisor	£105	£23	
19 (f)	Application for the transfer of a premises licence	£65	£23	
19 (g)	Interim authority notice	£114	£23	
19 (h)	Annual fee payable by premises licence holder	£740	£1,050*	

13 That is, they are based on the licensing authorities whose reported average cost over the year was highest for each process. They do not reflect the highest possible cost of administering a single application or notice.

14 Outliers are defined here as those falling outside two standard deviations from the mean.

15 Application for the grant of a licence and application to vary a licence to specify a designated premises supervisor, respectively.

19 (i)	Application for the grant of a certificate	£2,400	£635*	
19 (j)	Application to vary a certificate	£2,400	£635*	
19 (k)	Annual fee payable by club premises certificate holder	£720	£350*	
19 (l)	Application for grant or renewal of a personal licence	£114	£37	
other processes under the 2003 Act				
19 (m)	Application to replace stolen, lost etc. premises licence	£46	£10.50	
19 (n)	Notification of change of name or address of premises licence holder	£46	£10.50	
19 (o)	Application for minor variation of a licence	£244	£89	
19 (p)	Application to replace stolen, lost etc. certificate	£46	£10.50	
19 (q)	Notification of change of name or change of rules of club	£46	£10.50	
19 (r)	Notification of change of address of club	£46	£10.50	
19 (s)	Application to replace stolen, lost etc. temporary event notice	£38	£10.50	
19 (t)	Application to replace stolen, lost etc. personal licence	£59	£10.50	
19 (u)	Notification of change of name or address of personal licence holder	£59	£10.50	
19 (v)	Notification of interest of freeholder etc. in premises	£50	£21	

*denotes current maximum fee, where fee level is variable

Consultation Question 20:

Do you have any other comments on the proposed cap levels? Please specify them in the box below, keeping your views to a maximum of 200 words.

Temporary Event Notices (TENs)

- 7.8 Setting a cap level for TENs presents a particular challenge for two reasons. Firstly, TENs are used by a wide variety of organisations and individuals. For example, commercial operators may use a TEN to go beyond the terms of their current licence, individuals may wish to sell alcohol to the public at members' clubs, and community or charity groups may wish to sell alcohol at one-off events.
- 7.9 The Government is keen to ensure that the licensing regime is cost-efficient for all, and it is particularly important that costs are kept as low as possible for those working to improve their local community. As described paragraphs xx-xxi above, the Government is already reducing regulation for such groups.
- 7.10 Secondly, reports from licensing authorities suggests that TENs costs vary widely. Our best evidence indicates that the average TENs fee will be approximately £80¹⁶. Most authorities that responded to the LA Sample Survey reported costs below this level, whilst a small number of outliers reported costs significantly above £100. Analysis suggests that setting the cap at £100 would allow cost recovery in at least the significant majority of authorities.
- 7.11 Subject to further evidence, the Government therefore proposes a cap of £100, as this is appropriate for the generality of authorities and will encourage the remainder to keep their costs as low as possible. Although some authorities currently report higher costs, it should be noted that, with the present fee of £21, some operators may risk giving a TEN even though they are aware that it may result in an objection notice and therefore be wasted. We consider that an increase in the TEN fee to recover legitimate costs is likely to have an unintended consequence of deterring this practice and thereby lowering costs in the current highest cost areas. As set out in paragraph 7.1 above, the Government will retain the power to conduct an exceptional review of a cap if a case is made to do so.
- 7.12 We therefore invite evidence from all interested parties on the appropriate level for the TEN fee cap. The local authority cost survey that accompanies this consultation also seeks to strengthen our evidence base further on the average cost of a TEN, the degree of variation between areas, and the reasons for this variation, and we would encourage all licensing authorities to complete it.

16 See the Impact Assessment published alongside this consultation, Table 7 (page 34) and paragraphs 36 to 44 (page 13).

Consultation Question 21:

Do you agree or disagree that the proposed cap of £100 will enable your licensing authority to recover costs?

