



Report for:	Licensing and Health & Safety Enforcement Committee
Date of meeting:	14 January 2020
PART:	I
If Part II, reason:	

Title of report:	<b>Licensing fees &amp; charges 2020-21</b>
Contact:	Nathan March - Licensing Team Leader
Purpose of report:	To set the fees and charges payable in connection with licensing applications for the financial year 2020-21
Recommendations	That the fees and charges payable in connection with licensing applications from 1 April 2020 to 31 March 2021 are set at the levels proposed in Annex B.
Corporate objectives:	<ul style="list-style-type: none"> <li>• A clean, safe and enjoyable environment</li> <li>• Delivering an efficient and modern council</li> </ul>
Implications:	<p><u>Financial</u> There will be a small cost in adoption of fees, as some require public notice to be given.</p> <p><u>Value for Money</u> The proposed fees have been calculated using recent costs incurred by the Licensing service, with the aim of ensuring that administrative, processing and certain compliance costs are recovered in full.</p> <p><u>Risk / Community Impact / Health And Safety Implications</u> None identified</p>
Consultees:	Public notice and an opportunity for objections will be provided for a number of fees where there is a statutory duty for such.
Background papers:	

Glossary of acronyms and any other abbreviations used in this report:	
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## 1. BACKGROUND

- 1.1. Dacorum Borough Council has statutory responsibility for the administration and enforcement of a wide range of licences, registrations and permits. Many of these schemes allow the Council to charge a fee, payable by an applicant for a licence, in order to cover the costs (or a proportion thereof) of the administration of those licence types. In some cases, costs are also permitted to cover other aspects of providing the regulatory scheme, such as enforcement.
- 1.2. The basis in setting such fees is generally to ensure full cost recovery, or as close to it as possible. Numerous legal cases over the years have confirmed that licensing fees may not be used to generate a profit for councils, and that fees should be reviewed regularly (generally annually) to ensure that neither a significant surplus nor deficit is created. Surpluses or deficits may be carried forward to future years to be redistributed or recouped, as applicable.
- 1.3. Many licensing schemes fall within the definition of ‘services’, and are therefore subject to the EU Services Directive, incorporated in to UK law as the Provision of Services Regulations 2009. For such schemes, fees and charges 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*”.<sup>1</sup> This principle was affirmed by the UK Supreme Court in *R. (on the application of Hemming (t/a Simply Pleasure Ltd)) v Westminster City Council*.<sup>2</sup>
- 1.4. In the above case, the Supreme Court referred one issue, on the legality of a demand for upfront payment relating to the ongoing enforcement and compliance of licensing and regulatory schemes, to the European Court of Justice for consideration. The ECJ issued its judgement<sup>3</sup> in November 2016, stating that the law precludes any requirement for payment at the time of submitting an application, of part of a fee which relates to the ongoing management and enforcement of the authorisation scheme concerned, even if that part is refundable if that application is subsequently refused. As a result of this, and earlier decisions in the Hemming case, fees for licence types which fall within the scope of the Services Directive are now set in a two-stage structure:
  - an initial **application fee** payable at the time of application, representing the authority’s costs in considering and determining the application;
  - a subsequent **licence fee** payable upon the grant of the application but prior to the issue of the licence, covering the costs of ongoing enforcement and compliance checks of the authorisation scheme, and any other costs which the authority is permitted to recover through its licence fees.

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<sup>1</sup> Reg 18(4), Provision of Services Regulations 2009 (S.I. 2009 / 2999)

<sup>2</sup> [2015] UKSC 25

<sup>3</sup> [2016] EUECJ C-316/15 – [Link to judgement](#)

- 1.5. The key exclusions from the above provisions relate to gambling and taxi licences, as those categories of services are excluded from the Directive and the 2009 Regulations. Fees in connection with taxi applications are defined in the subject legislation as licence fees, as they are payable for the grant of a licence, not for an application (ancillary charges, e.g. DBS checks, are payable at the time, however). Gambling fees are treated as application fees, as the legislation makes no provision for refund in the event of an application being unsuccessful. Fees under the Licensing Act 2003 for alcohol/entertainment licences, which are set nationally within legislation, are also treated as application fees as the legislation is again silent on the subject of refunds.
- 1.6. The table at Annex A summarises the Council's powers to set its fees in respect of licensing applications, and any limitations on those powers.

## 2. PROPOSALS

- 2.1. A proposed list of service-wide fees and charges (excluding those fees set by statute or under executive arrangements) for the period from 1 April 2019 to 31 March 2020, is appended to this report as Annex B. Although the caravan site licensing fees are shown, these were set for 2020-21 previously when the policy was reviewed in 2019 through the required process.
- 2.2. In addition to the general explanatory note at para 1.4-1.5, the following comments are made on specific proposals:

### **Alcohol/entertainment fees (1.1.-1.7)**

These continue to be set nationally in legislation, at levels which have not changed since 2005. In November 2017, the Government responded<sup>4</sup> to a House of Lords Select Committee report examining the legislation for these licences, stating that the Government had decided not to commence statutory powers allowing licensing authorities to set these fees at a local level, citing additional costs facing licensed premises as a result of recent business rates revaluations. It therefore appears that these fees will remain at current levels, which result in a substantial deficit against costs, for the foreseeable future.

