

\*PART A

**Report to:** Licensing Committee  
**Date of meeting:** 11 January 2017  
**Report of:** Head of Community and Customer Services  
**Title:** Licensing fees and charges 2017/2018

1.0 **SUMMARY**

1.1 This report seeks the Licensing Committee's approval to charge fees for the 2017/2018 financial year for some of the different licensing regimes administered by the Council. Setting licensing fees are generally a Council rather than an Executive function under the Local Authorities (Functions and Responsibilities) (England) Regulations 2000<sup>1</sup> (as amended).

2.0 **RECOMMENDATIONS**

- 2.1 That the fees and charges set out at appendix 1 for the financial year 2017/2018 be approved.
- 2.2 That authority to consider any objections arising from statutory notices pertaining to these fees and the final determination of the fees relating to those objections be delegated to the Head of Community and Customer Services in consultation with the Chair of Licensing.
- 2.3 To delegate to the Environmental Health and Licensing Section Head the authority to increase or decrease charges in respect of provision of:
- compulsory door signage for hackney carriages
  - Disclosure and Barring Service, and Driver and Vehicle Licensing Agency, checks
  - Licence badges and plates.

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<sup>1</sup> SI 2000/2853

The reason for this request is outlined in sections 3.8 and 3.9

**Contact Officer:**

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**Report approved by:** Justine Hoy, Head of Environmental Health and Licensing

### 3.0 **BACKGROUND**

3.1 The Council is responsible for administering a number of statutory and discretionary licensing regimes, including the Licensing Act 2003, Gambling Act 2005, hackney carriages and private hire vehicles, street trading, pavement cafes, sex establishments and leaflet distribution.

Whilst these licensing fees are set by the Licensing Committee, rather than the Council, they are being considered at this particular meeting to coincide with the overall budget setting of the organisation and if agreed will be reported to council in the overall budget papers.

Members should also be aware that we are obliged to consult current driver and vehicle licence holders on the proposed fees and charges that relate to them. The consultation period is 28 days. If no objections are received then the fee changes must be brought in within two months of the end of the consultation period. If objections are received then these must be considered ahead of implementing the new fees with or without modification, it is therefore recommended that the consideration of such objections and the determination of the level of fees relating to those objections is considered by the Head of Community and Customer Services in consultation with the Chair of Licensing Committee

3.2 Some general principles apply to the setting of licence fees:

- they cannot be used to generate a profit, and any surplus should be identified and carried over to the following year
- it is acceptable to carry forward deficits from previous years
- income from licence fees may only be spent on the specific regime from which they were generated
- fees may not be discriminatory or to be used as an economic deterrent.

- 3.3 Members may be aware of the Hemmings and Others v Westminster City Council court case, which centres on whether councils can use receipts from licensing fees to pay for the cost of enforcement activities against unlicensed operators. The case focussed on licensing fees for sex establishments but is broadly transferrable to the entire licensing regime.

The High Court and Court of Appeal held that renewal fees could include monitoring and compliance costs. It further held that Westminster's fees for sex establishment licences were contrary to the EU Services Directive because the fee charged included the costs of enforcing against unlicensed operators.

The case was appealed to the Supreme Court which ruled against Mr. Hemmings. A technical aspect concerning the way in which the fees are calculated was referred to the European Court of Justice. It issued its judgment in November 2016 and confirmed that licensing fees cannot include the cost of enforcement against unlicensed operators, as well as clarifying how some fees should be calculated.

Accordingly all non-statutory licensing fees do not include a component relating to the enforcement of non-licensed activities.

It is worth mentioning that the Hemmings case only relates to licensing activities governed by the Provision of Services Regulations 2009 and there is some debate whether the taxi licensing regime falls under these regulations. As way of precaution and as it seems to reflect the outcomes of the case and natural justice we recommend continuing this approach within all our licence fees and have calculated our proposals accordingly.

- 3.4 Where statutory fees are not stipulated, licence fees are therefore set on a cost-recovery basis and subject to the following restrictions:

- Gambling Act 2005 – decided by the Council subject to statutory maxima
- hackney carriage and private hire vehicle licensing - reasonable charges may be made for the cost of administering and enforcing the regime, and providing taxi ranks
- street trading fees – reasonable charges may be made for the cost of administering and enforcing the regime in relation to licensed traders
- pavement licence fees – reasonable charges may be made for the cost of administering the regime
- sex establishment fees – reasonable charges may be made for the cost of administering the regime and enforcing it in relation to licensed establishments
- leaflet distribution – reasonable charges may be made for the cost of administering the regime and enforcing it in relation to licensees

- scrap metal dealer and collection licences – reasonable charges may be made for the cost of administering and enforcing the regime in relation to licensed dealers

3.5 Whilst these fees and charges will be reported to Cabinet in the budget report the Licensing Committee is required to formally approve the level of licence fees and charges as licensing (other than Gambling Act fees) are a Council rather than an Executive function under the Local Authorities (Functions and Responsibilities) (England) Regulations 2000<sup>2</sup> (as amended).

