

Regulatory Committee

10.00am, Monday, 2 October 2023

Public Entertainment Licensing: Application Fees

Executive/routine
Wards

All

1. Recommendations

- 1.1 The Regulatory Committee is asked to:
 - 1.1.1 Note concerns about certain public entertainment fees;
 - 1.1.2 Note the issues raised in this report with respect to the licensing of 'gala days' and "Sun Tan Centres"; and
 - 1.1.3 Agree a stakeholder consultation on these issues should be progressed, in advance of making any adjustment to the relevant application fees.

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Public Entertainment Licensing: Application Fees

2. Executive Summary

- 2.1 This report provides information on recent issues with respect to certain Public Entertainment Licence ('PEL') application fees which have recently been challenged, and requests that Committee instructs public consultation in advance of a full review of these fees.

3. Background

- 3.1 The Council is a licensing authority under the Civic Government (Scotland) Act 1982 ('the 1982 Act'). The 1982 Act allows the Council to set fees for licences. The key underlying principle is set out in Paragraph 15 of Schedule 1 to the Act, and provides that the licensing authority shall seek to ensure that the total amount of fees received by the authority is reviewed from time to time and is sufficient to meet the expenses of the authority in exercising their functions under the Act. In other words, licensing fees must be set on a cost recovery basis.
- 3.2 The Council's current practice is that licence fees are introduced following a report to the Regulatory Committee, typically when dealing with the introduction of a new licence type or carrying out a review of fees. The last full review of fees under the 1982 Act was carried out in 2015. Some minor changes have been made as a result of Committee decisions, most recently when the fee structure for PELs was amended to take account of the inclusion of theatres in the Public Entertainment Resolution. Thereafter, fees are normally increased to take account of inflation or other cost rises as part of the Council's budget setting process. In March 2023, with the exception of House in Multiple Occupation (HMO) licence applications, fees were increased by 11% as part of the budget setting process.
- 3.3 Annual reports are presented to Regulatory Committee with details of income collected and spend for all licence types. The last such [report](#) was presented in August 2023, covering the financial year 2022/2023 income/expenditure of the Licensing Service.
- 3.4 The Council has previously reviewed the fee structure for the licensing of events such as galas and fairs under the Public Entertainment Resolution. Historically these events did not require a licence as they were free to enter and thus exempt

from the licence requirements of the Act. In 2012, the 1982 Act was amended and that exemption for free to enter events was removed, and since that time these events have required a licence. The Council has put significant discounts in place for community events, but there remains a tension with respect to the additional fees charged for commercial operators of funfairs which typically form part of the event.

- 3.5 It is worth noting that gala days are usually organised by volunteers, who have limited knowledge of the Health and Safety requirements applicable to funfairs and that the licence holder is the 'responsible person' regarding the safety of the equipment, in conjunction with the operator.

4. Main report

- 4.1 Concerns have been raised with respect to the application fees for PELs which would apply for events, and in particular community events such as gala days. Separately, a legal query has been raised about the fees charged to sunbed and tanning premises under the PEL system.

Sun Tan Centre licensing

- 4.2 In common with many other local authorities, for several decades Sun Tan Centres in Edinburgh have been required to have a PEL.
- 4.3 The Council recently received a challenge to the fee charged for a PEL application with respect to a Sun Tan Centre. When the licensing of such premises was introduced, the fee structure was based on a fee per sunbed within the property, reflecting how the industry operated at that time with relatively small premises. Tracing the report which set out the rationale supporting this has not been possible within the Council's records. Therefore, it would be prudent to review this aspect of the fee structure to ensure compliance with the Council's statutory duties.
- 4.4 Licence holders and representatives of the relevant trade body have pointed out that the industry has changed significantly in recent years, with some operators having fewer but larger premises. It has been suggested that the present historic fee structure penalises such larger venues. In-person inspections were halted for health and safety reasons over the pandemic period, and it is not anticipated that existing resources will allow a return to the pre pandemic inspection regime. Given the developments within the industry and type of premises available, it is likely that a risk-based approach to inspections may now be more appropriate for the sector and the feasibility of such an approach will be considered.
- 4.5 It is therefore proposed to engage with stakeholders to offer an opportunity for licence holders and their representatives to set out their views on how the sector has developed and how the fee structure might be reformed, taking into account the Council's requirements that all fees achieve cost recovery (as set out above).

