

**EXECUTIVE NOTE TO
THE LICENSING (FEES) (SCOTLAND) REGULATIONS
2007 (SSI 2007/ 553)**

The above instrument was made in exercise of the powers conferred by sections 136(1) and (2) and 146(2) of the Licensing (Scotland) Act 2005. The instrument is subject to negative resolution procedure.

Policy Objectives

The purpose of the instrument is to provide for the fees to be charged by Licensing Boards in relation to various matters under the Licensing (Scotland) Act 2005. The instrument employs a variety of methods - flat-rate fees for personal licences, minor variations, occasional licenses and applications for extended hours; a capped range of fee values tied to the rateable value of a property for premises licence applications, annual fees, and provisional licence confirmations. It further allows Licensing Boards to set various fees in relation to more routine processes carried out under the Act. This approach is designed to ensure the right balance is achieved between consistency across Scotland, proportionality relative to the size of the premises, and flexibility for each Licensing Board to ensure they can fully meet their running costs from fee income.

Consultation

The Scottish Government undertook a public consultation from June to September 2007, receiving responses from all the main licensing stakeholders, Licensing Boards and others. The Regulations have been prepared following consideration of these responses.

Financial Effects

Personal Licences

The basis for calculating the fee to be paid on application for a personal licence is the cost of administrative time and resource that will be used in processing the application and producing the licence. This will be charged at £50 and the licence will ordinarily remain valid for 10 years. This cost will fall on the individuals applying for a personal licence or the company they work for. Each premises will require to have a premises manager and the premises manager must hold a personal licence. This means that the cost to each business will be £50. Some businesses may choose to have more than one personal licence holder.

Premises Licences

The method of determining the fees payable with an application for a premises licence is based on the rateable value of the premises. This fulfils the needs for the system to be simple, and, broadly speaking, ensures that businesses which will take up more of the Licensing Boards' time and resources in processing applications pay more than smaller premises.

There is a view that some premises with a high rateable value but which only generate a small proportion of their income from alcohol sales are disproportionately affected by these proposals. The independent research which formed the basis of the Government's consideration of fee arrangements accepts that this is possible but concludes that the overall benefits of the system chosen far outweigh the disadvantages.

The research shows that the vast majority of premises (82%) fall into the lowest 3 rateable value categories. Within that, 51% of premises will fall into either category 1 or 2 and will therefore pay application fees up to £200 or up to £800 respectively, and annual fees of up to £180 or up to £220 respectively. It is important to note that category 1 contains premises (as set out in regulation 4) which are to be included in the lowest category regardless of their rateable value. For example, registered clubs are automatically included in the lowest category, along with visitor attractions and Bed and Breakfast type establishments where alcohol is only available to guests. This approach is considered proportionate and equitable. Only the largest premises, for example large supermarkets, are likely to fall into the highest category.

The application fees are capped at a higher level than the annual fee because, as the research points out, the costs of processing an application are likely to be higher than the ongoing costs of monitoring compliance with the new licensing system and the running costs of Boards after completion of the transition period.

The Regulations provide that the annual fee levels quoted are to be the *maximum* amounts chargeable – there is an expectation that Licensing Boards may require to charge at or close to the full fees quoted to cover their costs initially (as anticipated by the research report), but thereafter may begin to benefit from the efficiencies of the new system and be able to pass these savings on to the trade.

Other fees

The Regulations also cover several other fees payable in relation to certain activities under the Act. These fees are intended to meet the costs of carrying out straightforward administrative processes under the Act, for example, replacing a licence that has been lost. The costs incurred by businesses will depend on how often they make such applications to the Board but we do not expect these costs to be high.

Savings

It is expected that there will be savings to business from the removal of certain renewals required under the current licensing system, in particular:-

- removal of licence renewals every 3 years (£86)
- removal of need to obtain a regular annual extension to hours (£86); and
- removal of need to obtain a children's certificate (£86)

Regulatory Impact Assessment

Title of proposal

1. The Licensing (Fees) (Scotland) Regulations 2007

Purpose and intended effect

(i) Policy objective

2. The purpose of the SSI is to prescribe the framework of fees in relation to the Licensing (Scotland) Act 2005.
3. The SSI will come into force on 1 February 2008.

(ii) Background

4. The Licensing (Scotland) Act 2005 represents a major overhaul of the alcohol licensing system. In relation to fees, the Act allows Ministers to make provision for the fee levels to be charged by Licensing Boards. Latterly around 63% of the total costs incurred by the Licensing Boards have been covered by income from fees paid by the licensed trade. It is the Government's intention that fee levels for the new licensing regime should be set at a level which fully meets Boards' costs.

5. The Regulations propose that certain fees such as that for a Personal Licence Application should be at a flat rate, regardless of the area in which the applicant resides, or the Licensing Board to which an application is made. For other licence fees, notably the premises licence, the draft Regulations propose that the fee level should be set at the discretion of the Licensing Board but within a range determined by the rateable value of the premises concerned and up to a maximum set by Ministers. Some exceptions to this rule are proposed.

