

THE ABERDEENSHIRE LICENSING BOARD

REPORT TO THE ABERDEENSHIRE LICENSING BOARD – 22nd February 2023

LICENSING (SCOTLAND) ACT 2005 FEES REVIEW

1 Executive Summary/Recommendations

- 1.1 This report sets out the responses to the public consultation on the proposals to increase fees to ensure that the costs of providing the licensing service is met by licensing income and asks the Board to agree to increase the fees as set out in Appendix 1.
- 1.2 **The Licensing Board is recommended to:**
- 1.2.1 **Consider and comment on the responses to the consultation contained in Appendix 2 to this report.**
- 1.2.2 **Agree to increase the fees as proposed fees from 1st April 2023 with inflationary increases, as determined by the Head of Finance, from 1st April 2024.**
- 1.2.3 **Consider writing to the Scottish Government to express concern at the impact of the continued low fee for an occasional licence.**

2. Background / Discussion

- 2.1 The Licensing (Scotland) Act 2005, as amended, provides for a mixed approach to licensing fees. Most of the fees are set by legislation, particularly the Licensing (Fees) (Scotland) Regulations 2007 (“the Regulations”). The Aberdeenshire Licensing Board currently charges the maximum fee, as do all Boards across Scotland, permitted under the regulations for those fees which are set.
- 2.2 However, there are some types of application where there is more discretion afforded to local licensing boards. Under the Regulations, licensing boards are empowered to set their own fees for: -
- **Transfer on Application of the Licence Holder under s. 33(1) which includes an application for variation under s.35 (1)**
 - **Transfer on Application of the Licence holder under s. 33(1) without an application for variation**
 - **Transfer on Application of a person other than the licence holder under s. 34(1) which includes an application for variation under s.35(1)**
 - **Transfer on Application of a person other than the licence holder under s. 34(1) without an application for variation**
 - Major Variations
 - Replacement Personal Licences
- 2.3 The existing fees were set by the Licensing Boards prior to the implementation of the 2005 Act and were reviewed in 2019 with changes coming into effect in early 2020. It was agreed in 2019 to apply inflationary increases yearly. However, due to the prolonged closure of premises due to restrictions and the tough trading times, it was inappropriate at that time

to increase fees. It is now appropriate to review the fees again in line with the corporate charging policy and to consider applying inflationary increases from April 2024.

- 2.4 Regulation 13 states that “in determining any fee, a board is to have regard to the desirability of ensuring that the total fees payable under these Regulations to that Board in respect of any period are likely to be broadly equivalent to the expenses incurred by that Board, and the council for the area of that Board, in administering the Act generally during that period”. However, the Provision of Services Regulations 2009 which implements the European Services Directive from 2006 restricts the discretion afforded to the Boards slightly in this regard as charges should not exceed the cost of procedures and formalities. This focusses the attention to how much does it cost to process, hear, and grant applications but does not permit the costs of enforcement action against unlicensed operators to be included in the costs.

Responses to the Consultation

- 2.5 The consultation took place from the 15th of December 2022 to 23rd January 2023 and only 8 responses were received. 5 responses were made by members of the public, and 3 responses were received from the licensed trade. All responses indicated that they feel that the proposed increases are too high and that it could lead to businesses closing as business is dwindling due to the cost-of-living crisis. Applying for a major variation is not something that a business requires to do unless they are changing how they operate therefore the cost of applying for a major variation should be considered along with their business planning and cost benefit analysis. These proposed changes do not impact on the annual fee that premises are due to pay.
- 2.6 Comments were made suggesting that the Council looks to cut costs rather than pass on higher fees to applicants. The Council has in the last few years looked at how costs can be reduced and indeed have reduced reliance on printing, travel and have introduced an online application system for occasional and personal licences all in the interest of reducing cost and increasing benefit to the licensed trade. The online meetings have contributed to keeping costs lower however the time spent by the legal team on applications is increasing, in the main due to inadequate applications which need a considerable amount of time and resource to get to a position where applications can be competently processed, avoiding the need and additional cost of a hearing. There is also a balance to be struck in terms of being able to meet the expectations of the licensed trade in terms of how quickly applications are processed and issued with the cost of ensuring we have enough staff to process all applications received in a timeous fashion. The licensing team is a busy team and there is a high demand for the service.
- 2.7 The highest demand focusses on occasional licences and there are comments in the consultation that occasional licences are too cheap and that we should increase those fees. Officers agree that occasional licences are too cheap at £10 however the fee for these are controlled by the Scottish Government. There was a consultation on increasing the fees for these pre Covid. However, indications now are that the fee will not increase in a bid to support communities recover from Covid. The Board may wish to consider writing to the Scottish Government to explain the implications of not increasing that fee and the juxtaposition there in terms of encouraging easier availability of alcohol, with less strict controls than in premises, for a lower fee and how that contradicts with the Licensing Objective of Improving and Promoting Public Health. An online system to improve efficiency of processing occasional licences has been a success in reducing touch time per application however still not to the level where £10 is sufficient and not all applicants use the system although are encouraged to do so.

