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Review of Alcohol Licensing Fees – Steering Group: Recommendations to Scottish Ministers



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Review of Alcohol Licensing Fees – Steering Group: Recommendations to Scottish Ministers

Scottish Government – 06 December 2013

Introduction

1. Since the alcohol licensing fees regime came into effect, in 2009, stakeholders have questioned how proportionate and fair the fees regime is. It has been suggested by some stakeholders that small and medium sized premises pay disproportionately large fees relative to larger premises. However, others have argued that the size of the premises should not impact on the premises licence fee, because applications take a similar amount of resources to process regardless of the size of the premises.
2. In 2010, the Regulatory Review Group (RRG) carried out a review of the Licensing (Scotland) Act 2005, which focused on fees and the cost of applications. One of their recommendations was that the Scottish Government review whether rateable values was the most appropriate basis for the banding structure used to calculate premises licences and annual fees, as well as considering other options that could be more suitable.
3. In response to these stakeholder concerns and the RRG recommendations, in October 2011, the Cabinet Secretary for Justice announced plans for a review of alcohol licensing fees.

Background

4. The alcohol licensing regime is administered at local authority level by Licensing Boards. These Boards carry out a range of functions including granting and reviewing licences, writing policy statements, and considering if there is overprovision of licensed premises in a particular area.
5. The Licensing (Scotland) Act 2005 s136 enables Scottish Ministers to make provision for the charging of alcohol licensing fees by Licensing Boards in a range of situations, such as applying for premises licences, personal licences and occasional licences; annual fees and transfers or variations of licences.
6. Some of these fees are fixed, however for others such as premises applications or annual fees, Licensing Boards are empowered to set their own fee levels as long as they do not exceed the maximum limits outlined in the Licensing (Fees) (Scotland) Regulations 2007. The fees are intended to reflect the Scottish Government's intention to make the system self-funding, i.e., to cover both direct and indirect costs incurred by Licensing Boards (over time, not at the level of individual applications). As stated in the Licensing (Fees) (Scotland) Regulations 2007 s13,

“a Board is to have regard to the desirability of ensuring that the total fees payable under these Regulations to that Board in respect of any period are

likely to be broadly equivalent to the expenses incurred by the Board and the council for the area of that Board, in administering the Act generally during that period.”

7. Although the fees are set by Licensing Boards, as stated in the above quote, the fees should also include Local Authority costs such as Licensing Standards Officers (LSOs), and other indirect costs such as use of local authority staff/buildings etc. Some Boards do not currently keep a record of these costs, and it can be a complicated process to calculate these retrospectively.
8. Most of these fees, such as those charged for occasional licences or extended hours, are the same for all applicants regardless of the size of their business, however premises applications and annual fees are linked to the business’s rateable value (with a number of exceptions such as Members’ Clubs, visitor attractions, etc.).
9. The fee payable for a premises licence application is to be determined by the relevant Board but is not to exceed–

(a) £200 in the case of premises within category 1
(b) £800 in the case of premises within category 2
(c) £1,100 in the case of premises within category 3
(d) £1,300 in the case of premises within category 4
(e) £1,700 in the case of premises within category 5
(f) £2,000 in the case of premises within category 6

10. In addition to the initial payment for premises licence applications, licence holders must pay an annual fee. Licensing Boards are empowered to set their own annual fees for premises licences as long as they do not exceed the maximum limits outlined in the Licensing (Fees) (Scotland) Regulations 2007.
11. The annual fee payable is to be determined by the relevant Board but is not to exceed–

(a) £180 in the case of premises within category 1
(b) £220 in the case of premises within category 2
(c) £280 in the case of premises within category 3
(d) £500 in the case of premises within category 4
(e) £700 in the case of premises within category 5
(f) £900 in the case of premises within category 6

Steering Group

12. A steering group was assembled to carry out the review of alcohol licensing fees. The group was made up of representatives from the on and off trade as well as from Licensing Boards (for membership see Annex A). In September 2012, the group met for the first time and agreed that their remit would be to:

- Set the parameters for research to be carried out by an independent contractor.
- Consider the findings of the research and any implications for the alcohol licensing regime in Scotland,
- Agree recommendations to Scottish Ministers.

