



<u>Committee and Date</u>
Strategic Licensing Committee
7 October 2020

<u>Item</u>
<u>Public</u>

LICENSING FEES AND CHARGES 2021-2022

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1. Summary

- 1.1 This report proposes revised fees for the period 1 April 2021¹ to 31 March 2022 for licences and licensing related activities where the authority has the discretion to determine the relevant fees and relates to:
- hackney carriage and private hire vehicles and drivers;
 - private hire operators;
 - public health (acupuncture, tattooing, semi-permanent skin colouring, cosmetic piercing, electrolysis);
 - animals (hiring out horses, providing day care for dogs, boarding for cats, home boarding, kennel boarding, breeding for dogs, selling animals as pets, keeping or training animals for exhibition, dangerous wild animals and zoos);
 - scrap metal;
 - sex establishments;
 - street trading;
 - explosives and fireworks;
 - distribution of free printed matter; and
 - pleasure boats and vessels.
- 1.2 The report also proposes revised fees under the Gambling Act 2005 in relation to gambling activities where the authority has the discretion to determine fees up to legally set statutory maximums.
- 1.4 The statutory fees that must be charged for specific licences, permits and registrations under the Licensing Act 2003, the Gambling Act 2005 and explosives and fireworks legislation are also set out within the report.
- 1.5 Those licensed activities for which no fees may be set are also highlighted.

¹ The fees applicable to hackney carriage, private hire vehicle and operator licences may become effective on a date prior to the 1 April 2021. This is because the Council must follow the process prescribed by Section 70 of the Local Government (Miscellaneous Provisions) Act 1976 to vary these fees and the actual date that the fees become legally effective is dependent on whether or not objections are made as part of the prescribed process. Whilst not legally required to do so, the Council has historically applied the same process to hackney carriage and private hire vehicle drivers licences.

2. Recommendations

- 2.1 That the Committee notes the statutory fees that Shropshire Council is required to charge in accordance with the Licensing Act 2003 as set out in **Appendix A**, in accordance with the Gambling Act 2005 as set out in **Appendix B** and in accordance with explosives and fireworks legislation as set out in **Appendix C** and recommends that the authority implements these fees (or if subject to statutory amendment, the relevant amended fees) on the 1 April 2021 and instructs the Trading Standards and Licensing Operations Manager to arrange for the fees to be included in the 2021/22 annual fees and charges reports that are presented to Cabinet and Council and further instructs the Trading Standards and Licensing Operations Manager to implement, as appropriate, any other statutory fees that may be brought into force during the 2021/22 financial year and to publish all relevant statutory fees on the licensing pages of the Council's website as soon as is practicable.
- 2.2 That the Committee implements, with any necessary modification and with effect from 1 April 2021, the proposed fees as set out in **Appendices D, E, F, G and H** that relate to those licences and licensing related activities where the authority has the discretion to determine the fees and instructs the Trading Standards and Licensing Operations Manager to arrange for the fees to be included in the 2021/22 annual fees and charges reports that are presented to Cabinet and Council and further instructs the Trading Standards and Licensing Operations Manager to publish the fees on the licensing pages of the Council's website as soon as is practicable.
- 2.3 That the Committee proposes to vary the fees relevant to driver, hackney carriage, private hire vehicle and operator licences as set out in **Appendix F**, with any necessary modification, and instructs the Trading Standards and Licensing Operations Manager, in accordance with the provisions of Section 70 of the Local Government (Miscellaneous Provisions) Act 1976 to undertake the necessary work to consult and implement the fees.
- 2.5 That the Committee instructs the Trading Standards and Licensing Operations Manager to arrange for the proposed fees as set out in **Appendix F**, with any necessary modification, to be included in the 2021/22 annual fees and charges reports that are presented to Cabinet and Council and, where necessary, in respect of those fees a note is recorded in the said annual reports stating '*Provisional fees under consultation fees to be confirmed by the Strategic Licensing Committee*'.