 Agree Disagree Don't know**Consultation Question 22:**

Please set out evidence for your answer in the box below, keeping your views to a maximum of 200 words.

8. Licensing authority costs, transparency, consultation with fee payers and guidance on setting fees

- 8.1 This chapter considers the costs that licensing authorities incur in discharging functions under the 2003 Act and the mechanisms of transparency and accountability to which licensing authorities are subject. It seeks views on the extent of local consultation on fee levels and how best to provide guidance to licensing authorities so as to ensure that high costs and “gold-plating” (exceeding the requirements of the 2003 Act) are avoided and efficiency encouraged.

Introduction – licensing authority functions and drivers of variable costs

Applications and notices

- 8.2 In administering the 2003 Act, licensing authorities must perform an administrative task of checking and processing a number of different types of application and notice. In respect of many of these processes, representations made by, for example, the police or residents may trigger a hearing, which is held by the licensing authority, so that the application or notice can be considered in more detail in the context of the licensing authority’s duty to promote the licensing objectives. In such cases, licensing officers may conduct an inspection of the premises to which the application relates. In particular, hearings occur in respect of a significant proportion of applications for premises licences and full variation applications. In other cases, such as an application to vary the Designated Premises Supervisor in relation to a premises licence, hearings are less common, but still occur. In rare cases, hearings may lead to appeal procedures involving the licensing authority. Licensing authorities are also responsible for advertising certain licensing applications on their website or by notices and for updating the licensing register.

Existing premises licences and club premises certificates

- 8.3 Licensing authorities must hold hearings to determine applications for the review of existing licences and certificates. A necessary component of fulfilling these responsibilities is the monitoring of compliance with the terms of licences and certificates in their areas. This may comprise inspections of premises, liaison with bodies with whom they work in partnership (such as the police, other departments of local authorities, or licensed premises) and conciliation between parties to avert the need for a review.
- 8.4 Licensing authorities must also carry out other functions under the 2003 Act for which no fee is specifically chargeable. For example, they must determine and periodically update their statements of licensing policy and they are responsible for maintaining a register of licensing information. Under these proposals for locally-set fees, they will also be responsible for setting fee levels. Under section 197A of the 2003 Act, the “general costs” arising from these functions are to be recovered through fees, with a “reasonable share” of these costs included in fee levels.

Responsible authority costs

- 8.5 Fees under the 2003 Act are intended to recover the costs of licensing authorities, and not of other bodies. This entirely excludes the recovery of police costs, for example. However, it includes the costs of the licensing authority exercising functions under the 2003 Act in its capacity as a responsible authority. This can include the environmental health authority, the planning authority; and the weights and measures authority, for example. The Government intends that the marginal costs of administering the 2003 Act (such as the costs of considering applications and making representations) can be recovered through licensing fees, but not other costs. In particular, the costs of inspection, monitoring of compliance or enforcement that arise in respect of the wider duties of responsible authorities under other legislation should not be recovered by fees under the 2003 Act.
- 8.6 It is important that costs that arise in respect of regimes that are funded by tax-payers or through their own fees regimes should not be passed onto licensing fee payers or double-funded.

The Provision of Services Regulations 2009

- 8.7 The fees provisions of the 2003 Act should be read in light of the requirements set out in the Provision of Services Regulations 2009 (the 2009 Regulations), as indeed should the 2003 Act as a whole. The 2009 Regulations provide that: “Any charges provided for by a competent authority which applicants may incur 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”. The Government will provide guidance to licensing authorities on the application of this provision to fees under the 2003 Act.