6. The fee charging system proposed reflects both the research carried out for the Scottish Executive ("Licensing (Scotland) Bill 2005: Proposal and Analysis of Fee Charging Options") and the responses received to our consultation on fees. The research was shaped by the aim of the Licensing (Scotland) Act 2005 to provide a system which creates 100% coverage of Licensing Board costs, promotes equal treatment of fees across Scotland, and does not create a disproportionate burden on smaller business and clubs. The information which formed the basis of the report was comprehensive with all but one local authority providing information on their costs. The consultation responses received from local authorities indicated uniformly that the proposed fees were below the level required.

(iii) Rationale for Government Intervention

7. Failure to fully provide for the costs to Licensing Boards of implementing the new regime risks undermining the objectives of the Licensing Act by leaving important innovations such as Licensing Standards Officers (LSO's) under-funded. The absence of any fees, or fees at too low a level, would create a funding gap that

would need to be met from other local authority budgets to the detriment of other public services.

8. A centrally-set fee regime would lead to some local authorities collecting more than their required costs while other local authorities would be underfunded.

Consultation

9. A formal consultation was carried out on the draft Regulations and partial RIA between June and September 2006. The results of the consultation have informed revisions made to the Regulations.

Options

10. The following options were considered.

10.1 Option 1 – Not make Regulations and allow Licensing Boards to set their own licence fee levels. This would allow the maximum flexibility to Boards to cater for local priorities, although might expose board decisions to legal challenge on the grounds of unreasonableness.

10.2 Option 2 - Set a framework centrally, with a combination of flat fee levels for some licences types but fee ranges graduated by rateable value of property for others, within which Licensing Boards can choose a fee level appropriate. The fee levels chosen reflect the input of Licensing Boards during the consultation process which indicated that the levels calculated were insufficient by between 50-100%. This is the approach adopted by these Regulations.

Benefits

11. Option 1 would be preferred by Licensing Boards as it allows them maximum flexibility to meet local priorities and to apply appropriate fees as they see fit to different premises. This would allow Boards to plan effectively for the administrative requirements of the new Act, and for local authorities to recruit as many of the new Licensing Standards Officers as needed for effective enforcement.

12. Option 2 combines the benefits of a uniform central approach with a flexible local approach. Boards will be able to calculate how much income is required for their administrative processes and charge accordingly but only up to a specified maximum and, per Article 13 of the Regulations, with an emphasis that the income be broadly in line with costs incurred administering the Act. This should ensure full cost recovery but with an element of consistency across the country.

13. As both options anticipate full funding of the new system, there will be a benefit to the public at large from the increased and dedicated supervision of licensed premises by Licensing Standards Officers. The introduction of Licensing Standards Officers should also benefit the licensed trade if it helps to discourage breaches of

licence conditions, or premises operating without a licence, which provides an unfair advantage over those which are law-abiding and well run.

Costs

Personal Licences

14. Option 1 – no clear alternative submitted by Licensing Boards: suggestions ranged from a substantially higher fee to the same initial fee accompanied by an annual retention fee.

15. Option 2 – The basis for calculating the proposed fee to be paid on application for a personal licence is the cost of administrative time and resource that will be used in processing the application and producing the licence. This will be charged at £50. A further fee will be payable after 10 years if the individual wishes to retain their licence. This is slightly higher than the £42 suggested in the fees research but constitutes a more rational figure. Consultation responses from Licensing Boards generally suggested a much higher figure but it is not the policy intention to “price employees out of the market”.

Premises Licences

16. Option 1 - Licensing Boards responding to the consultation were generally happy with the rateable value model but felt the levels suggested as maxima were inadequate.

17. Option 2 - The proposed method of determining the fees payable with an application for a premises licence is based on the rateable value of the premises. This fulfils the needs for the system to be simple, and, broadly speaking, ensures that businesses which take up more of the licensing board’s time and resources pay more. Rateable values:

- are an indicator of business size/turnover
- take into account the location of the business
- are reviewed regularly
- are a known quantity.

18. There is a view that some premises with a high rateable value but which only generate a small proportion of their income from alcohol sales may be disproportionately affected by these proposals. The research accepts that this is possible but concludes that the overall benefits of the system chosen far outweigh the disadvantages.

19. The research shows that the vast majority of premises (82%) fall into the lowest 3 rateable value categories. Within that, 51% of premises will fall into either category 1 or 2 and will therefore pay application fees up to £200 or £800 and annual fees of up to £180 or £220. It is important to note that category 1 contains premises (as set out in regulation 4) which are to be included in the lowest category regardless of their rateable value. For example, registered clubs are automatically included in the lowest category, along with visitor attractions only offering an off-sales facility and

Bed and Breakfast type establishments where alcohol is only available to guests. This approach is considered proportionate and equitable. In the case of registered clubs, it stems from a recommendation in the research report.