REPORT

3. Risk Assessment and Opportunities Appraisal

- 3.1 The Council makes every effort to recover regulatory and enforcement costs from those who are licensed. However, it is acknowledged that the Council's licensing fees and charges may be challenged through a number of routes, including service complaints to the Local Government Ombudsman and judicial review; hence, the importance of undertaking robust processes to set discretionary fees and charges.
- 3.2 The Council is permitted to include costs for clerical and administrative aspects when determining licence fees but these must be reasonable and proportionate to

the actual costs of the procedures. The costs of regulatory and enforcement activities, including enforcement to address unlicensed activity, can also be included. Only successful applicants can be required to make a contribution towards the regulatory and enforcement costs.

- 3.3 Where the Council intends to recover regulatory and enforcement costs, it cannot include these costs in the fee that is payable at the time any application is submitted. Such costs are only payable after the decision has been taken to grant or renew a licence. This means that for those licences that incur post application regulatory and enforcement costs, the fees are charged in two parts:
- (a) the first part is payable at the time an application is submitted and aims to recover the costs associated with the administrative procedures and formalities of the application process (this includes the costs of undertaking all the required checks relevant to each licence type); and
 - (b) the second part is payable by the applicant only once the licence is granted or renewed and aims to recover the costs associated with the ongoing regulation and enforcement of the licencing regimes.
- 3.4 There are a number of licences that do not incur post application regulatory and enforcement costs. This is because the work undertaken as part of the application process is deemed to be proportionate to the level of risk associated with the activity that is controlled by these particular licence types. For these licences, there is only one fee payable and this is at the point of application.
- 3.5 The two-part fee is not applicable to hackney carriage, private hire and gambling related licences; consequently, for these licence types a single fee is payable at the point of application. The same is applicable to all statutory fees.
- 3.6 To reduce the risk of challenge to the Council, a financial modelling tool was introduced in 2013 to calculate licensing fees from 2014/15 onwards. This continues to be updated, modified and refined to take account of amendments to the law, changes made by licensing officers, recommendations from the Council's finance officers and to reflect ongoing changes to the way in which the licensing function is resourced.
- 3.7 Overall, the tool draws together detailed information regarding the costs associated with undertaking the administrative procedures and formalities associated with all licensing procedures, including the costs of investigating the background and suitability of applicants for licences together with the cost of monitoring the compliance of those who are licensed against the conditions of their licences. It also aims to demonstrate that the cost of enforcing the licensing regime against unlicensed operators has been considered and is included in licence fees. Enforcement costs are not included for joint hackney and private hire drivers' licenses in line with specific provisions of the Local Government (Miscellaneous Provisions) Act 1976. Fees are compared on an ongoing rolling basis.
- 3.8 An Equality and Social Inclusion Impact Assessment has not been undertaken as the report does not concern the implementation of a new policy; the focus of the report is the review of licensing costs to ensure the Council is in a position to recoup its costs on a cost recovery basis in line with current legislative requirements.

- 3.9 There is no anticipated environmental impact associated with the recommendations in this report.
- 3.10 The recommendations are not at variance with the Human Rights Act 1998 and are unlikely to result in any adverse Human Rights Act implications. The recommendations are in line with current legal procedures laid down in domestic licensing legislation and takes into consideration relevant European provisions and case law.
- 3.11 There is no statutory duty on the Council to consult when setting or revising licensing fees with the exception of those fees relating to hackney carriage, private hire vehicles and operators' licences under Section 70 of the Local Government (Miscellaneous Provisions) Act 1976. This duty is reflected in the recommendation set out at paragraph 2.4 above. Historically, the Council has also consulted on driver licence fees and consequently it is recommended that this practice continues. With respect to the remaining discretionary fees, it is suggested that publishing the Council's intentions, prior to the fees coming into force, is sufficient and this reflects previous practice.
- 3.12 The Committee's legal authority to agree the recommendations is based within a range of specific licensing legislation together with the delegated functions set out in the Council's Constitution. Extracts from the relevant legislation are provided in **Appendix J**. Due consideration has also been given to relevant European legislation.