Transparency and local consultation

- 8.8 There are already a number of safeguards in place to ensure that local authorities take a fair, reasonable and transparent approach when developing policies, and this would also be the case when setting fees. Local government is, of course, subject to democratic accountability through councillors and the electorate. Decisions are also subject to challenge through judicial review. Additionally, local authorities are subject to a robust external audit. For example, the Audit Commission Act 1998 places a duty on auditors to ensure that they have made “proper arrangements for securing economy, efficiency and effectiveness in its use of resources”. Licensing authorities should also expect scrutiny from fee payers, particularly on inflationary pressures and the extent to which anticipated efficiency gains are reflected in fee levels. The Government considers, therefore, that these existing mechanisms should reassure fee payers that fees will be set properly, at cost.
- 8.9 However, some fees regimes, such as that which applies to taxi licensing, require local consultation with interested parties when fees are set (especially if they are due to increase). The Government is therefore recommending that licensing authorities should also be required to publish their proposed fees, and the basis on which they have been calculated, and invite comments from interested parties, before they are implemented

Consultation Question 23:

Do you agree or disagree that licensing authorities be required, before locally-set fees are implemented, to:

23a: publish their proposed fee levels?;



23b: publish the basis on which they have been calculated?



23c: publish the measures they have taken to keep costs down?



23d: invite comments from interested parties?



8.10 As well as the accountability mechanisms outlined above, local government is subject to existing duties with regard to freedom of information. The Government is not minded to specify any further specific requirements on local government with regard to publishing the basis on which they have set fees. However, the Government will give consideration to making data on licensing authority fee levels available centrally to assist fee payers in making comparisons.

Principles of regulation, efficiency and the avoidance of gold-plating

8.11 Licensing authorities are subject to various duties, in addition to the provisions of the 2003 Act, to ensure that they do not impose excessive burdens on those subject to regulatory regimes or incur excessive costs. Democratic accountability and external audit has been mentioned above. Paragraph 13.17 of the Guidance issued to licensing authorities by the Home Secretary under section 182 of the 2003 Act emphasises that:

“The 2003 Act does not require inspections to take place save at the discretion of those charged with this role. Principles of risk assessment and targeted inspection (in line with the recommendations of the Hampton review) should prevail and inspections should not be undertaken routinely but when and if they are judged necessary.”

8.12 The Provision of Services Regulations 2009 requires that powers exercised under an authorisation scheme (including the 2003 Act) must be based on criteria that are:

- a. non-discriminatory,
- b. justified by an overriding reason relating to the public interest,
- c. proportionate to that public interest objective,
- d. clear and unambiguous,
- e. objective,
- f. made public in advance, and
- g. transparent and accessible.

- 8.13 Additionally, provisions under the Legislative and Regulatory Reform Act 2006¹⁷ require that any person exercising a regulatory function, including functions under the 2003 Act, must have regard to the principles that
- a. regulatory activities should be carried out in a way which is transparent, accountable, proportionate and consistent;
 - b. regulatory activities should be targeted only at cases in which action is needed.
- 8.14 The Government considers that, subject to these existing duties, licensing authorities are best-placed to determine the scope of their own activities in support of the licensing objectives. Therefore, we consider that additional guidance provided alongside regulations on locally-set fees should avoid adding to these duties. We nevertheless seek views on what further guidance is required on the application of these principles to functions under the 2003 Act so as to encourage efficiency and safeguard against gold-plating.

Encouraging economy and efficiency

- 8.15 As stated above, licensing authorities are already under a duty to show that they have secured economy and efficiency in their use of resources. Setting fees on a cost recovery basis will bring new focus on the importance of keeping licensing costs as low as possible, reinforced by the priority importance of growth. Licensing bodies should set fees on the basis of estimates of actual costs, taking into account efficiencies to be achieved. It must be recognised that, for example, businesses that make licensing applications are seeking to start or grow their business.
- 8.16 The Government therefore intends to work with the Local Government Association and other partners to encourage innovation and best practice in securing economy and efficiency in the delivery of licensing functions. This could include changes to existing processes and procedures, potentially using the freedoms and flexibilities provided under the Localism Act 2011. Suggested mechanisms include the sharing of back-office functions between authorities and the use of partnership working and mediation to avoid the need for hearings or review. Licensing authorities should review their costs regularly (it is good practice to review these at least once a year) and, if appropriate, revise fee levels to take into account any changes to their costs, including from efficiencies that they have achieved or plan to achieve in the coming year. It is not good practice to simply assume that costs will increase due to inflation.