### 3.6 Proposals

The proposed schedule of fees and charges is set out at appendix 1. There are no proposed changes other than:

		Current fee 2016/17	Proposed fee 2017/18	Change
Taxi and Private Hire Vehicle Licence	Initial Application	£218	£235	7.8% increase
Taxi and Private Hire Vehicle Licence	Renewal	£218	£225	3.2% increase
Taxi and Private Hire Vehicle Licence (wholly electric vehicle)	Initial Application	£109	£117.50	7.8% increase
Taxi and Private Hire Vehicle Licence (wholly electric vehicle)	Renewal	£109	£112.50	3.2% increase
Driver Licence	Initial Application	£335	£329	1.8% decrease
Driver Licence	Renewal	£335	£325	3.0% decrease
Private Hire Operators Licence	Initial Application	£735	£771	4.9% increase
Private Hire Operators Licence	Renewal	£735	£769	4.6% increase

These changes reflect the current time taken to process and issue driver, vehicle and private hire operators' licences, including the cost of administering the regime. For drivers' licences, back office efficiencies have resulted in the time spent issuing these licences reducing slightly.

For vehicle and private hire operator licences, current analysis has shown that officers are in fact spending more time on average processing these licences.

Driver licences are valid for three years and vehicle licences are valid for one year. Therefore in a three year period, under the existing fee structure a driver who also holds a vehicle licence would currently pay £989. The proposed fees would mean that the same

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<sup>2</sup> SI 2000/2853

driver will pay £1000. This represents an overall increase of 1.1%, or an additional £11 over the next three years.

Officers have also compared existing fees to those of the other ten Local Authorities in Hertfordshire.

For drivers, our licence fee of £387 (£325 application fee plus £52 DBS check) is the 4<sup>th</sup> highest in the county. The lowest fee is £229 (Broxbourne) and the highest fee is £510 (Welwyn-Hatfield).

Our vehicle fee of £225 makes us the 3<sup>rd</sup> lowest. The lowest fee is £133 (Three Rivers) and the highest fee is £332.50 (North Herts).

- 3.7 The council continues to work in partnership with Electric Blue, a company based in St Albans and which is working with other local councils to encourage greater use of electric vehicles as hackney carriages.

Whilst the cost of administering a licence is the same regardless of the type of engine, members agreed a fee incentive on 12<sup>th</sup> January 2015 to encourage licence-holders to switch to electric vehicles when the discount is added to other incentives such as the reduction in Vehicle Road Fund Duty, exemption from the London Congestion Charge, lower running costs and grants available to purchase the vehicle.

This supports the Council's objectives to improve air quality in the borough and promote sustainability and it is not envisaged that take up will be such to have any significant impact on the income profiles this year. This will be kept under review.

- 3.8 The Licensing Committee is also asked to approve that officers can immediately change the charges that arise in respect of the cost to the Council of materials/ external fees for:

- compulsory door signage for hackney carriages
- Disclosure and Barring Service, and practical driver assessments
- licence badges and plates

- 3.9 This flexibility is requested so that officers can, where necessary, change contractors or service providers or to respond to changes in pricing and pass those costs or savings on to licence-holders without requiring further Committee approval.

- 3.10 For the sake of clarity, it is not proposed to increase or amend any other licence fee or charge other than those mentioned above.

## 4.0 IMPLICATIONS

### 4.1 Financial

4.1.1 The Head of Finance (shared services) comments that the implications of the fees and charges contained within this report have been included in the budget report going to Council on 24 January 2016.

### 4.2 Legal Issues (Monitoring Officer)

4.2.1 The Head of Democracy and Governance comments that the legal implications are contained within the body of the report

### 4.3 Potential Risks

Potential Risk	Likelihood	Impact	Overall score
<i>Level of fees challenged by District Auditor</i>	1	2	2
<i>Level of fees challenged by judicial review</i>	1	3	3

## Appendices

Appendix 1: Licensing Fees and Charges 2017-18

## Background Papers

No papers were used in the preparation of this report

## File Reference

Licence fees and charges 2017-18