4. Financial Implications

- 4.1 The total cost to the Council of delivering the licensing service in 2019/20 was calculated to be £841,488 and the income received was £707,201. There was an overall deficit of £134,287 with specific surpluses and deficits relating to each licence type calculated separately – see **Appendix I**. Steps have been, and continue to be taken, to improve cost recovery across all appropriate licence types in order to reduce the overall deficit and to redistribute, return and recoup fees in relation to each licence type as appropriate.
- 4.2 The proposed fees are based on undertaking the administrative procedures and formalities associated with the relevant licencing procedures, including the costs of investigating the background and suitability of applicants for licences together with the cost of monitoring the compliance of those who are licensed against the conditions of their licences and enforcement for unlicensed activities where it is permitted. Where relevant, the fees have been split into two parts. The recovery of the deficits and the return of the surpluses as set out in **Appendix I** have been included in the fee calculations for 2021/22. As a result of this work, the proposed fees have been calculated and are set out in **Appendices D to H**.
- 4.3 Costs can be recovered over a period of time allowing surpluses to be returned to licensees and deficits to be recouped by the Council. This does not mean that fees have to be adjusted every year to reflect immediately previous deficits or surpluses. In any case, it must be demonstrable over a period of time that only legitimately incurred costs are recovered. Costs associated with enforcing unlicensed operators/businesses are recoverable by the Council but these costs are excluded from the calculation for the joint hackney and private hire drivers' licences in line

with provisions in the Local Government (Miscellaneous Provisions) Act 1976. In addition, costs of providing advice to those who may consider applying for a licence in the future are included.

- 4.4 The surpluses and deficits for hackney carriage and private hire licence fees are set out in **Appendix I (Table 2)** and have been incorporated into the revised fees as set out **Appendix F**. Where a surplus has been generated in 2019/20 but a cumulative deficit position exists from 2014/15 to 2019/20, licence fees have not been reduced. The only fee where a variation is applicable is listed below. It is proposed that all other hackney carriage and private hire related fees remain the same as the fees set for 2019/20 due to the Coronavirus outbreak which has resulted in an unprecedented reduction of income for the trade.
- Novelty Private Hire Vehicle – renewal increased by 26.9%
- 4.5 The fees under the Licensing Act 2003 are statutory fees that the Council cannot change. **Appendix I (Table 1)** shows a fee surplus of £74,680 was generated. This is largely due to the requirement for licensed premises to pay an annual fee to maintain their licence. The process of offsetting the overall licensing deficit using Licensing Act fees is permissible; however, this is only because the Licensing Act fees are statutory. Where the Council has the authority to set specific discretionary fees, these fees must be used only for the purposes of funding those specific licences.
- 4.6 Public health licences are issued indefinitely; hence, there is no opportunity to recoup deficits or return surpluses through a renewal process. Fee payments are entirely reliant on new applicants. The number of applicants is difficult to forecast, although there currently appears to be an upward trend. The administration and enforcement of the public health licences has, and continues to be, reviewed and efficiencies identified. However, the applications received still contributed to a £17,080 deficit across the public health licences in 2019/20. To attempt to reduce the risk of further deficits, it is proposed to increase the existing fee. A summary of those fees where a variation is proposed are listed below.
- acupuncture premises including one person increased by 28.7%
 - acupuncture person increased by 40.6%
 - electrolysis premises including one person increased by 28.7%
 - electrolysis person increased by 40.6%
 - cosmetic piercing – person and variation increased by 40.6%
 - tattooing premises including one person increased by 28.7%
 - tattooing person increased by 40.6%
- 4.7 The work that has been undertaken to recover the deficits associated with animal licences from 2014/15 to date has not been fully effective. The cumulative deficit has increased with a further £8,571 incurred in 2019/20. This is principally due to the increased staffing resource required to carry out inspections, particularly to address the increasing risk to animal welfare as a result of importation and over-breeding. The administration and enforcement of the animal health licences has, and continues to be, reviewed and efficiencies identified.
- 4.8 On the 1 October 2018 the Animal Welfare (Licensing of Activities Involving Animals) (England) Regulations 2018 come into effect. This provides for the

licensing of providing day care for dogs, breeding for dogs, boarding for cats, kennel boarding, home boarding, selling animals as pets, keeping or training animals for exhibition and hiring out horses. The new regulations do not include zoos and dangerous wild animals, the issuing of these licenses remain under the existing legislative requirements.