Consultation Question 24:

What practical steps can licensing authorities take to secure efficiency? Please state and give reasons for your answer in the box below, keeping your views to a maximum of 200 words.

¹⁷ The provisions apply by virtue of the Legislative and Regulatory Reform (Regulatory Functions) Order 2007

Safeguards against excessive costs and gold-plating

8.17 In addition to encouraging efficiency, we intend to ensure that the guidance guards against excessive costs and “gold-plating” (by which we mean that activities that go beyond the duties of the 2003 Act and are not justified by proportionality). Particular activities have been suggested where there may be a risk of excessive costs or gold-plating, as set out below.

Consultation Question 25:

Do you agree or disagree that the Guidance should suggest that these areas present a particular risk of excessive costs or gold-plating?

 Agree

 Disagree

 Don't know

25a: Notification of residents individually of licensing applications in their area by letter (given that the existing duties to advertise on the premises and on the licensing authorities' website enable the involvement of local residents, and that more cost efficient methods of further engagement may be available);

 Agree

 Disagree

 Don't know

25b: Central re-charges, such as payments from the licensing budget to legal services or external communications. These should relate to costs actually incurred in the delivery of functions under the 2003 Act and not, for example, a standard percentage of central costs.

 Agree

 Disagree

 Don't know

25c: The costs of discharging the statutory functions of licensing authorities that arise under other legislation, such as the duties arising under the Environmental Protection Act 1990. (Given that these functions are funded through taxation, and should not be funded by fees under the 2003 Act merely because they arise in respect of premises that hold an authorisation under the 2003 Act, see paragraph 8.5 above).

 Agree

 Disagree

 Don't know

Consultation Question 26:

Do you think that there are other activities that may present a particular risk of excessive costs or gold-plating? Please state and give reasons for your answer in the box below, keeping your views to a maximum of 200 words.

9. A single national payment date for annual fees

- 9.1 Annual fees for premises licences and club premises certificates are currently paid on the anniversary of the date on which the licence or certificate was granted. Holders of premises licences, particularly operators who hold multiple licences granted at different times, have argued that it would be more efficient for them to be able to pay all their annual fees on the same date.
- 9.2 On the other hand, some licensing authorities consider that it would increase their costs, by creating a peak period in their work. In any case, there would certainly be a transitional cost in the first year. Under locally-set fees aimed at recovering costs, any increased costs would be passed on to fee payers.
- 9.3 This consultation therefore seeks views on whether there should be a single national payment date for annual fees. However, it is not proposed to implement this change at the same time as the regulations governing locally-set fees are introduced, because it would increase the complexity of the forthcoming change to the fees regime. For example, it would strongly imply a date by which licensing authorities would have to have set their own fees. Please note that this topic is therefore not assessed in the Impact Assessment.

Consultation Question 27:

Do you agree or disagree that there should be a single national payment date for annual fees in England and Wales?

 Agree Disagree Don't know

10. Impact assessment

10.1 The impact assessment for the proposals in this consultation has been published alongside this document. Consultation respondents are encouraged to comment on this document.

Consultation Question 28:

Do you think that the Impact Assessments related to the consultation provide an accurate representation of the costs and benefits of the proposal to move to locally-set fees (including, in particular, the costs of setting fees locally)?

 Agree Disagree Don't know

Consultation Question 29:

Do you have any comments on the methodologies or assumptions used in the impact assessment? If so, please detail them in the box below, referencing the page in the impact assessment to which you refer. Please keep your views to a maximum of 200 words.

