



Consultation Response

The Licensing (Scotland) Act 2005

Consultation on reviewing the fee for occasional licences and considering a limit on the number and duration of occasional licences

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Introduction

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Our Licensing Law sub-committee welcomes the opportunity to consider and respond to the Scottish Government "*Consultation on reviewing the fee for occasional licences and considering a limit on the number and duration of occasional licences*" (the consultation). The sub-committee has the following comments to put forward for consideration.

Fees

1. Do you agree that the fee for an occasional licence should be increased from the current level of £10?

Yes.

There appears to be evidence to support an increase in the occasional licence fee which was identified in the Review of Alcohol Licensing Fees¹ Report which stated:

"The vast majority (97%) of Licensing Board respondents thought that the Occasional Licence fee was too low and did not reflect costs incurred."

Licensing Boards have no discretion as to what fees to set in respect of occasional licences as Regulation 15 of The Licensing (Procedure) (Fees) Regulations 2007 (2007 Regulations) sets the fee currently at £10.²

¹ <https://www.gov.scot/publications/review-alcohol-licensing-fees/pages/10/>

² SSI 2007/553

The passage of time alone since the fees were set at £10 even allowing for inflation would appear to justify some increase from that £10 level. Where there continues to be no flexibility as to the fixing of fees for occasional licences since these need set under the 2007 Regulations, one proposal is for there to be an annual increase of the fee linked to inflation or that there are more regular reviews to ensure that, moving forward, the fees keep in step with the costs of processing occasional licences.

The policy intention and indeed, the basis for charging fees for licences where the Licensing Boards have a discretion to levy fees, is to allow them to reimburse the costs of the necessary administration in processing such applications. Objectively, given the notification, publication and determination that are required in connection with the grant of such licences under the 2007 Regulations and the consequential administrative burden on Licensing Boards, we can understand the argument made for increasing the fee from the current level of £10. A fee of £10 does seem quite a token charge.

In light of the very different types of applications being made for occasional licences and the wide range of organisations applying for them who range from hotels to charities, it would seem better to consider the introduction of different levels of fee, depending upon the type of application and the capacity of premises. This would appear to be a fairer system and could replicate the fee bands for public entertainment licences set under the Civic Government (Scotland) Act 1982.

The level of fee increase that would be justified by the different fee levels would need to reflect the recouping of the additional administrative costs involved. However, any banding would need to be kept as simple as possible.

One separate policy consideration might arise in connection with clubs. As they are outside the standard licensing regime in many respects, perhaps the imposition of a higher fee would seem to be appropriate for situations in which they are operating, effectively, as normal licensed premises.

2. Why?

We refer to our answer to Question 1.

3. Do you agree that £50 is an appropriate new fee level?

We cannot comment on the level of increase in fees.

4. Why?

Setting a blanket fee for occasional licences does not seem to meet the criteria for fee-setting which we outlined above. Though the administrative resource utilised by the local authority will vary from grant of

occasional licence to occasional licence, any flat fee, if that system is maintained, should be proportionate to such work as requires to be undertaken.

A 500% increase in fee level for most of these licences might not appear at first instance to be justified.

It is unfortunate perhaps that the evidential basis that would have justified both an increase in fee and robust evidence as the increased amount to be set was recognised as lacking from the Review of Alcohol Licensing Fees Report³ which indicated that:

“[only full financial information was supplied by a minority of Licensing Boards and what was supplied appeared in some cases to be of dubious reliability. For example, there were a number of inconsistencies between data returned on the spreadsheet...”

Such robust evidence does not therefore appear to exist. If an increase is justified to £50, a strong evidential basis should be demonstrated that that fee or indeed any higher fee is justified according to the policy criteria.

We understand from the consultation that part of the policy consideration is that there are organisations who are using the occasional licence route to circumvent the need to apply for a full premises licence. What evidence is there to show the introduction of a higher fee, be it £50, £75 or £100 would discourage this practice? Presumably, any increase in a fee to these suggested levels would discourage anyone using the loophole of occasional licences rather than applying for a full licence as the cost differential from applying for a full premises licence would not be so great.

As far as any further increase to £75 or £100, we would apply similar arguments as outlined above.

5. Do you agree that £75 is an appropriate new fee level?

We cannot comment on the level of increase in fees.

