Licensing Committee

Grand Jury Room, Town Hall
19 March 2014 at 6.00pm

The Licensing Committee deals with policy issues relating to licensing matters and applications and appeals concerning hackney carriage and private hire vehicles and drivers and other appeals.

Information for Members of the Public

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You have the right to attend all meetings of the Council, its Committees and Cabinet. You also have the right to see the agenda, which is usually published 5 working days before the meeting, and minutes once they are published. Dates of the meetings are available at www.colchester.gov.uk or from Democratic Services.

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COLCHESTER BOROUGH COUNCIL
LICENSING COMMITTEE
19 March 2014 at 6:00pm

Members

Chairman	:	Councillor Nick Cope.
Deputy Chairman	:	Councillor Julia Havis.
		Councillors Mary Blandon, Margaret Fairley-Crowe, Pauline Hazell, Mike Hogg, Brian Jarvis, Margaret Kimberley, Michael Lilley and Gerard Oxford.

Substitute Members :

Agenda - Part A
(open to the public including the media)

Members of the public may wish to note that Agenda items 1 to 5 are normally brief.

Pages

1. Welcome and Announcements

(a) The Chairman to welcome members of the public and Councillors and to remind all speakers of the requirement for microphones to be used at all times.

(b) At the Chairman's discretion, to announce information on:

- action in the event of an emergency;
- mobile phones switched off or to silent;
- location of toilets;
- introduction of members of the meeting.

2. Substitutions

Members may arrange for a substitute councillor to attend a meeting on their behalf, subject to prior notice being given. The attendance of substitute councillors must be recorded.

3. Urgent Items

To announce any items not on the agenda which the Chairman has agreed to consider because they are urgent and to give reasons for the urgency.

4. Have Your Say!

(a) The Chairman to invite members of the public to indicate if they wish to speak or present a petition at this meeting – either on an item

on the agenda or on a general matter not on this agenda. You should indicate your wish to speak at this point if your name has not been noted by Council staff.

(b) The Chairman to invite contributions from members of the public who wish to Have Your Say! on a general matter not on this agenda.

5. Declarations of Interest

The Chairman to invite Councillors to declare individually any interests they may have in the items on the agenda. Councillors should consult Meetings General Procedure Rule 7 for full guidance on the registration and declaration of interests. However Councillors may wish to note the following:-

- Where a Councillor has a disclosable pecuniary interest, other pecuniary interest or a non-pecuniary interest in any business of the authority and he/she is present at a meeting of the authority at which the business is considered, the Councillor must disclose to that meeting the existence and nature of that interest, whether or not such interest is registered on his/her register of Interests or if he/she has made a pending notification.

- If a Councillor has a disclosable pecuniary interest in a matter being considered at a meeting, he/she must not participate in any discussion or vote on the matter at the meeting. The Councillor must withdraw from the room where the meeting is being held unless he/she has received a dispensation from the Monitoring Officer.

- Where a Councillor has another pecuniary interest in a matter being considered at a meeting and where the interest is one which a member of the public with knowledge of the relevant facts would reasonably regard as so significant that it is likely to prejudice the Councillor's judgment of the public interest, the Councillor must disclose the existence and nature of the interest and withdraw from the room where the meeting is being held unless he/she has received a dispensation from the Monitoring Officer.

- Failure to comply with the arrangements regarding disclosable pecuniary interests without reasonable excuse is a criminal offence, with a penalty of up to £5,000 and disqualification from office for up to 5 years.

6. Consultation on Fees Under the Licensing Act 2003 **1 - 48**

See the report by the Head of Professional Services

7. Relaxation of Licensing Hours for the World Cup // Consultation Document **49 - 50**

See report by the Head of Professional Services

8. Exclusion of the public

In accordance with Section 100A(4) of the Local Government Act 1972 and in accordance with The Local Authorities (Executive Arrangements) (Access to Information) (England) Regulations 2000 (as amended) to exclude the public, including the press, from the meeting so that any items containing exempt information (for example confidential personal, financial or legal advice), in Part B of this agenda (printed on yellow paper) can be decided. (Exempt information is defined in Section 100I and Schedule 12A of the Local Government Act 1972).

Licensing Committee

Item **6**

19 March 2014

Report of	**Head of Professional Services**	**Author**	**Sarah White ☎ 506420**
Title	**Consultation on fees under the Licensing Act 2003**		
Wards affected	**All**		

This report sets out the Council's proposed response to the Home Consultation on the proposed introduction of locally set fees under the Licensing Act 2003

1. Decisions Required

1.1 Members are asked to consider the attached proposed response to the Home Office consultation on the setting of locally determined fees under the Licensing Act 2003.