Research – Commissioning

13. Following a competitive tendering exercise, the Scottish Government commissioned 4-consulting to provide the independent analysis to support this review.

14. The aim of the research was to evaluate the current alcohol licensing fees regime and consider the efficacy of other potential structures to inform the Scottish Government's proposed reform of the fees regime. The research had three main objectives:

- Establish a factual baseline:

How much income do Licensing Boards currently receive from the range of alcohol licensing fees? How much does it cost Licensing Boards to administer the licensing regime? Do the boards achieve full cost recovery of direct and indirect costs? If additional funds are made, are these finances ring-fenced?

- Evaluate the current fees regime:

Do stakeholders feel that the current system is fair and proportionate to all sections of the trade? Which of the current fees are most/least appropriate? What are the advantages and disadvantages of the system?

- Evaluate these potential alternative options for premises licence applications/ annual fees:

Are the proposed alternatives workable? Do stakeholders feel that they are fair and proportionate to all sections of the trade? What are the advantages and disadvantages of the proposed alternatives?

- A turnover-based system
- A system based on square footage of the premises
- Revision of the existing system

Research – Methods

15. An online survey and a financial data collection spreadsheet were issued to all 40 Licensing Boards to gather data on the direct and indirect costs of administering the regime, as well as the income from the fees, and the views of respondents on the current regime and proposed alternatives.

16. 4-consulting conducted semi-structured interviews with the following key stakeholders to gauge views on the current provision of alcohol licensing services and fees.
 - Alcohol Focus Scotland
 - Edinburgh Licensing Board – depute clerk
 - Renfrewshire Licensing Board – depute clerk
 - The Law Society of Scotland
 - Scottish Beer and Pub Association
 - Scottish Grocers Federation
 - Scottish Retail Consortium
 - Scottish Licensed Trade Association
 - Wine and Spirit Trade Association.

17. The research team carried out case study visits with key stakeholders to more fully understand how the current licensing system affects a variety of different licence holders:
 - Licensing Boards
 - A small pub in an urban area
 - Small pubs and a pub/restaurant in a small town in a rural area
 - An on trade operator with outlets across Scotland
 - A convenience store operator with outlets across Scotland
 - A major supermarket operator with outlets across Scotland.

Research – Findings

Licensing Board Finances

18. Responses to the qualitative survey were received from all 32 Local Authorities, however only 18 respondents completed the income spreadsheet and only 15 provided details of costs incurred administering the licensing regime. With 15 sets of cost data, 4-consulting were unable to produce robust data on the overall picture across Scotland and could not say whether most Boards were achieving cost recovery or were making a surplus or a deficit.
19. The Licensing (Scotland) Act 2005 provides that licensing fees be based on cost recovery. If Boards do not have reliable up-to-date data on their income and expenditure, it is not possible to state whether they are currently doing so.
20. The recent Hemming vs Westminster City Council judgement, while not having precedence in Scotland, makes clear that local authorities must be able to justify fees and demonstrate that they operate on a cost recovery basis.
21. Of the 15 Boards that submitted financial data, the majority did not cover their costs with fee income. On average, fee income covered about 72% of

expenditure. If the data from these Boards is extrapolated across the whole of Scotland then the deficit is estimated to be approximately £2.6m.

22. Most of the Boards who participated in the research do not make future projections of workload so have not taken into account the costs of the upcoming personal licence refresher process.
23. It should be noted that this dataset does not include some large Boards. Were these areas to be breaking even or making a profit due to economies of scale and more efficient processes, their absence would have an impact on the data overall.
24. There is a perception amongst the trade that all Boards charge maximum fees, however the research showed that around a third of Boards charged less than this. Of the seven Boards that did not charge the maximum for application fees and/or annual fees, six made a deficit and one made a surplus. It is not known why these Boards do not raise their fees, although they may be operating at a loss intentionally to create a business-friendly environment or, alternatively, may be unaware that they are operating at a loss and have the option to address this by adjusting fees.