### **Animal licences (2.1-2.8)**

The Council now has over a year of experience in dealing with the new legislation implementing a combined licensing scheme for businesses engaged in animal boarding, dog breeding, sales of pet animals, displaying or exhibiting animals, or hiring of horses for riding or riding tuition which came into existence on 1st October 2018. The fees have been adjusted following the experience gained since October 2018, as applicants need much more assistance than was originally anticipated, and it has also been necessary to include some recovery of the cost of training that will be a legal requirement for inspectors in the future.

Dangerous wild animal licences (currently 2 in force) and zoo licences (0 in force) remain separate from the new licences, due to their specialist nature.

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<sup>4</sup> <https://www.gov.uk/government/publications/the-government-response-to-the-report-from-the-house-of-lords-select-committee-on-the-licensing-act-2003>; Recommendation 61, page 39

- 2.3. As with last year, no prior consultation has been carried out on these proposed fees, save for discussions with the service accountant. As licensing authorities are legally obliged to set fees on a cost recovery basis, costs are the only factor they should consider, and comparisons with fees charged by other authorities, comparisons with inflation rates or other indices (including regulated taxi fares) or responses generally opposing an increase as it will raise costs for businesses should carry little weight. In previous years almost all of the responses received to consultations have fallen under these descriptions, as it is very difficult for third parties to make any other comment on the costs incurred by the licensing authority.
- 2.4. For fees covered by a public notice requirement, an opportunity will be available to make representations on the proposed fees prior to their going live, following the publication of a public notice in a local newspaper. The authority must consider any representations received prior to deciding whether to go ahead with the proposed fee levels.

### **3. RECOMMENDATIONS**

- 3.3. In pursuance of the fee-setting powers conferred upon the Council as specified in Annex A of this report, that the Licensing, Health & Safety and Enforcement Committee set as the fees and charges payable by applicants in connection with applications and other processes for licences, registrations and permits the fees and charges as set out in Annex B, for the period from 1<sup>st</sup> April 2020 to 31<sup>st</sup> March 2021; and**
- 3.4. That authority to consider any objections arising from statutory notices pertaining to these fees be delegated to the Assistant Director (Corporate and Contracted Services) in consultation with the Chairman of the Licensing, Health & Safety and Enforcement Committee.**

## Annex A

### Summary of powers to set application fees

Section	Area	Power arises from
General principle		<p>Reg. 18, Provision of Services Regulations 2009</p> <p>(2) Authorisation procedures and formalities provided for by a competent authority under an authorisation scheme must not—</p> <p style="padding-left: 20px;">(a) be dissuasive, or</p> <p style="padding-left: 20px;">(b) unduly complicate or delay the provision of the service.</p> <p>...</p> <p>(4) 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.</p>
1.1 – 1.7	Alcohol, entertainment, etc	<p>Prescribed in regulations made by the Secretary of State under the Licensing Act 2003.</p> <p>Section 197A of that Act will allow licensing authorities to set fees locally on a cost-recovery basis, but is yet to be commenced.</p>
2.1, 2.3, 2.4, 2.5, 2.7, 2.8	Animal Activity Licensing	Animal Welfare (Licensing of Activities Involving Animals) (England) Regulations 2018. Cost recovery
2.2	Dangerous wild animals	s.1(2)(e), Dangerous Wild Animals Act 1976 Sufficient to meet direct and indirect costs incurred
2.6	Zoos	s.15(1), Zoo Licensing Act 1981 Sufficient to cover reasonable expenditure incurred by the authority. Special provisions for inspections, closures, and direction making.
3.2, 3.4 – 3.5	Gambling notices, premises licences	Set on a cost recovery basis by the authority, up to maximum amounts prescribed in regulations under the Gambling Act 2005. No fee chargeable for OUN's
3.1, 3.3	Gaming permits, lotteries	Prescribed in regulations made by the Secretary of State under the Gambling Act 2005
4.1, 4.2	Charity collections	No fees chargeable
5.1	Hypnosis	No fees chargeable (except by London boroughs)
6.1	Scrap metal	Sch 1 para 6, Scrap Metal Dealers Act 2013 Fee set by the authority, with regard to guidance <i>FEE-SETTING IS AN EXECUTIVE FUNCTION</i>
7.1	Sex establishments	Sch 3, para 19, Local Gov't (Misc. Provisions) Act 1982 Reasonable fee
8.1	Skin piercing, etc	s.14(6), 15(6), Local Gov't (Misc. Provisions) Act 1982 Reasonable fee
9.1	Street trading	Sch 4, para 9, Local Gov't (Misc. Provisions) Act 1982 Such fees as LA considers reasonable Different fees permissible for different types of licence/consent, including duration, location and type of goods.
10.1, 10.2	HC/PH drivers	s.53(2), Local Gov't (Misc. Provisions) Act 1976 Recovering the costs of issue and administration. <i>Refundable if licence not granted.</i>
10.2, 10.3	HC/PH vehicles, PH operators	s.70(1), Local Gov't (Misc. Provisions) Act 1976 Sufficient to cover the cost of: inspection of vehicle for licensing purposes, providing hackney carriage stands, or other costs for administration and control/supervision of vehicles. <i>Refundable if licence not granted. Max. fees must be advertised.</i>
11.1	Mobile homes	Mobile Homes Act 2013