2. Reasons for Decisions

2.1 The Home Office is consulting on the issue of locally determined fees and it is considered important that this Council offers its views for consideration as part of the response.

3. Alternative Options

3.1 The alternative option is not to respond and to await the outcome of the consultation without taking part in it.

4. Supporting Information

4.1 The Consultation document invites views on specific aspects of the regulations that will introduce locally set fees under the 2003 Act and these are –

- The future of fees bands based on the national non domestic rateable value of the premises.
- Whether the new fee setting process should include discretionary measures to apply different fees depending on whether or not the premises is authorised to provide licensable activities until a late terminal hour and/or is used exclusively or primarily for the sale of alcohol for consumption on the premises.
- Whether there should be further discretions available to licensing authorities to exclude certain classes of premises from liability for the higher fee amount.
- The proposed cap level for each fee category.
- What guidance will be needed on setting fees.
- Whether there should be a single annual fee date.
- The transition process to locally set fees.

4.2 Under the proposed arrangements the Council will be able to determine its own fees using a new national fee structure. The principle in fee setting is that the Council, as licensing authority, should be able to recover the costs it incurs in the discharge of its functions under the Licensing Act 2003.

4.2 In addition to the consultation response the Council is also asked to complete a cost survey designed to give the Home Office a clearer idea of the costs of administering the 2003 Act; and to assist in determining the likely impact of locally set fees.

4.3 The Council's proposed response is attached at Appendix 1 and set out in pages 36 to 42 of the Consultation document. The deadline for the submission of comments is 10 April 2014.

5. Standard References

5.1 At this stage, there are no particular references to the Strategic Plan; publicity or consultation considerations; or financial; equality, diversity and human rights; community safety; health and safety or risk management implications. These will be covered fully when the issue of implementation is considered.

Home Office

A consultation on fees under the Licensing Act 2003

Contents

Ministerial foreword

Norman Baker

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.

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.

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 then[1]. 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 notices[2]. 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 legislation[3]. 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 payable[4]. 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 Act[5]. 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 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/goverment/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/goverment/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 entirely[6]. 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 area[7].

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

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	
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.

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:

a. authorised to provide licensable activities until a late terminal hour and/or
b. 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	
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.

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	
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.

	From	To
Select hours		

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	
Disagree	
Don't know	

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	
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.

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	
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.

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	
Disagree	
Don't know	

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 costs[11]. 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 licences[12].

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 category[13] 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. Outliers[14] 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 processes[15]. 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 administrating 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 £80[16]. 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?;

Agree		Disagree		Don't know	

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

Agree		Disagree		Don't know	

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

Agree		Disagree		Don't know	

23d: invite comments from interested parties?

Agree		Disagree		Don't know	

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 2006[17] 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	x

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.

The Council agrees in principle to ceasing to use the NNDR as a criterion for variable fee amounts noting that higher costs are not always associated with higher bandings. However, the Council would wish to see that the alternative fee setting process is open and transparent and can be readily understood and applied by all users.

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	x	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.

The Council invests more time and therefore money in looking at those premises with licensable activities provided until a late terminal hour because such premises have the potential to cause a greater nuisance to local residents.

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	X	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	X	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	X	Disagree		Don't know	

Consultation Question 10:

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

This discretion will enable the Council to recognise seasonal variations which in general cause few problems; and support diversity in licensed premsies by supporting some of the smaller, independent premises.

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	X	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.

There is a strong correlation between a premises being used primarily for the sale of alcohol on the premsies and problems occuring at that premises. These venues, in general, cost the Licensing Authority more in terms of the costs of enforcement and inspection.

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	X

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.

In order to be able to implement this it will be necessary to have a clear definition of what constitutes a premises used exclusively or primarily for the sale of alcohol. There have been problems across authorities in the consistent application of the multiplier and without a clear definition the Council is concerned that these problems would then extend to fee setting.

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	x	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	x	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.

The Council considers that if the fee structure is changed, and it is appropriate to do so, the Council should be able to exclude such premises as those set out in the discretionary exemptions for the late night levy e.g.theatres and cinemas.

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.

No comments.

Consultation Question 19:

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

Agree	x	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.

No comments.