Community events such as ‘gala days’

- 4.6 The fees which have applied to community events have been contentious since the 1982 Act was modified to remove the ‘free to enter’ exemption with the fee structure modified several times until its current form was agreed in 2015. The fees for community events have often not been increased in line with other licence fees, as the Council has at various times in the past chosen to prioritise keeping fees low for community groups. The fee for a free to enter event run by a community group is nil for events with a capacity up to 500 persons. Thereafter the fee increases in steps up to 2,500 persons but is still heavily discounted (Appendix 1).
- 4.7 In parallel, for many decades the Council has charged a separate fee for the licensing of amusement devices of the type used at funfairs. This has always been considered as separate from the licence required for community events, and there has been no change in that fee structure since 2015. An issue often arises where a community group or organisers of a gala day invite a commercial funfair organiser to provide funfair rides at the gala. The Council’s longstanding position is that these funfair rides should not be included under the licence granted to the community group, as the reduced fee was never intended to cover what is commercial activity. In addition, a community group would not normally have the skills or experience to safely manage funfair rides. The Council’s position is therefore that a commercial operator should obtain its own PEL.
- 4.8 In addition, some event organisers register as a charity and seek reduced fees on this basis. Charitable status for the purposes of Licensing is defined as all proceeds from the event being donated to charity.
- 4.9 During the period 2020/2021, there were no significant galas in Edinburgh due to the public health restrictions that were in place. In 2022, there was a small scale return, but it was only in 2023 that gala and funfair numbers returned to the pre-pandemic levels. No changes to the fee structure have been made in the intervening period apart from increases to deal with inflation, however it has recently become clear that a perception exists that fees for amusement devices are a new requirement.
- 4.10 Members will be aware of a number of queries about how fees have been applied in the current year. On checking Licensing records, there have been a number of inconsistencies regarding the application fees charged, in part due to information provided by applicants, and also due to the service’s interpretation of the information provided. Due to these inconsistencies, a refund of two thirds of the fee paid was made to all affected organisers in order to ensure fairness and transparency.
- 4.11 Separately, in-person inspection of these events has not recommenced following the pandemic. Responsibility for health and safety of equipment set-up and operation belongs with the PEL holder. Public Safety colleagues previously carried out site inspections which included checking certification and a general site visit but this did not include safety assessments of individual pieces of equipment. There

are no plans to recommence site visits, thereby highlighting the need for the licence holder to understand and carry out their Health and Safety obligations. This responsibility has always been that of the licence holder, and Council officers are happy to support where appropriate.

- 4.12 Approval is sought to consult with stakeholders on PEL fees for 2024 onwards, and particularly how community events with amusement devices are charged and where liability sits regarding health and safety of equipment.

5. Next Steps

- 5.1 With respect to both areas of licensing, it would be intended to engage with stakeholders during the remainder of 2023 and to bring forward proposals for amending the fee structures to Committee in February 2024. This would allow business and community groups to plan for fees which would be chargeable after 1 April 2024.

6. Financial impact

- 6.1 Any reduction on licence fee income must be contained within the Licensing budget, as fees must be on a full cost-recovery basis. Any discount on licensing fees will be offset by fees charged for other Civic licence holders. Therefore, there is no impact on the Council budget.

7. Equality and Poverty Impact

- 7.1 Where required, an integrated impact assessment will be conducted as part of any proposed changes to the PEL fee structure.

8. Climate and Nature Emergency Implications

- 8.1 There are no foreseen climate or nature emergency impacts as a result of this report.

9. Risk, policy, compliance, governance and community impact

- 9.1 Engagement will take place with relevant stakeholders, including community and trade representatives, in relation to any proposed fee changes for PEL before bringing proposals back to Committee.

10. Background reading/external references

- 10.1 [Review of Fee Structures – report to Regulatory Committee 2 February 2015](#)

- 10.2 [Public Entertainment Licensing – Interim Fee Proposals – report to Regulatory Committee 9 March 2012](#)
- 10.3 [Public Entertainment Licensing – Public Consultation on Amendments to the Resolution – report to Regulatory Committee 20 April 2012](#)

11. Appendices

- 11.1 Appendix 1 – Licence application fees 2023/2024.