11. List of questions

Consultation Question 1:

Do you agree or disagree that the use of National Non-domestic Rateable Value bands as a criterion for variable fee amounts should be abandoned?

 Agree Disagree Don't know

Consultation Question 2:

If you disagree, please provide evidence that higher National Non-domestic Rateable Value is consistently linked to higher average costs to the licensing authority within individual licensing authority areas, keeping your views to a maximum of 200 words.

Consultation Question 3:

Do you agree or disagree that the criterion of whether or not a premises is authorised to provide licensable activities to a late terminal hour is linked to costs?

 Agree Disagree Don't know

Consultation Question 4:

If you agree, please provide evidence for your answer in the box below, keeping your views to a maximum of 200 words.

Consultation Question 5:

Do you agree or disagree that the criterion of whether or not a premises is authorised to provide licensable activities to a late terminal hour is sufficiently practical to implement?

 Agree

 Disagree

 Don't know

Consultation Question 6:

If you do not agree, please state your reasons in the box below, keeping your views to a maximum of 200 words.

Consultation Question 7:

Do you agree or disagree that the licensing authority should be able to determine the hours during which the higher fee is payable within the boundaries of midnight to 6am?

 Agree

 Disagree

 Don't know

Consultation Question 8:

If you disagree, please state the hours during which you think licensing authorities should be able to determine that a higher fee is payable.

Consultation Question 9:

Do you agree or disagree that licensing authorities that impose higher fees for premises which open later should have discretion to exclude premises that are authorised to open late only on certain nights per year?

 Agree

 Disagree

 Don't know

Consultation Question 10:

Please state your reasons, keeping your views to a maximum of 200 words.

Consultation Question 11:

Do you agree or disagree that the criterion of whether or not a premises is used primarily for the sale of alcohol for consumption on the premises is linked to costs?

 Agree Disagree Don't know

Consultation Question 12:

Please provide evidence for your answer in the box below, keeping your views to a maximum of 200 words.

Consultation Question 13:

Do you agree or disagree that the criterion of whether or not premises are exclusively or primarily used for the sale of alcohol for consumption on the premises is sufficiently practical to implement?

 Agree Disagree Don't know

Consultation Question 14:

If you do not agree, please state your reasons in the box below, keeping your views to a maximum of 200 words.

Consultation Question 15:

Do you agree or disagree that there should be discretion to apply higher fee amounts only where both criteria apply in combination?

 Agree

 Disagree

 Don't know

Consultation Question 16:

Do you agree or disagree that, if a licensing authority has determined that different fee amounts should apply, it should have discretion to exclude certain types of premises from that higher fee amount?

 Agree

 Disagree

 Don't know

Consultation Question 17:

If discretion to exclude certain types of premises from a higher fee amount were available, what types of premises should be specified in the regulations as potentially excluded classes? Please give reasons for your answer, keeping your views to a maximum of 200 words.

Consultation Question 18:

Are there alternative options that should be available to licensing authorities to apply different fee amounts in their area? Please specify and set out your evidence in the box below, keeping your views to a maximum of 200 words.

Consultation Question 19:

Do you agree or disagree that the proposed cap levels will enable your licensing authority to recover costs?

 Agree

 Disagree

 Don't know

Consultation Question 20:

Do you have any other comments on the proposed cap levels? Please specify them in the box below, keeping your views to a maximum of 200 words.

Consultation Question 21:

Do you agree or disagree that the proposed cap of £100 will enable your licensing authority to recover costs?

<input type="checkbox"/> Agree	<input type="checkbox"/> Disagree	<input type="checkbox"/> Don't know
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Consultation Question 22:

Please set evidence for your answer in the box below, keeping your views to a maximum of 200 words.

