

**FORM 2**

**NOTICE OF DECISION OF CABINET MEMBER**

Pursuant Section 15(4) of the Local Government Act 2000, as amended by section 63 of the Local Government and Public Involvement in Health Act 2007, the senior executive member may discharge any of the functions that are the responsibility of the Cabinet or may arrange for them to be discharged by another member of the Cabinet or Officer. On 1<sup>st</sup> December 2010, the Council adopted the Strong Leader Model for Corporate Governance 2011 as required under Part 3 of The Local Government and Public Involvement in Health Act 2007 (The 2007 Act).


In accordance with the authority delegated to me, I have made the following decision:

Subject	Decision	Reason for decision	Date for Decision to be taken
Submission of consultation response on Home Office proposal for locally set licensing fees.	<b>To submit the consultation response attached.</b>	The Council wishes to comment on the consultation and the time period for submissions required return before the next available Licensing Committee sits.	4 <sup>th</sup> April 2014.

**I confirm that the appropriate statutory officer consultation has taken place with regard to this decision.**

Dated:

Signed:

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Councillor Marcus Hart  
 Leader of the Council

To: Leader

From: Director of Economic Prosperity & Place

Date: 01/04/14

**Response To Home Office Consultation On Fees Under The Licensing Act  
2003**

**1. PURPOSE**

To agree the response to the consultation prepared by Worcestershire Regulatory Services (WRS)

**2. RECOMMENDATION**

That approval is given to the WRS response (attached) to the Home Office Consultation.

**3. BACKGROUND**

The Home Office has consulted on changes to the Licensing Act Fees 2003 to herald the way for locally set fees. The scope of the consultation covers:

- 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.
- The proposed cap levels that will apply to each fee category.
- What guidance will be needed on setting fees, 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.

#### **4. FINANCIAL IMPLICATIONS**

The Council will continue to receive licensing fee income. Fee levels were last set in 2005 but have not been revised since then. Cost recovery remains the underpinning principle and 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.

#### **6. LEGAL AND POLICY IMPLICATIONS**

The power to make fee regulations is set out in primary legislation. 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.

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.

#### **7. CONCLUSION**

That the Council proceeds to submit the consultation response attached by the 10<sup>th</sup> April deadline.

#### **8. RISK MANAGEMENT**

The Council could decide not to respond, but by responding the Council takes the opportunity to influence the shape of the introduction of locally set fees.

#### **9. EQUALITY IMPACT NEEDS ASSESSMENT**

Not required for this proposal.

**10. CONSULTEES**

S151 Officer  
CLT

**11. BACKGROUND PAPERS**

Home Office consultation.  
WRS proposed consultation response.

# A consultation on fees under the Licensing Act 2003

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## Variable fee amounts: the national non-domestic rateable value “bands”

### 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

If you agree skip to question 3

### 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

### Consultation Question 4

If you agree, please provide evidence for your answer, keeping your views to a maximum of 200 words.

- The majority of complaints relate to noise and disturbance late at night. Paying people to work out of hours – additional costs – double manning – *out of hours log ons*.?? Costly committee hearings more likely with applications for late terminal hours

### 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

If you agree, skip to question 7.

### 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?

- Disagree

### 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.

- 11pm to 6am

### **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

### **Consultation Question 10**

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

- Those that only open late on a limited number of special occasions per year are unlikely to generate the same costs for the licensing authority as a premise that opens late all year round.

### **Consultation Question 11**

Do you agree or disagree that the criterion of whether or not premises are used primarily for the sale of alcohol for consumption on the premises is linked to the costs?

- Agree

### **Consultation Question 12**

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

- For example high volume vertical drinking establishments tend to generate more costs for the authority than restaurants with alcohol sales being as an ancillary to food.

### **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?

- Disagree

### **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.

- It needs to be clear as most pubs/clubs tend to provide food and would argue that provision of alcohol for consumption on premises is not their primary use.
- This would need to be clearly defined to ensure that time and expense was not incurred by licensing authorities and the trade arguing as to whether they fall within the definition or not.
- It would be a matter of degree therefore you would be asking licensing officers to judge degree, this may cause confusion.

