



AGENDA ITEM: 9.

**LICENSING & GAMBLING
COMMITTEE: 1 APRIL 2014**

Report of: Assistant Director Community Services

Relevant Managing Director: Director of People and Places

**Contact for further information: Paul Charlson (ext 5246)
(E-mail: paul.charlson@westlancs.gov.uk)**

**SUBJECT: HOME OFFICE CONSULTATION - FEES UNDER THE LICENSING ACT
2003**

Wards affected: Borough wide

1.0 PURPOSE OF REPORT

- 1.1 To approve a response to a Home Office consultation regarding reforms to the fee structure under the Licensing Act 2003.

2.0 RECOMMENDATIONS

- 2.1 That the proposed consultation response attached at Appendix 2 to this report be approved for submission to the Home Office prior to the consultation deadline of 10 April 2014.

3.0 BACKGROUND

- 3.1 Members are familiar with the Council's responsibilities as Licensing Authority under the Licensing Act 2003 (the 2003 Act) to regulate and administer the sale of alcohol, the provision of late night refreshment and regulated entertainment in the Borough.
- 3.2 Members will be aware that the Government is in the process of making several changes to 'rebalance' the 2003 Act. The regulation of live music and other forms of entertainment has recently been significantly reduced, and the provisions for late night refreshment and personal licences are also to be

reviewed. In addition, the Government has also legislated to reduce the evidence threshold for decision-making under the 2003 Act and introduced the Late Night Levy and Early Morning Alcohol Restriction Orders (EMROs).

- 3.3 Licensing fees are intended to recover the costs that licensing authorities incur in implementing the 2003 Act. Fee levels were set nationally in 2005, but have not been revised since. 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.
- 3.4 Current fees are payable annually to the Council by holders of licences and certificates, or by those making applications or issuing notices. The current list of fees and fee bands (the national non-domestic rateable value (NNDR) of the premises) based on are provided in the consultation document attached at Appendix 1 to this report.
- 3.5 There are currently 352 licensed premises (holding either a Premises Licence and/or Club Premises Certificate) in the Borough and the Council has issued 1003 personal licences to sell alcohol since 2005. The Council annually receives the following income derived from the existing fee structure under the 2003 Act:

Premises Licences: £66k
Personal Licences: £3k
Temporary Event Notices: £4k

4.0 CURRENT POSITION

- 4.1 As part of the proposals to rebalance the 2003 Act, the Government wants to respond to arguments that, as fee levels have been unchanged since they were set in 2005, this has led to disproportionality and inadequacy in the fee structure. The Government has made it clear that it will make regulations under the 2011 Act to introduce locally set fees under the 2003 Act. Accordingly, the consultation attached at Appendix 1 to this report seeks opinion on these proposals, which include:

- The removal of the current NNDR fee bands and replacement with 'alternative classes' for which licensing authorities could apply different fee amounts;
- 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 (currently proposed at 00:00 to 06:00) and/or
 - used exclusively or primarily for the sale of alcohol for consumption on the premises
- That licensing authorities are able to apply different fee amounts based on a further discretion to exclude certain classes of premises from liability for the higher amount (i.e. if not associated with higher costs - for example community premises, bingo halls etc.);

- That proposed cap levels that will apply to each fee category;
- That guidance will be needed on fee calculation, efficiency and the avoidance of “gold-plating” (i.e. including activities that go beyond the duties of the 2003 Act and are not justified by proportionality);
- Consideration whether there should be a single annual fee date;
- The transition process to locally set fees.

5.0 ISSUES

- 5.1 The Government has made it clear that locally set fees cannot be used to raise extra revenue or tackle crime. Therefore all income derived from fees under the new scheme should be used solely within the licensing service to allow the Council to fulfil its duties under the 2003 Act. This would include administration processes and the monitoring of compliance – i.e. inspection of premises, liaison with partner agencies and the licensed trade, production of licensing policy and public registers. Fees must therefore be based on full cost recovery when carrying out these functions. Accordingly, locally set fee structures and expenditure must be transparent and based on evidence. There is also an expectation that fees are reviewed annually to take account of actual costs and any efficiencies made or planned. The Home Office clearly state that it is not good practice to simply assume that costs will increase due to inflation.
- 5.2 The proposals do appear to offer a more equitable approach to fees. However, the methodology and accuracy of fee calculation will be paramount to ensure fees are applied correctly and proportionately so as to cover relevant costs. The task of fee calculation and implementation therefore appears to be quite an onerous and potentially costly exercise in itself. Accordingly, it is currently unclear whether the level of licence fee income currently received by the Council would be affected - particularly as the term ‘late terminal hour’ is not fully defined.
- 5.3 Nevertheless, the Government states that it does not wish to impose excessive duties or complex processes that will increase the costs of the licensing regime. The consultation attached at Appendix 1 to this report therefore seeks views on how to create a proportionate system of fees that follows these principles. However, a series of fee caps will be introduced as a means to ‘reassure fee payers’. 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.
- 5.4 The proposed consultation response is attached at Appendix 2 to this report. Member approval is sought so that the response can be provided to the Home Office by the deadline of 10 April 2014. A further report will be submitted to Members in due course once more information is released by the Home Office.

6.0 SUSTAINABILITY IMPLICATIONS/COMMUNITY STRATEGY

- 6.1 This consultation has the potential to impact upon the Community Strategy. The contents of the report has the following links with the Community Strategy: Community Safety (issues A and E); Economy and Employment (issue D).

7.0 FINANCIAL AND RESOURCE IMPLICATIONS

- 7.1 The contents of this report can be delivered within existing resources.

8.0 RISK ASSESSMENT

- 8.1 The Council is not under a legal obligation to respond to this Home Office consultation. However, given the potential implications for the licensing regime, the Council may receive some criticism if it failed to provide an opinion on this important issue.

Background Documents

The following background documents (as defined in Section 100D (5) of the Local Government Act 1972) have been relied on to a material extent in preparing this Report.

None.

Equality Impact Assessment

There is a significant direct impact on members of the public, employees, elected members and / or stakeholders. Therefore an Equality Impact Assessment is required. A formal equality impact assessment is attached as an Appendix to this report, the results of which have been taken into account in the Recommendations contained within this report.

Appendices

- 1 Home Office consultation: fees under the Licensing Act 2003
- 2 Proposed Home Office consultation response
- 3 Equality Impact Assessment