Consultation Question 23:

Do you agree or disagree that licensing authorities be required, before locally-set fees are implemented, to:

23a: publish their proposed fee levels?;

<input type="checkbox"/> Agree	<input type="checkbox"/> Disagree	<input type="checkbox"/> Don't know
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23b: publish the basis on which they have been calculated?

<input type="checkbox"/> Agree	<input type="checkbox"/> Disagree	<input type="checkbox"/> Don't know
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23c: publish the measures they have taken to keep costs down?

<input type="checkbox"/> Agree	<input type="checkbox"/> Disagree	<input type="checkbox"/> Don't know
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23d: invite comments from interested parties?

<input type="checkbox"/> Agree	<input type="checkbox"/> Disagree	<input type="checkbox"/> Don't know
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Consultation Question 24:

What practical steps can licensing authorities take to secure efficiency? Please state and give reasons for your answer in the box below, keeping your views to a maximum of 200 words.

Consultation Question 25:

Do you agree or disagree that the Guidance should suggest that these areas present a particular risk of excessive costs or gold-plating?

25a: Notification of residents individually of licensing applications in their area by letter (given that the existing duties to advertise on the premises and on the licensing authorities' website enable the involvement of local residents, and that more cost efficient methods of further engagement may be available);

25b: Central re-charges, such as payments from the licensing budget to legal services or external communications. These should relate to costs actually incurred in the delivery of functions under the 2003 Act and not, for example, a standard percentage of central costs.

25c: The costs of discharging the statutory functions of licensing authorities that arise under other legislation, such as the duties arising under the Environmental Protection Act 1990.

Consultation Question 26:

Do you think that there are other activities that may present a particular risk of excessive costs or gold-plating? Please state and give reasons for your answer in the box below, keeping your views to a maximum of 200 words.

Consultation Question 27:

Do you agree or disagree that there should be a single national payment date for annual fees in England and Wales?

 Agree

 Disagree

Consultation Question 28:

Do you think that the Impact Assessments related to the consultation provide an accurate representation of the costs and benefits of the proposal to move to locally-set fees (including, in particular, the costs of setting fees locally)?

 Agree Disagree**Consultation Question 29:**

Do you have any comments on the methodologies or assumptions used in the impact assessment? If so, please detail them in the box below, referencing the page in the impact assessment to which you refer. Please keep your views to a maximum of 200 words.

12. Appendix A: Sections 197A and 197B of the Licensing Act 2003

197A Regulations about fees

- (1) Subsection (2) applies where the Secretary of State makes regulations under this Act prescribing the amount of any fee.
- (2) The Secretary of State may, in determining the amount of the fee, have regard, in particular, to--
 - (a) the costs of any licensing authority to whom the fee is to be payable which are referable to the discharge of the function to which the fee relates, and
 - (b) the general costs of any such licensing authority;

and may determine an amount by reference to fees payable to, and costs of, any such licensing authorities, taken together.

- (3) A power under this Act to prescribe the amount of a fee includes power to provide that the amount of the fee is to be determined by the licensing authority to whom it is to be payable.
- (4) Regulations which so provide may also specify constraints on the licensing authority's power to determine the amount of the fee.
- (5) Subsections (6) and (7)--
 - (a) apply where, by virtue of subsection (3), regulations provide that the amount of a fee is to be determined by a licensing authority, and
 - (b) are subject to any constraint imposed under subsection (4).
- (6) The licensing authority--
 - (a) must determine the amount of the fee (and may from time to time determine a revised amount),
 - (b) may determine different amounts for different classes of case specified in the regulations (but may not otherwise determine different amounts for different cases), and
 - (c) must publish the amount of the fee as determined from time to time.
- (7) In determining the amount of the fee, the licensing authority must seek to secure that the income from fees of that kind will equate, as nearly as possible, to the aggregate of--
 - (a) the licensing authority's costs referable to the discharge of the function to which the fee relates, and
 - (b) a reasonable share of the licensing authority's general costs;

and must assess income and costs for this purpose in such manner as it considers appropriate.