### **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

### **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

### **Consultation Question 17**

If discretion to exclude certain types of premises from a higher fee amount were available, that 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.

- Community premises operated on a 'not for profit' basis such as village halls, church halls and community halls. (those that can dis-apply the DPS requirements)

### **Consultation Question 18**

Are there alternative options that should be available to licensing authorities to apply different fee amounts in their area?

- The likelihood of costs being incurred. Complaints/hearings rise in line with late terminal hours.
- Premises closing at 11pm should therefore pay less than ones opening until midnight and so bands could be set based on terminal hour for licensable activities – for example
  - Band A – up to 11pm £200
  - Band B - 11pm to 1am £ 500
  - Band C - later than 1am (up to 24 hours) £1000
  - 50% discount for certain classes such as Community Premises.

## Consultation Question 19

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

Question	Fee Category	Proposed Cap	Current or maximum fee (for information only)	Agree/disagree/don't know
19(a)	Application for the grant of a premises licence	£2,400	£1,905*	Agree
19(b)	Application for a provisional statement	£2,400	£315	Agree
19(c)	Application to vary a premises licence	£2,400	£1,905*	Agree
19(d)	Application to vary premises licence to specify designated premises supervisor	£105	£23	Agree
19(e)	Application to vary a premises licence to remove requirement for a designated premises supervisor	£105	£23	Agree
19(f)	Application for the transfer of a premises licence	£65	£23	Disagree – should be as DPS (£105)
19(g)	Interim authority notice	£114	£23	Agree
19(h)	Annual fee payable by premises licence holder	£740	£1,050*	Agree
19(i)	Application for the grant of a certificate	£2,400	£635*	Agree
19(j)	Application to vary a certificate	£2,400	£635*	Agree
19(k)	Annual fee payable by club premises certificate holder	£720	£350*	Agree
19(l)	Application for grant or renewal of a personal licence	£114	£37	Agree
<b>Other processes under the 2003 act</b>				
19(m)	Application to replace stolen, lost etc. premises licence	£46	£10.50	Agree
19(n)	Notification of change of name or address of premises licence holder	£46	£10.50	Agree
19(o)	Application for minor variation of a licence	£244	£89	Agree



19(p)	Application to replace stolen, lost etc. certificate	£46	£10.50	Agree
19(q)	Notification of change of name or change of rules of club	£46	£10.50	Agree
19(r)	Notification of change address of club	£46	£10.50	Agree
19(s)	Application to replace stolen, lost etc. temporary event notice	£38	£10.50	Agree
19(t)	Application to replace stolen, lost etc. personal licence	£59	£10.50	Agree
19(u)	Notification of change of name or address of personal licence holder	£59	£10.50	Agree
19(v)	Notification of interest of freeholder etc. in premises	£50	£21	Agree

\*Denotes current maximum fee, where fee level is variable

### Consultation Question 20:

Do you have any other comments on the proposed cap levels?

- No other comments

### Consultation Question 21

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

- Agree

### Consultation Question 22

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

- Hearings for TENs are relatively rare and are usually an admin procedure only, £100 should cover costs.

## **Licensing authority costs, transparency, consultation with fee payers and guidance on setting fees**

### **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
- 23b Publish the basis on which they have been calculated?
  - Agree
- 23c Publish the measures they have taken to keep costs down?
  - Agree
- 23d Invite comments from interested parties?
  - Agree

### **Consultation Question 24**

What practical steps can licensing authorities take to secure efficiency?

- The licensing authorities in Worcestershire have already taken steps to secure efficiency by bringing together their licensing functions which are delivered by a shared service “WRS”
- Mediation is always attempted to avoid unnecessary costs from hearings and reviews.

### **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
  
- 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. (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)
  - Agree

### **Consultation Question 26**

Do you think that there are other activities that may present a particular risk of excessive costs or gold-plating?

- No

## **A single national payment date for annual fees**

### **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

## **Impact assessment**

### **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