



February 2005

LICENSING ACT 2003 FEES

It was recently brought to the Department's attention that the fees regulations which were laid in Parliament on the 20 January 2005 failed to achieve the policy objectives that had been decided by Ministers. On examination, it appeared that there were some inadequacies with the regulations (SI No.79) and, consequently, an Order amending them was made on 21 February and came into effect on 23 February.

This note summarises the specific changes made by these amendments and provides more general guidance and illustrations on how the fees regime is meant to operate. It is provided as an information guide only and is not a full and authoritative statement of the law and does not constitute professional or legal advice. Any statements on these pages do not replace, extend, amend or alter in any way the statutory provisions of the Licensing Act 2003 or any subordinate legislation made under it or statutory guidance issued in relation to it. No responsibility is accepted by the Secretary of State for the Department for Culture, Media and Sport or the Department for Culture, Media and Sport for any errors, omissions or misleading statements in this note.

The problems with the regulations laid on 20 January

Under the fees regulations laid on 20 January, a premises which applied to convert its existing licence and simultaneously applied to vary it by the addition of, for example, live music, but did not intend to vary anything connected to supplying alcohol for consumption on the premises, would pay a fee for conversion and a fee to vary: effectively double the amount that Ministers intended. If allowed to continue, this would breach clear undertakings given by Ministers during the Parliamentary stages of the Licensing Bill that simultaneous variation to include regulated entertainment on a licence would cost no more than obtaining the main premises licence. This error has now been corrected.

In addition, Ministers intended that premises in Bands D & E which primarily or exclusively supply alcohol for consumption on the premises should pay a multiplier fee when converting a licence, applying for a new licence or applying to vary a licence (except when done at the same time as converting an existing licence). However, as drafted, the fees regulations could have been interpreted as meaning that the multiplied fee would only be payable if the application itself (rather than the premises) concerned the primary or exclusive supply of alcohol for consumption on the premises. This could have the unintentional effect of meaning that a premises which was not primarily or exclusively concerned with the sale of alcohol, would have to pay the multiplier if in band D or E and their application concerned such sales. For example, a theatre applying for a variation for its bar to stay open longer might be caught by the multiplier as that application to vary concerned the sale of alcohol. The multiplier was introduced to recognise the increased inspection and enforcement costs associated with large premises engaged mainly selling alcohol and not establishments where such sales were a marginal activity.

Also, the unique scale of fees which apply to premises used to stage large scale events involving 5,000 persons or more, would also be paid twice in circumstances where an application to vary simultaneously with an application to convert an existing licence was made. The regulations also failed to ensure that the additional fee for large events would be due where an event reached the trigger point because of a variation to an existing licence.

The premises affected do not include qualifying clubs. Those affected by errors would be relatively small in number, but may include some off-licences and supermarkets; some premises staging large events attended by more than 5,000 people; and premises where any variation during the period of transition concerned only regulated entertainment or late night refreshment. We understand that very few applications have yet been made. Accordingly, a handful, if any, will have paid erroneous fees.

What the amendments will do

The main effects of the amendments are:

- To make it clear that the multiplier in bands D and E relates to premises which are used exclusively or primarily for the supply of alcohol for consumption on the premises.
- To ensure that, in respect of an application to vary which is made at the same time as an application to convert an existing licence to a new premises licence:
 - (a) where the application relates in any way or to any extent to the supply of alcohol for consumption on the premises a reduced fee will be payable for the application to vary (schedule 4 in the regulations); and
 - (b) where such an application does not relate in any way or to any extent to the supply of alcohol for consumption on the premises no fee will be payable for the application to vary.
- To ensure that if an application to vary has the effect of increasing the maximum number present during licensable activities on relevant premises to 5000 or more, that the additional fee for large scale events is paid.

In addition to the concerns related to the errors in the fees regulations, there have also been some queries and misunderstandings about other elements of the fees regulations:

The fee for variation during transition that relates to the sale of alcohol (schedule 4 in the fees regulations)

This only applies when a premises selling alcohol for consumption on the premises seeks to vary its licence to sell alcohol at the same time as an application to convert an existing licence during the transitional period. This fee is not subject to the multiplier for certain premises in bands D and E.

Exempt premises from public entertainment licence fees

Where premises which are exempt from paying for a licence for regulated entertainment hold a licence to sell alcohol (either through converting grandfather rights or because or as a result of a new application) they would not pay to vary their licence in relation to the provision of public entertainment. However, any variation to the sale of alcohol would attract payment.

Large scale events

This is an additional fee to the standard application and variation fees. Venues that are permanent and purpose built or structurally altered for the activity are exempt from the additional fee. Other premises may be able to obtain a permanent premises licence and would then pay an additional annual fee. However, this may depend on the practicalities of drawing up a plan(s) which is not subject to variation each year, and an operating schedule that satisfies responsible authorities and interested parties. Otherwise, they may have to apply for a new licence each year.

WHAT TO DO NEXT

The amending Order came into effect on 23 February and the fees, as amended, now apply.

Applications already received

The errors in the fees regulations would not have affected the vast majority of applications. The amendments do not affect the fees for any applications for conversion of a premise licence without variation, any personal licence applications or conversion, any club premises certificate applications and conversion.

Applications to convert and vary a premises licence which have recently been made may have been accompanied by a fee which is more than was intended, even though it may have been correct according to the regulations in effect at the time the application was made (ie those which came into effect on 7 February, but have now been amended). Similarly, applicants may have included the fee that was intended, but this may technically have been too little in relation to the fees laid on 7 February, although it may reflect the situation confirmed by the fees amendments which are now in force. Licensing authorities will need to consider the individual circumstances of any such applications, taking their own legal advice where necessary.