- 4.9 All licences subject to the Regulations are given a star rating (with the exception of Keeping or Training Animals for Exhibition Licences, which replaced Performing Animals Certificates and are subject to an automatic three year licence which is not star rated). The purpose of the star rating system is to ensure consistency in the implementation and operation of the licensing system, and to ensure that consumers can clearly see the star rating a business has received and therefore the risk level and standards of animal welfare they have. The star rating is determined by a scoring matrix set out in the Regulations. In order to calculate the star rating the results of an inspection of a premises and an assessment of the level of risk a business poses are combined to produce a rating between one and five stars. The higher the star rating is the better the standard of the business. The star rating also determines the length of time a licence lasts. One and two star licences last for one year, three and four star licences last for two years and five star licences last for three years.
- 4.10 The introduction of the star rating and different length licences makes it challenging to forecast annual income in relation to animal licences, this is due to the fact that under the new regime the number of licences issued in one financial year does not reflect the number that will be due for renewal in the following financial year. There are also a number of other variables which may affect when, or if, a licence is renewed, including:
- Surrender or non-renewal of a licence – there has been an increase in this since the new Regulations came into force as they are more difficult to comply with and some business have chosen not to continue operating.
 - A licence not being granted, or an application being withdrawn after the initial application and inspection phase (and therefore not paying the second part of the fee) because the business is not able to comply with the Regulations – instances of this have also increased due to some businesses finding it hard to comply with the new Regulations.
 - A business requesting a re-rating inspection mid-licence because they have carried out work identified as needed at the initial inspection and are now able to reach a higher standard. The star rating and therefore the length of the licence would increase as a result, changing the original renewal date.
 - A businesses star rating being downgraded following an unannounced inspection (either the mandatory unannounced inspection carried out during the course of the licence as required by the Regulations or as the result of a complaint), resulting in

the licence lasting for a shorter period of time than originally issued, changing the original renewal date.

- A business deciding not to continue with one activity where they carry out more than one or deciding to add a new activity. For example, a business which was a kennel and a cattery deciding not to offer cat boarding but continuing with kennel boarding when they come to renew their licence, reducing the renewal fee due.

- 4.11 Under the previous regimes the majority of licences lasted for one year, there were no star ratings and the regimes were less rigorous, so there were relatively fewer variables which could impact on the likelihood of when and if a licence was renewed. It was therefore possible to forecast expected income from animal licences in year more accurately.
- 4.12 A list of the fees under the new regulations is set out at **Appendix H**.
- 4.13 Explosives and fireworks licence and registration fees are all statutory fees (with the exception of those discretionary fees listed in **Appendix D**), which cannot be changed by the Council. **Appendix I (Table 1)** shows a deficit of £10,053, which will only be able to be reduced through making efficiency improvements across the administration and enforcement processes. The service is continuing to review how these efficiencies can be achieved. It should be noted that the activities to which the discretionary fees relate are little used in practice and were not used at all during 2019/20; hence there being no opportunity to generate additional discretionary income in order to recover the deficit incurred.
- 4.14 The work that has been undertaken to recover the deficit associated with scrap metal licences from 2014/15 to date has been effective. The fees where a variation is applicable are listed below. The staffing resource required to carry out inspections to address the recognised criminal risks associated with scrap metal dealing is continually reviewed. The administration and enforcement of scrap metal licences has and continues to be reviewed and efficiencies identified.
- Scrap Metal Dealer – Site New has increased by 5.2%
 - Scrap Metal Dealer – Collector to Site Variation has increased by 0.7%

The fees associated with scrap metal licences are set out in **Appendix G**.