Consultation Question 21:

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

Agree	x	Disagree		Don't know	

Consultation Question 22:

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

The Council agrees that the costs of a TEN can be covered but only if the notice is submitted online as this reduces the Council's costs.

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?;

Agree		Disagree	x	Don't know	

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

Agree	x	Disagree		Don't know	

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

Agree		Disagree	x	Don't know	

On the basis that published fees should show how they are made up and will be transparent.

23d: invite comments from interested parties?

Agree		Disagree	x	Don't know	

On the grounds that they are unlikely to provide a balanced view nor sufficient information in order to reach an alternative view.

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.

No comments.

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); AGREE

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

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. AGREE

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.

No comments

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	X	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	X

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.

The Council is concerned that the alternative methods proposed for fee setting are more expensive in terms of time and therefore cost than is indicated in the impact assessment.

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

Licensing Committee - URGENT ITEM

Item 3

19 March 2014

Report of	**Head of Professional Services**	**Author**	**Jon Ruder**
Title	**Relaxation of Licensing Hours for the World Cup // Consultation Document**		
Wards affected	**All**		

This report details the consultation paper from the Home Office on the relaxation of licensing hours for the World Cup and seeks the Committee's views on the proposals outlined.

1. Decision Required

1.1 The Committee is asked to consider the proposals contained in the consultation document on the Relaxation of Licensing Hours for the World Cup. The Council needs to submit a response to the Home Office by 26 March 2014.

2. Proposal

2.1 The Government is consulting on whether to relax licensing hours nationally to mark England's participation in the FIFA World Cup 2014 in June and July, or whether to rely on the existing system of Temporary Event Notices which gives the local police and environmental protection officers a say in decisions on whether local premises should extend their licensing hours based on local circumstances.

2.2 The relaxation of licensing hours would relate to the sale of alcohol for consumption on the premises and late night refreshment in on-licensed premises; it would not cover regulated entertainment. The consultation seeks views on how long licensing hours should be relaxed during England's matches in the World Cup to achieve a balance between premises selling alcohol and public order. It is considered that licensing hours should not be extended by the order beyond 1am for any of the matches. Premises wishing to stay open longer than this could do so by giving a TEN. The consultation paper also asks whether this is an occasion for which the power to relax licensing hours to celebrate an occasion of 'exceptional international, national or local significance' should be used.

2.3 The impact of a relaxation in hours is assessed in the consultation document. The Government estimates that almost 90% of on-trade premises could benefit from a national relaxation until 1am on Sunday 15 June. It is not known how many premises would have applied for a TEN in the absence of an order but it is expected that there will be savings for those intending to trade later and additional takings from the extended opening time. The order will also relieve local authorities and the police from the burden of considering potentially thousands of TENs in the run-up to the World Cup. There are however, potential risks to relaxing licensing hours such as the impact on the enforcement agencies. Using the TEN regime would provide for local discretion with the police and environmental protection being able to object to a TEN on the basis of local circumstances because of a negative effect on any of the four licensing objectives.

2.4 The Committee is asked to consider 4 questions and these are set out in Appendix 1 to this report. Having considered the issues it is considered preferable to leave the extension of hours to the TEN system which enables the Council to deal with local circumstances which may undermine the promotion of the licensing objectives. The Council's suggested response to each question is set out below.

- **Question 1**

Which of the following statements best reflects your view on the relaxation of licensing hours for specific periods during the World Cup 2014?
b) I think that licensing hours during the World Cup should be a local decision using the existing TEN systems.

- **Question 2**

Do you agree or disagree that a national relaxation of licensing hours would contravene one or more of the licensing objectives.

Prevention of crime and disorder	Agree
Public Safety	Neither agree nor disagree
Prevention of public nuisance	Agree
Protection of children from harm	Neither agree nor disagree

- **Question 3**

If licensing hours were to be relaxed nationally during England's World Cup matches, do you think this should be for: three, three and a half or four hours after the scheduled kick off time.
a) Three hours.

- **Question 4**

The Licensing Act 2003 applies to both England and Wales. However, a national relaxation of licensing hours could apply to the entire region or to specified areas within it. With this in mind, if licensing hours were to be relaxed nationally during England's matches in the World Cup, do you think that this should be for England and Wales or for England only?
c) Do not know.

3. Standard References

3.1 There are no particular references to the Strategic Plan; publicity or consultation considerations; or financial; equality, diversity and human rights; community safety; health and safety or risk management implications.

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