20. The maximum fees proposed are set out the Regulations and can be summarised as follows:-

Fig. 1

Proposed Rateable Value Categories					
Cat. 1	Cat. 2	Cat. 3	Cat. 4	Cat. 5	Cat. 6
*as laid out in regulation 4	£1- £11,500	£11,501- £35,000	£35,001- £70,000	£70,001- £140,000	Over £140,000

Fig. 2

Maximum Fees for New Applications for Premises Licenses					
Cat. 1	Cat. 2	Cat. 3	Cat. 4	Cat. 5	Cat. 6
£200	£800	£1,100	£1,300	£1,700	£2,000

Fig. 3

Maximum Annual Fees for Premises Licenses					
Cat. 1	Cat. 2	Cat. 3	Cat. 4	Cat. 5	Cat. 6
£180	£220	£280	£300	£700	£900

21. The application fee range is capped at a higher level than the annual fee range because, as the research points out, the costs of processing an application are likely to be higher than the ongoing costs of monitoring compliance with the new licensing system and the running costs of Boards after completion of the transition period.

22. The draft Regulations provide that the annual fee levels shown above are to be the *maximum* amounts chargeable – there is an expectation that Licensing Boards may require to charge at or close to the full fees shown above to cover their costs initially, (as anticipated by the research report) but thereafter may begin to benefit from the efficiencies of the new system and be able to pass these savings on to the trade.

Provisional Licences

23. Option 1 – The majority of consultation responses indicated that the suggested amounts of £160 for a provisional licence and £34 for confirmation of that licence were unreasonably low without suggesting an alternative, other than the existing amounts.

24. Option 2 – After consideration of the consultation responses, it was decided that the fees charged in this respect should more closely resemble the premises licence application and annual fees given their close similarity. In addition, one of the consultation responses advised that the majority of new licences granted in that area were by way of provisional licence followed by grant of finality, which would defeat the aim of the Regulations to create full cost recovery if the fee was left at the original level consulted upon.

25. The fees are now to consist of an initial fee of £200 for the provisional licence, followed, at confirmation, by the balance of the fee which would have been due had the premises applied for a premises licence and been charged the appropriate application fee for its rateable value band. This will eliminate any disparity where the majority of new applications are by way of confirmation of provisional licence rather than new application.

Other fees

26. The Regulations also propose several other fees payable in relation to certain activities under the Act: the fee levels will be at either a flat rate or left to the discretion of the Board. The effect of these fees on business will depend upon how many times a business requires the licensing board to consider various issues, for example, how many times it chooses to apply for an occasional licence. The fees proposed are considered reasonable to meet the costs that Licensing Boards will incur in dealing with these applications and requests.

Savings

27. It is expected that there will be savings to business from the removal of certain renewals required under the current licensing system, in particular:-

- removal of licence renewals every 3 years (£86)
- removal of need to obtain a regular annual extension to hours (£86); and
- removal of need to obtain a children's certificate (£86)

Small/Micro firms impact test

28. The use of rateable values as a determinant of fee level is specifically designed to make the fee proportionate to the size of the business. Small businesses will also tend to have less personal licence holders per premises, minimising the cost arising from personal licence applications and renewals of these licences 10 years thereafter.

Test run of business forms

29. There are no new business forms associated with the charging of fees under these Regulations.

Competition Assessment

30. Since both new and existing premises will have to go through the same process and pay the same fees, the Regulations will not be more detrimental to one premises over another and can be considered competition neutral in that respect. As the fees are scaled by business premises' rateable value, which is closely related to business size, it is not thought that there will be a disproportionate effect on either large or small businesses and the cost of the proposed fees will, in any event, be small compared to the turnover of the business.

Enforcements, sanctions and monitoring

31. The need for the owners of a premises to pay the application fee is immediate, in that the application will not be processed unless the fee is included. This also applies to personal licences.

32. The requirement to pay the annual premises fee is set out in both regulation 7(1) of the SSI and in schedule 3, paragraph 10 of the Licensing (Scotland) Act 2005. The latter provision ensures that the requirement to pay the annual fee is a mandatory condition of the licence and failure to comply will be dealt with by Licensing Boards in the same way as any other breach of conditions. Sanctions available include the suspension or revocation of the licence.

Post-implementation review

33. The Government retains the ability to review the fee levels as it considers appropriate and will do so in consultation with Licensing Boards and the licensed trade. As a further measure, the Government intends that the Accounts Commission should examine the fee levels set by Boards compared to their running costs after the Act has come fully into force – this will ensure that Article 13 of the Regulations is observed.

Summary and recommendation

34. The Executive considers that the Regulations seek to cover the full costs of administration connected to the new system introduced by the Licensing (Scotland) Act 2005 with fee levels which are appropriate to the businesses concerned. It is considered that the Regulations are proportionate to the risks involved. It is recommended that the SSI be implemented as described.

Declaration

35. I have read the Regulatory Impact Assessment and am satisfied that the benefits justify the costs.

Signed

Date December 2007

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