- 4.15 The licences that are grouped as miscellaneous include those for caravan sites, sex establishments, free printed matter, street collections, house to house collections, street trading and pleasure boats and vessels as listed in **Appendix G**. Work that has been undertaken to recover the deficit associated with these licences from 2014/15 to date has not been effective with the cumulative deficit increasing with a further £32,291 incurred in 2019/20. A proportion of these costs are not recoverable and will always be borne by the local taxpayer as there are certain licences where the Council is unable to charge fees, e.g. licensing house to house collections, street collections and non-residential caravan sites. In addition, work has yet to be undertaken to develop a policy under which the Council will be able to charge for the licensing of residential caravan sites. The administration and

enforcement of these licences has and continues to be reviewed and efficiencies identified. This has led to a range of reductions in the basic costs of administering these types of licences. However, to reduce the risk of incurring further deficits, it is proposed to retain the existing discretionary fees, rather than to reduce them in line with processing costs.

- 4.16 The Gambling Act 2005 provides for licences, permits, notices and registrations. The Council has the discretion to set the fees for licences and notices up to certain statutory maximums. The fees for permits and registrations are statutory and the Council has no authority to change these.
- 4.17 The majority of the Gambling Act work undertaken relates to the administration and enforcement of permits and registrations, which are the subject of statutory fees. There is a clear indication that these statutory fees are insufficient to cover the cost of the work associated with the administration and enforcement of the permits, e.g. basic administrative costs are at least 20% more than the statutory fee payable and there are a considerable number where the overall costs are significantly more. Processes continue to be reviewed and refined to ensure efficiencies wherever practicable.
- 4.18 The Council has the authority to set the licence fees under the Gambling Act (up to certain statutory maximums). The proposed fees, which directly reflect the calculations to recover the costs incurred, or the statutory maximum depending on which of the two is lower, are set out in **Appendix E**. As with explosives licences referred to above, the activities to which the discretionary fees relate are little used in practice; hence there being no opportunity to generate additional discretionary income in order to recover the deficit incurred.
- 4.19 An assumption has been made about the number of renewals that will take place in 2021/22 in order to recover or redistribute the deficits and surpluses. Until the end of the 2021/22 financial year it will not be known whether the assumptions about the number of renewals were accurate or not. The activity in 2020/21 will again change the cumulative position and further adjustments will be required in this rolling annual process. The adjustments to correct any material discrepancy in the recovery or redistribution of the deficits and surpluses will be made against 2022/23 fees and so on until the recovery of the surplus or deficit reaches a satisfactory position.
- 4.20 Where licenses have a renewal period of greater than one year, the recovery or redistribution calculation is spread across the same period.
- 4.21 The setting of licensing fees and charges for the 2021/22 includes:
- A 2.75% nationally agreed pay award for local government staff effective from 1 April 2020.
- 4.22 Where legislation allows the Council to recover licensing costs, it is important that this is undertaken effectively. Losses that are not funded by other means, including being subsidised by council tax payers, may result in a reduction in the Council's ability to effectively deliver the overall licensing regime in the Shropshire Council area. However, it is recognised that not all licensing costs are recoverable.