Individual Fees

25. Licensing Board respondents stated that their most resource intensive activity related to the administration of applications for occasional licences, this was because there were so many of these. This had the lowest fee attached (£10) and the vast majority of Licensing Board respondents stated that the Occasional Licence fee was too low and did not reflect the costs incurred.
26. 90% of Licensing Board respondents thought the Extended Hours Licence fee was too low (£10), 77% thought the Minor Variation fee was too low (£20/ £31), and 57% thought the Major Variation fee was too low (determined by individual Boards with no upper limit although they should be based on cost recovery). The other fee levels were thought to be „about right“ by the majority of respondents.

Stakeholder Views

27. The majority of stakeholders thought that most fees were about right. Views on whether the current system was fair and proportionate to all sections of the trade varied depending on stakeholder type.
28. In recent years there has been a trend towards much larger stores. This has concentrated sales at the top end of the market. However there is a view that this is not sufficiently reflected in the fee structure. It was felt by some stakeholders that small businesses paid disproportionately high fees and that large premises should have been paying more.
29. There was said to be an inconsistent approach across the Licensing Boards – this led to frustration among multi-site businesses dealing with different systems

in each area. A number of consultees expressed support for a central administration or central setting of fees and operational systems/processes. In particular, it was suggested that the administration of Personal Licences would benefit from centralisation.

30. Under the current fees system, Members' Clubs are automatically assigned into category one and therefore pay the cheapest application fees and annual fees. Members' Clubs pay reduced rates to recognise the important social role that they play in communities throughout Scotland. There is a perception that some Members' Clubs effectively operate on a commercial basis and therefore granting them special privileges is unfair to other licensed premises. Consequently there is a view that the status of Members' Clubs should be reconsidered.

Potential Alternative Fees Regimes

31. The research team considered three alternative fees options suggested by the steering group:
 - A turnover based system
 - A system based on the square footage of the premises
 - Modification of the existing system by, for example, adding extra bands, adjusting the existing bands, introducing potential discounts for some licensees such as small businesses/tourist attractions, etc.
32. Some stakeholders were in favour of the turnover based system and the square footage based system, however both of these approaches were considered to be problematic and received more arguments against than in favour of their use.
33. The turnover based system was considered to be the fairest because it linked fees directly with sales. However, this approach would increase the administrative burden both for Boards, who may not have appropriate staff to administer such a regime, and for premises, particularly off-sales businesses that were not currently obliged to gather this data. Furthermore, premises were reluctant to disclose commercially sensitive information.
34. The square footage based system was thought to be more proportionate and fairer to smaller businesses. However, a system based on square footage was considered to be difficult for Licensing Boards to administer, while not necessarily equating to the amount of alcohol sold e.g. in the case of department stores.
35. Overall, a substantial majority of Licensing Board survey respondents and stakeholder interviewees favoured modification of the existing system based on rateable value.

Steering Group Consideration

36. The Steering Group considered the findings of the research and its implications for the alcohol licensing regime in Scotland. Although they concluded that the current fees regime could be improved, there was no consensus regarding whether an alternative approach should be based on turnover, square footage, or modifications to the existing regime. There were those in favour of each of these options, and it was not possible to resolve these issues definitively based on the evidence provided by the research.
37. Therefore, it was decided that at this stage it was not possible to justify taking a fundamentally different approach from the current system based upon rateable value.
38. However, there were a number of recommendations that the group agreed were necessary and appropriate at this stage, such as amending the occasional fees, considering whether the special status awarded to Members' Clubs is still appropriate, and putting a duty on Boards to report their fee income and expenditure.

Occasional Fees

39. The research showed that occasional applications were the most labour-intensive activity for Boards, which spent between 5% and 50% of their total activity on these applications. Although many occasional applications require relatively little work, some are much more complex and labour intensive and the fee does not cover the associated costs. Furthermore, there are a large number of these compared to other applications. The group agreed that the £10 fee for the occasional licence was not sufficient to cover the cost of administration. They also felt that Boards should have the flexibility to charge an appropriate fee for occasional applications, up to a maximum fee determined by regulations. This would enable them to charge a greater fee for larger, more complicated, commercial applications, and a smaller fee for smaller, more straight forward applications.

