



Subject:	Review of Licence Fees for Street Trading
Date:	15th June, 2016
Reporting Officer:	Stephen Hewitt, Building Control Manager, Ext 2435
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Is this report restricted?	Yes <input type="checkbox"/>	No <input checked="" type="checkbox"/>
Is the decision eligible for Call-in?	Yes <input checked="" type="checkbox"/>	No <input type="checkbox"/>

1.0	Purpose of Report/Summary of main Issues
1.1	<p>Section 15 of the Street Trading Act (NI) 2001 (the Act) gives the Council the power to set sufficient fees to allow it to recover the full costs of administering the Street Trading Licence Scheme. The Act, prescribes the range of circumstances in which the Council may charge a fee:</p> <ol style="list-style-type: none">1. For the grant or renewal of a Street Trading Licence;2. For the grant of a Temporary Licence; and3. For varying the conditions on a Licence at the request of the licence holder.
1.2	<p>The Act also limits the maximum amount of the fee to that required to cover the Council's costs in administering the scheme. The Council is, therefore, denied the right to use the Street Trading Licensing system to raise revenue.</p> <p><u>Hemming v Westminster Case</u></p>
1.3	<p>Members may be aware of the recent case involving Hemming v Westminster City Council. The case was determined on 29th April 2015 in the UK Supreme Court who delivered judgment, in what was a significant case for regulators and the regulation of licensing or other similar regulatory regimes. The introduction of the EU Services Directive 2006 changed the basis upon which fees for certain licences and permissions could be charged by the issuing authorities which are, in the main, local authorities.</p>
1.4	<p>The Supreme Court ruled that licensing authorities are entitled under the Local Government (Miscellaneous Provisions) Act 1982 to impose fees for the grant or renewal of licences covering the running and enforcement costs of the licensing scheme. The Supreme Court therefore ruled that the <i>type</i> of costs Westminster included within its licences fee were legitimate. It referred the issue of <i>how</i> the charges were levied to the European Court of Justice. The Court identified two different approaches to charging fees:</p>

	<ol style="list-style-type: none"> 1. Whereby a council charged a fee upon application (covering the costs of authorisation procedures) and a subsequent fee to successful applicants (covering the cost of administering and enforcing the framework) - the 'type A' approach, or 2. Where a council charged a single fee on application covering all costs, on the basis that the relevant proportion of the fee would be refunded to unsuccessful applicants – the 'type B' approach. <p>1.5 The Court found the type A approach of charging two fees is permissible under the Services Directive but felt that the type B approach of charging a single fee was more problematic. The Court felt that it remained unclear whether including all costs upfront involved in law a charge incurred from the application, which is contrary to the Services Directive. The Court suggested that a charge could possibly include borrowing or loss of interest during the period in which the application was considered, but noted that the Hemming legal team had not provided any evidence of such costs.</p> <p><u>Procedure for fee setting</u></p> <p>1.6 The Act states the procedures which the Council must follow in setting the fees and these stages may be summarised as follows:</p> <ol style="list-style-type: none"> 1. The Council is to give notice of the proposed fees to licence holders and to publish a notice in two or more newspapers showing how the fees have been calculated. 2. The Council is required to consider any written representations concerning the proposed fees and charges. 3. Furthermore, the Act allows the Council to determine the time and manner in which fees or charges are to be paid. <p>1.7 However, as a prerequisite, Members need to determine the proposed level of fee, which will allow the Council to start the statutory process for setting the fee as per stage one above.</p> <p>1.8 As we progress with the proposed changes, further reports will be brought before the Committee detailing the outcome of the process of consultation. At that stage, Members will be able to determine the final fee you consider appropriate.</p> <p>1.9 The EU Services Directive, the Provision of Services Regulation 2009 and the Hemming case, have provided clarity about the specific requirements that apply to the charging of fees. Charges must be reasonable and proportionate to the cost of the processes associated with a licensing scheme and councils must not use fees to make a profit or act as an economic deterrent to certain business types from operating within an area.</p>
2.0	Recommendations
2.1	<p>Members are asked to:</p> <ol style="list-style-type: none"> 1. approve and authorise the proposed fees for publication and commence consultation with licence holders.