- 2.8 Plans are in place for additional application types to be included in the online offering however major variations and new premises applications are complex in nature and the developer resources for developing the online forms must be prioritised with other priorities across the Council. This is a longer-term aim of the licensing team for this reason.
- 2.9 There is also a comment suggesting that the Council should absorb some of the additional costs, and specifically mentions catering for meetings and fuel reimbursement. The Aberdeenshire Licensing Board has not met in person since 2020 and so there are no costs for catering nor fuel reimbursement. The regulations provide that the costs should be paid for by the fees for the service. These are commercial costs for businesses to consider in their decision-making on whether proposed variations are advantageous or necessary.
- 2.10 Fee comparisons with other Licensing Boards across the country have been completed and were included in the December report on fees.
- 2.11 It is proposed that to ensure that the income keeps up with expenditure that any fee over which the Boards have discretion to set should rise with inflation as set out by the Council's Head of Finance annually from the 1st of April 2024.
- 2.12 Other fees charged by the Council for liquor licensing are set by the Scottish Government.
- 2.13 The Monitoring Officer within Business Services was consulted in the preparation of this report and had no comments to make and is satisfied that the report complies with the Scheme of Governance and relevant legislation.

3 Implications and Risk

- 3.1 An integrated impact assessment has been carried out as part of the development of the proposals set out above. It is included as Appendix 4 to the December report and a potential negative impact on premises located in Town Centre First locations has been identified however is mitigated due to the statutory duty to ensure that the licensing fees cover the costs of delivering the licensing system and this ensures that the service is sustainable. No additional issues were reported during the public consultation stage.
- 3.2 There are financial implications in that increased fees will increase income which aims to ensure that the costs of alcohol licensing are covered.
- 3.3 The following Risks have been identified as relevant to this matter on a Corporate Level; ACORP001 – Budget Pressures and the following Risks have been identified as relevant to this matter on a Strategic Level BSSR001 – Balancing The Books, Directorate Risk Registers].

Ritchie Johnson

Director of Business Services

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Date January 2023

APPENDIX 1

CURRENT FEES, PROPOSED FEES, and NATIONAL AVERAGE COMPARATOR

Type of Application	Current Fee	National Average Comparator	Proposed Fee	Comment
S.33 and s.34 – Transfer	£180.00 (included variation element)	£90.04.	£200.00	The costs have increased and so the proposed fee is £200.
S.33 and s.34 – Transfer – With Minor Variation	Transfer with Minor Variations - £200.00 Transfer with Change to Premises Manager Minor Variation - £211.00	£233.46	Transfer with Minor Variations - £220.00 Transfer with Change to Premises Manager Minor Variation - £231.00	The fee structure previously agreed is that the fees are paid for the required service. The proposal is that the transfer fee is agreed at £200 and then the appropriate minor fee is added. This is £20 for layout changes or restrictions to children and young persons access or £31 for a change to the premises manager. Both the £20 and £31 fees are set by the Scottish Government.
S.33 and s.34 – Transfer – With Major Variation	£180 plus £350 - £530.00		£625.00	The costs need to reflect not just the processing of the transfer part of the application but the increased costs in the processing of the variation part of the application.
Major Variation Fee	£350.00	£302.74	£425.00	This is an increase according to analysis of the average time spent on processing major variation applications which has increased per application as detailed in the report.
Replacement Personal Licence Fee	£20.00	£22.15	£20.00	This covers the costs of processing.