197B Regulations about fees: supplementary provision

- (1) Subsections (2) and (3) apply for the purposes of section 197A.
- (2) References to a licensing authority's costs referable to the discharge of a function include, in particular--
 - (a) administrative costs of the licensing authority so far as they are referable to the discharge of the function, and
 - (b) costs in connection with the discharge of the function which are incurred by the

- licensing authority acting--
- (i) under this Act, but
 - (ii) in a capacity other than that of licensing authority (whether that of local authority, local planning authority or any other authority).
- (3) References to the general costs of a licensing authority are to costs of the authority so far as they are referable to the discharge of functions under this Act in respect of which no fee is otherwise chargeable and include, in particular--
- (a) costs referable to the authority's functions under section 5;
 - (b) costs of or incurred in connection with the monitoring and enforcement of Parts 7 and 8 of this Act;
 - (c) costs incurred in exercising functions conferred by virtue of section 197A.
- (4) To the extent that they prescribe the amount of a fee or include provision made by virtue of section 197A(3) or (4), regulations may--
- (a) make provision which applies generally or only to specified authorities or descriptions of authority, and
 - (b) make different provision for different authorities or descriptions of authority.
- (5) Subsection (4) is not to be taken to limit the generality of section 197.

13. Appendix B: Current fee levels under the Licensing Act 2003

Table 1: Main fee levels (as they currently stand)

Band	A	B	C	D	E
Non domestic rateable value	No rateable value to £4,300	£4,301 to £33,000	£33,001 to £87,000	£87,001 to £125,000	£125,001 plus
Premises licences					
Application for grant and variation	£100	£190	£315	£450	£635
Multiplier applied to premises used exclusively or primarily for the supply of alcohol for consumption on the premises (Bands D & E only)	N/A	N/A	N/A	X2 (£900)	X3 (£1,905)
Annual fee	£70	£180	£295	£320	£350
Annual charge multiplier applied to premises used exclusively or primarily for the supply of alcohol for consumption on the premises (Bands D&E only)	N/A	N/A	N/A	X2 (£640)	X3 (£1,050)
Club premises certificates					
Application for grant and variation	£100	£190	£315	£450	£635
Annual fee	£70	£180	£295	£320	350

Table 2: Other fees in the Act (as they currently stand)

Application for the grant or renewal of a personal licence	£37
Temporary event notice	£21
Theft, loss, etc. of premises licence or summary	£10.50
Application for a provisional statement where premises being built etc.	£315
Notification of change of name or address	£10.50
Application to vary licence to specify individual as premises supervisor	£23
Application for transfer of premises licence	£23
Interim authority notice following death etc. of licence holder	£23
Theft, loss etc. of certificate or summary	£10.50
Notification of change of name or alteration of rules of club	£10.50
Change of relevant registered address of club	£10.50
Theft, loss etc. of temporary event notice	£10.50
Theft, loss etc. of personal licence	£10.50
Application to vary premises licence to include alternative licence condition	£23
Application for a minor variation to a licence or certificate.	£89
Duty to notify change of name or address	£10.50
Right of freeholder etc. to be notified of licensing matters	£21

Table 3: Current additional fees for “large events” (premises licences where more than 5,000 people are expected in non-purpose built premises)

Number in attendance at any one time	Additional Premises licence fee	Additional annual fee payable if applicable
5,000 to 9,999	£1,000	£500
10,000 to 14,999	£2,000	£1,000
15,000 to 19,999	£4,000	£2,000
20,000 to 29,999	£8,000	£4,000
30,000 to 39,999	£16,000	£8,000
40,000 to 49,999	£24,000	£12,000
50,000 to 59,999	£32,000	£16,000
60,000 to 69,999	£40,000	£20,000
70,000 to 79,999	£48,000	£24,000
80,000 to 89,999	£56,000	£28,000
90,000 and over	£64,000	£32,000

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