

Committee(s)	Dated:
Licensing	1 February 2017
Subject: Gambling Act – Annual Review of Fees 2017/18	Public
Report of: Director of Markets and Consumer Protection	For Decision
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Summary

The City of London Corporation has to set annual fees for those premises requiring a licence under the Gambling Act 2005. The report outlines current case law which has indicated that the process for setting the fees must be robust and that income received through the licensing process cannot exceed the cost of obtaining that income.

The matters considered by the licensing service in setting the proposed fees are discussed and include all aspects within the licensing process.

The proposed fees will result in a similar income compared with previous years. Some fees have been increased due primarily to slight increases in staff costs.

Recommendation(s)

Members are asked to:

- Agree the proposed fees for 2017/18 as set out in Appendix 1 (column five).

Main Report

Background

1. The Gambling (Premises Licence Fees) (England and Wales) Regulations 2007 (the 'Regulations') sets out the statutory provisions and limitations for setting gambling fees.
2. The City of London Licensing Authority must determine the appropriate fees subject to a maximum as set out in the schedule to the regulations. The fee structure allows for various types of applications associated with varying classes of premises licence, many of which do not currently apply within the City of

London e.g. Casinos, bingo Halls. The maximum fees can be seen in Appendix 1, column 4.

3. Licences are valid for life from the date of grant unless surrendered or revoked. An annual fee is due for payment within thirty days of the licence issue (effective date) and then annually thereafter.
4. Section 212 of the Gambling Act 2005 states that the licensing authority, ‘...shall aim to ensure that the income from fees of that kind [*determined by the licensing authority*] as nearly as possible equates to the costs of providing the service to which the fee relates...’.
5. A High Court case held on 16 May 2012 (*R (Hemming and Others) v Westminster City Council*) concluded that the amount of the fee is required to be determined every year and further that a local authority was precluded from making a profit from the licensing regime. A full account of the fee income and expenditure would therefore need to be considered to ensure a surplus is not being made. The decision was subsequently upheld by the Court of Appeal.
6. Mr Justice Keith stated in the case ‘... [*in relation to*] the steps which an applicant for a licence has to take if he wishes to be granted a licence or to have his licence renewed. And when you talk about the cost of those procedures, you are talking about the administrative costs involved, and the costs of vetting the applicants (in the case of applications for a licence) and the costs of investigating their compliance with the terms of their licence (in the case of applications for the renewal of a licence). There is simply no room for the costs of the ‘authorisation procedures’ to include costs which are significantly in excess of those costs.’
7. The Supreme Court heard an appeal on 29 April 2015 and decided that licensing schemes which required the applicant to pay a fee covering the administrative costs of the application at the time the application is made and, in the event that the application is granted, a further fee to cover the costs of enforcing the licensing scheme did not fall foul of the Provision of Services Regulations 2009. Furthermore, the Supreme Court rejected Mr Justice Keith’s view that enforcement costs cannot be recouped. In delivering the judgement of the Supreme Court, Lord Mance stated ... “ there is no reason why it (*the fee*) should not be set at a level enabling the authority to recover from licensed operators the full cost of running and enforcing the licensing scheme, including the costs of enforcement and proceedings against those operating ... establishments without licences.”
8. The decision of the Supreme Court was upheld by the European Court of Justice in November 2016.

Calculation of Fees for 2017/18

9. In order to avoid possible complications arising from non-compliance with the Hemming decision, the licensing service has carried out an in-depth examination of the processes that are undertaken in order to administer the

licence application/renewal and the costs of investigating compliance with any licence conditions.

10. In determining the proposed fee structure for gambling premises licences the following factors have been taken into account:

- Officer time spent on processing applications including site inspections and the issue of any licence
- Officer time spent on the development and maintenance of processes and guidance notes
- Training of staff as necessary
- A proportion of the service costs such as accommodation, equipment and central recharges
- Officer time spent on inspections of licensed premises to ensure compliance with terms and conditions of any licence

A further breakdown of those factors taken into account in the calculation of fees can be seen as Appendix 2.

11. Gambling fees for 2017/18 have been calculated on the above basis for each of a number of different types of licence. Proposed fees have either remained the same or increased slightly. The primary reason for the increase is changes to staffing costs. Proposed fees can be seen as Appendix 1, column 5.

12. The forecast number of applications for each type can be seen in the table below along with the number of licences/registrations that were actually granted in previous years.

	2015/16		2016/17		2017/18
	Forecast	Actual	Forecast	Actual	Forecast
New Betting Shop	1	0	1	1	1
Annual fee (renewal)	39	39	39	38	38
Variation Betting Shop	0	1	1	1	1
Transfer	0	0	0	0	2
Gaming machine permits	20	19	19	21	22

Proposals/Options

13. If fees are set lower than those recommended the result will be a deficit for 2017/18 as costs of administering the licence will not be fully met from income received.
14. Fees set higher than those recommended will result in a surplus i.e. an income which exceeds the cost of providing the service.
15. Any such under or over recovery of costs from 2017/18 will be calculated after the end of that financial year and will be carried forward to be taken into consideration in setting fees for 2019/20. The surplus or deficit on each fee type from 2015/16 has been taken into account when setting the fees for 2017/18. Ignoring a surplus or deficit could result in the City Corporation being subject to legal challenge.

Corporate & Strategic Implications

16. The proposals within this report meet the statutory requirement to set fees for the licensing of activities within the Gambling Act 2005, as they apply to the City of London Corporation.

Implications

17. Setting the recommended fees will result in Gambling licence estimated income for 2017/18 of £25,420, against a budgeted income of £26,000.
18. Setting fees above or below those recommended will have the implications as set out in paragraph 15 above.

Appendices

- Appendix 1 – Proposed Fees for 2017/18 and list of maximum fees
- Appendix 2 – Factors taken into account when calculating Fees.

Background Papers

None

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