Members' Clubs

40. The research showed that many stakeholders believed that Members' Clubs should not receive reduced rates because some may be operating as commercial entities. The steering group felt that, in light of these findings, further work should be carried out to consider whether the treatment of Members' Clubs was still appropriate.

Licensing Board Duty

41. The lack of data on whether Licensing Boards are currently achieving cost recovery means that neither an overall rise nor decrease in fee levels could be empirically-proven at this time.

42. The steering group agreed that action should be taken to address this data gap so that any future changes to the fees regime could be based on robust evidence.
43. The group noted the Hemming vs Westminster City Council judgement, while not having precedence in Scotland, makes clear that local authorities must be able to justify fees and demonstrate that they operate on a cost recovery basis.
44. It was agreed that the Scottish Government should take steps to place a duty on Licensing Boards to account for their costs and fee income in a transparent manner. It is important to ensure that the required accounting be produced and that Boards use comparable approaches to data gathering/reporting.
45. The details of how a duty may work are outside the remit of the steering group. However, very clear parameters will be needed or there could be wide variations in the methods and quality of cost reporting. There are many factors to be considered – for example licensing is just one of many tasks that local authority employees carry out; there are many indirect costs to consider; and some costs are not currently calculated (such as use of council buildings/electricity).
46. It was agreed that the most suitable approach would be to wait for an appropriate legislative opportunity to insert a duty into primary legislation. An order-making power could be inserted so that the details can be finalised at a later date.
47. At the SOLAR meeting on Fri 13th September 2013 (The Society of Local Authority Lawyers & Administrators in Scotland), the group considered the steering group's recommendation to place a duty on Licensing Boards to account for their costs in a transparent manner in order to demonstrate that their fees regime operate on cost recovery (unless they choose to make a deficit).
48. There was agreement from SOLAR that this was an appropriate recommendation, although the importance of clear guidance regarding exactly what kind of data Boards should provide was emphasised.

Fairness and Proportionality

49. The Steering Group discussed whether „fairness“ and „proportionality“ should be considered when setting the alcohol licensing fees or whether cost recovery should be the only consideration in decision making. The group agreed that although the cost recovery principles set out in the 2005 Act should determine the overall amounts raised through fees, within these totals it was appropriate to consider fairness and proportionality.

Recommendations

- The group agreed that the Scottish Government should take steps to place a duty on Licensing Boards to account for their costs and fee income in a transparent manner. This will allow them to demonstrate that the fees regimes operate on a cost recovery basis (unless they choose to make a deficit).
- The group agreed that although they are not recommending substantive changes to the fees regime at this time, it will be necessary to revisit the issue once there is better data available from the new duty on Boards to report their costs and income. Furthermore, it is likely that there will be a business rates revaluation in 2017 so it may be appropriate to wait until information on this process is available before taking further action.
- The group agreed that the fee for occasional licences should be raised higher than its current £10 cost. It was agreed that Boards should have some discretion about how much to charge; to enable them to charge, for example, charity meetings less than commercial entities. The group suggested that a range of £20 – £80 may be appropriate for this purpose.
- The group agreed that it may be appropriate to revisit the special status awarded to Members' Clubs. Currently there is insufficient data to make specific recommendations, however more work should be done to consider whether some clubs are operating as commercial enterprises, and if so, whether their special status in the fees regime is still appropriate.

Annex A

The Steering Group

William Boyack – Wine and Spirit Trade Association (WSTA)

Patrick Browne – Scottish Beer and Pub Association (SBPA)

John Drummond – Scottish Grocers' Federation (SGF)

Morag Leck – Depute Clerk to Renfrewshire Licensing Board (attended the steering group as representatives of the SOLAR Licensing Group)

Robert Millar – Depute Clerk to City of Edinburgh Licensing Board (attended the steering group as representatives of the SOLAR Licensing Group)

Paul Waterson – Scottish Licensed Trade Association (SLTA)

Chair – Quentin Fisher – Head of Licensing – Scottish Government

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