5. Background

- 5.1 The principle of cost recovery under licensing legislation applies to the licensing of hackney carriages and private hire vehicles, operators and drivers. It also extends to sex establishments, street trading, acupuncture, tattooing, semi-permanent skin colouring, cosmetic piercing, electrolysis, zoos, providing day care for dogs, breeding for dogs, boarding for cats, kennel boarding, home boarding, selling animals as pets, keeping or training animals for exhibition, hiring out horses, dangerous wild animals, scrap metal dealers, pleasure boats/vessels, distribution of free printed matter, residential caravan sites, some explosives and fireworks licences, together with the issuing of various licences under the Gambling Act 2005.
- 5.2 Caravan sites are currently licensed by the Council under the Caravan Sites and Control of Development Act 1960, as amended by the Mobile Homes Act 2013. The amendment to the 1960 Act permits the Council to charge fees for the licensing of residential caravan sites; however, the Council is required to publish a fees policy prior to setting fees. The Council has not yet adopted a policy; consequently, fees are not yet included in the proposals.
- 5.3 The financial modelling tool, referred to in paragraph 3.6, has been set up to allow residential caravan site and Licensing Act 2003 fees to be incorporated and calculated as and when the Council is in a position to do so both from a policy and a legislative perspective.
- 5.4 The government has previously consulted on its intention to move from centrally set to locally set licence fees under the Licensing Act 2003 but has yet to take this forward. As a result, the nationally determined statutory fees are retained and the Licensing Act 2003 fees are included in **Appendix A**. There are no discretionary Licensing Act 2003 fees proposed other than for providing a copy of information contained in an entry in the public register; this is reflected in **Appendix G**.
- 5.5 The costs associated with the licensing procedures that the Council may legally recover in fees consists of administrative costs, the costs of investigating the background and suitability of applicants for licences and the costs of monitoring the compliance of those with licences with their terms. Where applicable the cost of enforcement against unlicensed operators is also included in the fee. These will certainly include the costs that are directly attributable to licensing procedures and a proportion of indirect costs. The Council must be in a position to demonstrate that the costs included in any fees calculations are reasonable and proportionate to the cost of the licensing procedures.
- 5.6 Fees cannot exceed the cost of the licensing procedures and cannot be used to finance the delivery of other Council services.
- 5.7 To aid the Council to properly recover relevant licensing costs all licensing procedures have been considered and reviewed in detail; this work continues to evolve through an iterative process to further develop, improve and refine the processes involved. Managers, licensing officers and finance officers have collaborated in this work. The licensing procedures are considered from receipt of application to the issue of the final licence, permit, notice or registration with both variable and fixed costs being considered. These costs include officer,

management and member time, including running of relevant Committees and the Licensing Panel, to administer and monitor compliance of both those already licensed and those who are unlicensed but exclude time spent enforcing matters that relate to joint hackney and private hire drivers' licences. In addition, a proportion of all indirect costs that can reasonably be attributed to licensing procedures have been included; for example, office accommodation, ICT, travelling, advertising, postage & printing, subscriptions, telephone costs, training and all other relevant internal market recharges and supplies and services costs.

6. Additional Information

- 6.1 In respect of the discretionary fees proposed in **Appendix F**, namely the setting of fees for hackney carriages, private hire vehicles and operators' licences, statutory procedures must be followed. Consequently, to vary the fees from those currently set, the Council is required to follow specific procedures that allow for objections to be made and considered by the Committee.
- 6.2 The process that has been undertaken to determine the fees for 2021/22 is an extension of the process that commenced in 2013. This process will continue annually with amendments being made to take account of changes in the law and Council procedures and costs.

List of Background Papers (This MUST be completed for all reports, but does not include items containing exempt or confidential information)

- Services Directive 2006/123/EC of the European Parliament and of the Council of 12 December 2006 on services in the internal market
- Provision of Services Regulations 2009 - SI 2009 No 2999
- Supreme Court Judgement in the case of R (on the application of Hemming and others v Westminster City Council – 29 April 2015 - [2015] UKSC 25 on appeal from [2013] EWCA Civ 591
- Court of Justice for the European Union Judgement in the case of Hemming [2016] EUECJ C-316/15 (16 November 2016)
- Mobile Homes Act 2013
- The Animal Welfare (Licensing of Activities Involving Animals) (England) Regulations 2018

Cabinet Member (Portfolio Holder)

Councillor Gwilym Butler Portfolio Holder for Communities, Place Planning and Regulatory Services

Local Member

Not applicable – report has county wide application

Appendices

Appendix A Licensing Act 2003 Statutory Fees

Appendix B Gambling Act 2005 Statutory Fees

Appendix C Explosives and Fireworks Legislation Statutory Fees

Appendix D Explosives and Fireworks Legislation Discretionary Fees

Appendix E Gambling Act 2005 Discretionary with Statutory Maximum Fees

Appendix F Hackney Carriage and Private Hire Discretionary Fees

Appendix G Other Legislation Discretionary Fees

Appendix H New Animal Legislation Discretionary Fees

Appendix I Licensing costs, income and surplus/deficit

Appendix J Extracts from relevant licensing legislation providing legal framework within which local authorities may charge licensing fees