6. Why?

We refer to our answer to Question 4.

7. Do you agree that £100 is an appropriate new fee level?

³ Paragraph 9.3 <https://www.gov.scot/publications/review-alcohol-licensing-fees/>

We cannot comment on the level of increase in fees.

8. Why?

We refer to our answer to Question 4.

9. If you do not think that any of the proposed fee levels are appropriate, what do you believe would be a suitable fee level?

We cannot comment on the level of increase in fees.

10. What evidence, based on cost recovery, can you supply for an appropriate fee level for occasional licences?

We cannot advise.

11. Do you agree that limits should be placed on the number and duration of occasional licences for holders of a premises licence and holders of a personal licence?

Section 56 of the Licensing (S) Act 2005 (2005 Act) does not define what an “occasional licence” is. It does not prescribe the types of events or occasions which are covered by such an application. We have not suggested any amendments to primary legislation in our response as that seems out with the scope of this consultation which is dealing with the issue of secondary regulations. A better definition in primary legislation of “occasional licences” would seem to provide a long-term solution.

We understand that applications for occasional licences range from:

- voluntary organisations to small outside catering companies who require occasional licences to run their businesses
- national companies applying for occasional licences to cover the period between completion of new premises and confirmation of provisional licences.

The use of occasional licences will vary too depending whether it is a rural or urban venue.

It is not possible and indeed, undesirable, to attempt to cater for all these variables regarding occasional licences given the wide range of applicants who can apply for these licenses and the types of premises involved. These appear to us to be matters which would be best covered by the individual Licensing Boards' policy statements. We understand that many Boards already define within their policy statements the types of events or occasions that they deem to be appropriate for occasional licences. This is to try and prevent the misuse of occasional licences where a premises licence should be applied for.

The reason for suggesting statutory limits on the number of occasional licences available for any particular premises would appear to be to prevent operators from circumventing the licensing process and trading for long periods of time on a commercial basis, without being subject to the same scrutiny. Though we agree that this is undesirable, if legislative limits were to be placed on the number of applications which could be made by a single personal licence holder, this could unfairly disadvantage sole traders or smaller organisations such as a small outside catering company. Larger companies with numerous personal licence-holders in their employment would not face the same challenges. Mobile bar companies who apply for occasional licences for hundreds of events across the country in the course of a year would not be able to operate without more than one personal licence holder.

The 2005 Act already provides adequate grounds for refusing applications in those circumstances. Many Licensing Board's policy statements also provide for a local approach to repeat occasional licence applications from the same premises. If a limit was set, it would remove all discretion currently contained within the process. This discretion is often necessary as the circumstances within which occasional licences can be granted vary so significantly.

It is also conceivable that limiting the number of licences available in respect of one premise could have a very serious effect on that venue, particularly in rural area. which is used by different groups on a regular basis. For instance, this could affect the church hall which is hired out for an event every week. Where the person is hiring out the hall seeks the occasional licence and assumes responsibility for the event, it would simply not be practical to force such venues to obtain full premises licences. Those who would hold the licence would be the premises manager and would pay the annual fee etc. Operators who utilise occasional licences on a continuous basis to license external areas would be unable to do so if unrealistic limits were set.

With a view to reducing the administrative burden on the local authority and operators, we would suggest increasing the maximum number of consecutive days to 28 to cater for events such as the Edinburgh festival

12. Why?

We refer to our answer to Question 11.

13. What do you think would be an appropriate limit on the number of occasional licences that could be issued to the same applicant in a 12-month period, and why?

We refer to our answer to Question 11.

14. What do you think would be an appropriate limit on the number of occasional licences that could be issued to the same premises in a 12-month period, and why?

We refer to our answer to Question 11.

15. What do you think would be an appropriate limit on the number of days that occasional licences issued to the same applicant in a 12-month period could have effect, and why?

We refer to our answer to Question 11.

16. What do you think would be an appropriate limit on the number of days that the occasional licences issued in relation to the same premises in a 12-month period could have effect?

We refer to our answer to Question 11.

17. What do you think would be an appropriate limit on the number of continuous days that a series of occasional licences can have effect in relation to the same premises?

We refer to our answer to Question 11.

18. Are there any other comments you wish to make that relate to the occasional licence?

We have nothing further to add.

For information, please contact:

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