	<p>2. agree to remove the 5% discount for full payment and for Direct Debit.</p> <p>3. agree that, after 3 defaults in payment, the licence be referred to Committee for consideration of revocation.</p> <p>4. agree to recover from the licence holders the full costs associated with the removal of street trading receptacles (Stalls and Vehicles).</p>
2.2	Members are asked to note if full cost recovery is not achieved then this will have a direct impact on the district rate and would need to be referred to SP&R Committee.
2.3	Members are advised that the Licensing Committee does not have delegated powers in relation to policy decisions concerning licensing matters and as such your recommendation as to the appropriate fees for Pavement Cafe Licences will be subject to ratification by Council.
3.0	Main report
	<u>Key Issues</u>
3.1	The current Street Trading Licence fees were set in 2002. In the intervening time period, the Council has processed numerous licence applications and dealt with any associated licence holder queries. This has allowed the Service to have a better understanding of what it costs to administer the licence scheme.
3.2	Within that intervening time period, costs associated with an application and licence compliance have also increased such as those relating to salary, employer's National Insurance contributions, superannuation contributions, etc.
3.3	The process for administration and regulation of the various types of licences has been examined and the time allocated to each task has been reviewed.
3.4	In assessing our processes for both Stationary and Mobile Licences it has been determined that both types of licence cost an identical amount for licence compliance. The cost for a Stationary Licence application or for the renewal of a Mobile Licence application to be processed are also identical; the only major difference between the licence types is in the cost of a new Mobile Licence application which requires consultation with Transport N.I. and the PSNI.
3.5	It is therefore recommended that, instead of having separate fees for both types of licence, a new combined fee structure is introduced.
3.6	Temporary Licences were extensively examined and in particular the amount of work that is required to process and ensure licence compliance. Given the nature of a Temporary Licence, it is normally granted for 1 day for a one off event, a daily charge is therefore applied. However, a Temporary Licence can be granted for up to 7 consecutive days and the trader will have been charged for seven compliance visits even though a compliance visit has not taken place every day.
3.7	To rectify the situation, it is proposed that there will be an application fee and a single charge for a Temporary Licence whether it is for 1 day or 7 days.
3.8	The amount of work required for processing a Temporary Licence application is the same as the other types of licences; hence the cost of a Temporary Licence application is identical.

- 3.9** The revised licence fees reflect the changes the Service consider are required and will make it easier for all parties involved to understand, namely the respective applicants.
- 3.10** The detailed costs of the revised licence fees are attached at Appendix 1.
- 3.11** Additionally, for Members reference and comparison with the revised fees, a copy of the current licence fees is attached at Appendix 2.
- 3.12** The following table is a summary of the proposed fees which have been rounded to the nearest pound.

	2016/17	Say
STATIONARY AND MOBILE LICENCE		
Application Fee - <i>Non refundable</i>	£617.50	£617
Renewal Application Fee - <i>Non refundable</i>	£522.75	£523
Licensed for Monday to Friday	£1,502.19	£1,500
Licensed for Monday to Sunday	£1,567.44	£1,570
Licensed for Weekend	£1,349.94	£1,350
Licensed for Sunday	£1,219.44	£1,220
TEMPORARY LICENCE		
Application Fee - <i>Non refundable</i>	£677.50	£677
Licence Fee	£130.50	£130
Variation of Licence Particulars	£442.75	£440

Time and Manner of Payment

- 3.13** The Act allows the Council to determine the time and manner in which fees or charges are to be paid.
- 3.14** In order to accommodate licence holders, it is proposed that the Mobile and Stationary Licence Fees continue to be spread over a one year period of twelve equal instalments. The first payment must be received before the licence is issued. The remaining eleven instalments may be made by Direct Debit or eleven payments in person. For a three year licence, the trader would in effect continue to make 36 payments over the licence term.
- 3.15** Members may recall that when the fees were previously set the Committee agreed, by way of incentive and to encourage timely payment, that the Council would offer a 5% discount where the person paid in full at the start of their licence year or where they paid by Direct Debit.
- 3.16** This discount scheme has proven to be problematic and complicated under the Direct Debit scheme, as licence holders regularly default on monthly payments, which involves additional time for Council staff in following up and pursuing process of payment.

<p>3.17</p> <p>3.18</p> <p>3.19</p>	<p>The same licence holders then move from the Direct Debit scheme to paying in person on a monthly basis and no discount is afforded, which results in a recalculation of the licence fee that must be paid monthly. Often the licence holder then wants to go back on the Direct Debit scheme resulting in another recalculation of the fee to be paid. This process becomes confusing and time consuming for licence holders as to the actual fee that must be paid.</p> <p>In addition, no payments have been made in full in recent years to benefit from the 5% discount, which would support the removal of the incentive.</p> <p>Members may wish to consider if they want to discontinue offering this small discount for payment in full and by Direct Debit.</p>
	<p><u>Non-payment of Fees</u></p> <p>3.20</p> <p>3.21</p>
	<p>Members will also recall that a number of reports have already been presented to you regarding licence holders who have defaulted on licence payments and the matter has become so serious that the Council has either revoked or considered revoking their licences.</p> <p>Members may now wish to take the opportunity to determine the appropriate payment structure for Street Trading Licences that 3 defaults in payment will result in the licence being referred to the Licensing Committee for consideration of revocation. Authorisation is sought to permit the publication of the Statutory 28 Day Notice and to commence consultation with licence holders.</p> <p><u>Power to Remove Receptacles</u></p> <p>3.22</p> <p>3.23</p> <p>3.24</p> <p>3.25</p>
	<p><u>Financial and Resource Implications</u></p> <p>3.26</p> <p><u>Equality and Good Relations Implications</u></p> <p>3.27</p>

4.0	Documents Attached
	Appendix 1 – Revised costs associated with Licence Fees Appendix 2 – Current Licence Fees