

Locally set licensing fees... or not?

David Clifton, director of Clifton Davies Consultancy Limited, passes on comments on the proposal to allow licensing authorities to set their own fees

The Home Office public consultation on a move from centrally-set to locally-set fees under the Licensing Act 2003 ended on 10 April. Cynics might think the government's response is a foregone conclusion and that we can now expect licensing fees to rise in England and Wales, subject in each case to a cap so that, for example, the maximum fee for applying for a new premises licence or for variation of an existing licence will rise to an all-time high of £2,400; the maximum fee for applying for a minor variation will rise to £244 (from the present fixed fee of £89); the maximum fee for applying to vary a DPS will more than quadruple to £105; and the maximum fee for a personal licence holder to notify a change of address will soar more than five times over to £59.

The suggested change to what the government calls a "proportionate system of fees" has been driven by concerns of significant financial deficits from some licensing authorities. Essential considerations include:

- Provisions in the Police Reform and Social Responsibility Act 2011 enable locally-set fees based on recovery of the costs that licensing authorities incur in carrying out their licensing functions.
- According to the Home Office, costs vary "for legitimate reasons" in different areas.
- Locally-set fees cannot be used to raise extra revenue, nor are they tools to tackle crime (although EMROs and late night levies are).
- They must be set transparently and be based on evidence and the Home Office proposes introducing caps on the level of each fee as mentioned above.

On 25 March I went to a Home Office workshop on this subject in London. With attendance from a mix of local authority officers, major leisure and pub companies and a small number of

fellow licensing lawyers and practitioners, one might have expected considerable argument to ensue. What was surprising was the level of agreement reached and it will now be interesting to see if the Home Office abandons the principle of locally set fees in the same way that it has recently abandoned proposals to abolish personal licences.

With levels of gambling licensing fees used as an example, there was a general concern that setting a cap on maximum fee levels might result in some councils being unable to avoid the temptation to set local fees at, or very close to, the maximum permitted, regardless of the requirement that they be calculated on a cost-recovery basis.

Despite LGA guidance on locally set fees, local authority officers generally seemed reluctant to support the principle of inviting comments on proposed locally set fee levels and publishing measures they have taken to keep fees down, fearing judicial challenges from operators. Problems were also foreseen in setting variable fees dependent on whether premises are open late and/or used primarily for drinking.

Where a difference of views did exist was on the suggestion of a single national payment date for annual fees – in general terms, industry for, local authorities against.

In my view, as was decided in Scotland, the best course is the retention of centrally set licensing fees linked to rateable values, with perhaps some modest increase from existing fee amounts to reflect

the fact that licensing fee levels have remained unchanged since they were set in 2005. To offset the cost of such an increase, the government should revisit its July 2013 decision not to abolish the requirement for notice of licensing applications to be published in local newspapers.

Then again, pigs might fly. 



Clifton Davies Consultancy Ltd



Clifton Davies Consultancy Limited is a consultancy business (not a law firm) which specialises in all licensing, gambling and regulatory issues affecting the pub and bar industry. David Clifton and Suzanne Davies are also consultants to Joelson Wilson LLP. The views expressed are given without any assumption of responsibility on their part. If you have any questions, do get in touch and they will be pleased to provide answers, either via this page or direct.

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Questions & Answers



Q: I read that the government has decided not to abolish personal licences. Does that mean that they will still have to be renewed every 10 years or are there going to be any changes?

A: The government's proposal to abolish the requirement to renew a personal licence every 10 years is being implemented via the Deregulation Bill that is currently before Parliament. Suggestions for other changes made by respondents to the personal licence consultation included the introduction of a personal licence holder national database, ensuring that a trained personal licence holder was on the premises at all times; new powers to enable licensing authorities to remove personal licences from holders; and the introduction of tiered training accreditation schemes. However, the government has no current plans to take these suggestions forward.

Q: What are the new national minimum wage levels and when will they come into force?

A: With effect from 1 October 2014, the adult rate will increase from £6.31 to £6.50 and for 18 to 20 year olds it will increase from £5.00 to £5.13.

Q: I have real problems with some customers pre-loading before they come to my pub. What's happened to the proposed ban on the sale of alcohol below the cost of duty plus VAT?

A: As I write this, the change is due to be brought into effect by the introduction of a new mandatory licence condition on 6 April 2014. You can read more about it in Home Office guidance recently published on gov.uk, which includes a duty plus VAT permitted price calculator designed to assist in calculating the "permitted price" in order to avoid any breach of the new condition.