

LICENSING COMMITTEE – 22 JANUARY 2009

GAMBLING ACT 2005 – FEES AND CHARGES FOR 2009 - 2010

Report of the: Community and Planning Services Director

Status: For Decision

Executive Summary: This report sets out details of the proposed fees the proposed Gambling Act 2005 for the year 1 April 2009 until 31 March 2010 (Appendix A).

The Gambling Act fees were first set at the Licensing Committee on 30 May 2007, (with the same fee model being used to work out the proposed fee for the forthcoming year using a 2.5% inflation factor).

There are currently eight Betting premises within the District that will be affected by the new proposed fee increases.

This report supports the Key Aim of safe communities

Portfolio Holder Cllr. Loney

Head of Service Head of Environmental and Operational Services – Mr Richard Wilson

Recommendation: It be RESOLVED that the Gambling Act 2005 fees for 2009/10 as set out in Appendix A of the report be approved.

Background

- 1 The Gambling Act 2005 Section 212 gives the Secretary of State power to make regulations prescribing the fees payable to the licensing authority. It also gives him the power to devolve to Licensing Authorities in England and Wales the freedom to set fees for premises licence applications, subject to any constraints the Secretary of State may prescribe. The government has decided that for England and Wales, licensing authorities will determine their own fees for gambling premises licences but that the Secretary of State will prescribe the maximum fee payable for each category of licence.
- 2 After consulting widely and obtaining and considering information from licensing authorities and the gambling industry, the Department for Culture, Media and Sport (DCMS) has prescribed maximum fees for each type of premises and each type of application for which a fee is payable. The maximum levels have been included in Appendix A in brackets for comparison purposes.
- 3 Details of the current Gambling Act 2005 fees are detailed in Appendix B

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- 4 There will be an initial fee to cover the cost of application and an annual “maintenance” fee.
- 5 The DCMS has asked Licensing Authorities to set fees to ensure full cost recovery and that the fee levels represent fairness and value for money for the gambling industry. All Licensing Authorities must set their fees upon a cost recovery basis only (Gambling Act Section 212 (2)(d)) and will be required to review their fee levels on an annual basis to ensure this

Introduction

- 6 The Local Authorities Coordinators of Regulatory Services (LACORS) has published a fees toolkit to assist local authorities in compiling the fee levels and has advised authorities that it believes trade bodies of gambling premises will be undertaking judicial review proceedings against authorities which it believes are not setting their fees on the basis of cost-recovery.
- 7 Fees must be set for all types of premises licences and Temporary Use Notices.

Premises type

- Casinos
 - Bingo
 - Betting (off-course)
 - Tracks (on-course betting)
 - Adult Gaming Centres
 - Family Entertainment Centres
- 8 The fees must be determined for the different classes of premises as set out in the fees regulations (See Gambling Act 2005 Section 212(2)(b) and SI 2007 / 479 paragraph 3) and cannot be based, for example, upon premises size, rateable value, etc.
 - 9 Fees must be set by each licensing authority for the following:
 - Application fee for fast-track applications (transitional applications only)
 - Application fee for non fast-track applications (transitional applications only)
 - Application for (new) premises licence
 - Application to vary a premises licence
 - Application to transfer the licence (Sections 188 and 189)

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- Application for re-instatement of the premises licence (Sections 195 & 196)
- Application for a provisional statement
- Application for a premises licence for a premises which already has a provisional statement
- Fee to accompany a request for a copy of the premises licence (Sections 190)
- Fee to accompany a notification of change of circumstances (only relevant change is that of address - Section 186)
- Fee to accompany a temporary use notice (Section 219)

Fees and Income

- 10 The fees have been calculated by examining the time taken to carry out the various tasks and who in the authority is likely to carry them out. The hourly rates of staff, including on costs for various members of staff, were provided by this Council's Finance Team. Then these hourly rates are fed in to a spreadsheet produced by the DCMS to calculate costs for each type of activity. For each application the processes involved are identified and the costs of each process are calculated and entered in to the spreadsheet provided by LACORS, which produces an average cost for each type of application and an annual fee.
- 11 The type of tasks involved in premises application include for example, assistance to applicant (pre-application stage, including telephone advice, sending forms, etc), the validation of an application when received, checking all required documents are attached, processing the application fee, check, process, bank and reconcile payments, entering the information into our computer system (including scanning if appropriate), contacting the applicant to clarify application or obtain missing information if required, assess representations for relevance, undertake informal mediation, undertaking site visits where necessary, checking operating licence once issued, determining the licence, arranging a hearing, holding a hearing, notification of the decision, prepare and issue the licence, update the records/register (including the notification to the Gambling Commission), appeal preparation and holding an appeal hearing.
- 12 The costs associated with appeals and hearings have been estimated and a forecast has been made as to the likelihood of these events occurring are entered into the final calculations. The risk of appeals and hearings occurring has been based on assumptions gathered through training on the Gambling Act 2005 and from the authority's experience of the frequency of hearings and appeals under the Licensing Act 2003.

Key Implications

Financial

- 15 The current number of premises that will be subject to Gambling Act 2005 fees is eight betting shops, for which annual fees will generate £3,520 (8 x £440) of income to this Council.

Legal, Human Rights etc.

- 16 Should parts of industry believe the authority's fees are at a level which is greater than the costs of the statutory functions then it would be open to them to undertake judicial review proceedings. Should this arise, the authority would need to evidence how it arrived at the fee levels to demonstrate that they have been calculated on a cost recovery basis only.

Equality

- 17 Equality is not affected by the setting of the Gambling Act 2005 fees.

Risk Assessment Statement

- 18 The process of setting the proposed fees for premises licence fees for premises used for gambling is essential to ensure that operational costs are recovered and if no decision is taken, the Council budgetary objectives are unlikely to be met.
- 19 Should parts of industry believe the authority's fees are at a level which is greater than the costs of the statutory functions then it would be open to them to undertake judicial review proceedings. Should this arise, the authority would need to evidence how it arrived at the fee levels to demonstrate that they have been calculated on a cost recovery basis only.
- 20 Case law relating to fee levels in various licensing areas has agreed a general principle that licensing fees should not be used as a method of creating revenue and so setting a fee level that would result in an excess of revenue would leave the authority open to legal challenge.
- 21 LACORS is currently exploring what action it is appropriate for local authorities to take each year should they discover that they have either over or under-charged at the fee levels set. It has been suggested that the annual fees should be raised / reduced to reflect the over / under charge.

Sources of Information:

Licensing Committee 30 May 2007 and 17 March 2008 – (Setting of fees for Gambling Act 2005)

<http://www.culture.gov.uk>

<http://www.gamblingcommission.gov.uk>

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