



LICENSING COMMITTEE REPORT

Report Title	Annual Fees - Suspension of Licence
---------------------	--

AGENDA STATUS: PUBLIC

Committee Meeting Date:	19 th June 2012
Directorate:	Customers & Communities

1. Purpose

1.1

This document sets out the responsibilities and procedures in relation to the collection of the annual fees due under the Licensing Act 2003. It sets down guidance and responsibilities of staff for the purposes of collecting, maintaining systems and suspension of licences. This guidance exists to protect both the Council and its employees from legal challenges and maximising the income due.

2. Recommendations

- 2.1 That the committee agree to the introduction of the billing procedure as 3.1.7 and 3.1.8 below.

3. Issues and Choices

3.1 Report Background

- 3.1.1 Prior to the 25th April 2012, the Licensing Act 2003 (The 2003 Act) set down a statutory annual fee due by all Licence Holders. Following consultation on rebalancing the 2003 Act, it became evident that the vast majority of Local Authorities, including Northampton Borough Council, found these fees difficult to collect and no real powers or incentives existed to enforce overdue debts.

- 3.1.2 The Police Reform & Social Responsibility Act 2011 (The 2011 Act) introduced changes to The Licensing Act 2003, to make provision for licensing authorities to suspend licences due to non-payment of fees. The Government felt this amendment would provide a much stronger incentive for businesses to pay their fee in a timely manner and save licensing authorities the time and cost of pursuing non-payment. **This change became law on the 25th April 2012.**
- 3.1.3 The new legislation allows for a minimum period of 21 days for licence holders to pay their fees and for the licence to be reinstated as soon as the fee is paid. The licensing authority must give the licence holder two days notification that the licence will be suspended and must notify the licence holder when their licence has been reinstated.
- 3.1.4 There is provision within the act, that if an administrative error has occurred or there is a dispute about liability to pay a fee, the licence cannot be suspended.
- 3.1.5 Under section 182 of the 2003 Act, a Local Authority in carrying out its functions must have regard to any guidance issued by the Secretary of State. The amended guidance relating to the new legislation in respect of the suspension of licences for non-payment of the annual fee is detailed in Annex A.

3.1.6 Maintenance of Fees

No changes are proposed to the existing maintenance of fees as detailed below:

- Annual fees in respect of the Licensing Act 2003 are collected by invoicing, using the corporate Agresso software.
- The Exchequers Department is responsible for : setting up Direct Debits, collecting the Direct Debits, the production of subscription invoices, sending out ad-hoc invoices.
- The responsibility for authorising and amending Customer Masterfile Information falls within the Exchequers Department
- The responsibility for inputting and amending ad-hoc invoices, reoccurring subscriptions and credit notes, falls within the Licensing Team.
- The responsibility for producing the arrears list falls within the Recovery Team.

3.1.7 Billing Procedures

No billing procedures exist at present and it is proposed to adopt the following procedures:

- Issue invoice with a “Due Date” from the grant date of the Licence, responsibility of the Licensing Team.
- 14 days after the “Due Date” a normal reminder is sent by exchequers.
- 14 days after that (28 days after Due Date) a Final letter is sent by the Exchequers team informing the Licence Holder that their Licence will be suspended within 7 days*.
- At the same time as step 3* details and copies of the letter will be sent to the Senior Licensing Officers (SLO), in order that a visit and a copy of the letter can be hand delivered to the premises, within 2 working days.
- The SLO must check if a Registered Interest 3rd party application has been lodged in respect of the Licence and contact the 3rd party immediately to warn of the impending suspension and possible loss of business.
- The SLO must check the billing details are consistent with the information held on file and check if any complaint regarding an administration error has been lodged with the Local Authority.
- If still no payment is received, the SLO will send notice of the suspension date to the Licence Holder at both the billing address and hand deliver the notice to the premises. The SLO will also notify the police that the Licence has been suspended and update the Agresso Customer Information Notebook.
- Payment for suspended licences should be directed to the Licensing Team and will be requested by debit or credit card, in order to ensure that licences are reinstated as quickly as possible, instead of waiting for cheques to clear.
- Upon receipt of payment, the SLO must no later than the end of the next working day, give written notice to the licence holder that the licence has been reinstated and inform the police.

3.1.8 Proposed Exchange of Information with Exchequers

Reports of the outstanding licensing fees are currently received on an ad-hoc basis and it is proposed to adopt the following exchange of information with the exchequers department:

- Recovery will send a weekly report that identifies those invoices that have gone passed the "X" date and are not paid. It would be the responsibility of the Senior Licensing Officers to suspend the licence.

- Recovery will use a specific "Complaint Code" with a Complaint Date towards the year-end. This would mean that the Recovery Team in Revenues and Benefits would take no action on these invoices until the complaint date is expired and they have received instruction from the Licensing Team to take further action.
- Once the complaint date has expired, the Licensing Team will be responsible for raising credit notes and/or instructing the Recovery Team to pursue through the Debt Collection Agents.
- The Exchequers/Recovery Sections, and the Licensing Team must ensure that any complaints lodged regarding an issue concerning an administration error, or a dispute over the charges, are recorded in the Customer Information Notebook on the Agresso system. Complaints will only be accepted as valid, once the complaint has been received in writing or by email.
- The Licensing Team will update the individual Agresso Customer Information Notebook that a Licence has been suspended.
- Customers who request a change of billing address must be referred to the Licensing Team. These customers will be asked to return their premises licence for updating in accordance with s.33 of the Licensing Act 2003.

3.3 Choices (Options)

This report proposes a process to implement this legislation within the councils Licensing service. It is proposed that this council allow longer than the statutory minimum period as above. Another option would be to be less generous and require payments within the minimum times, however this would not align with the billing and payment policies of other service area and may be considered too onerous on the businesses concerned.

4. Implications (including financial implications)

4.1 Policy

- 4.1.1 No annual fees procedure currently exists for the Licensing Act 2003. These procedures may need to be integrated into policies/procedures that exist within the exchequers/recovery teams; they have been consulted with and the Licensing Team will continue to work with those departments, in order to ensure that staff are made aware of these changes.

4.2 Resources and Risk

- 4.2.1 No financial risk identified in respect of staffing costs
- 4.2.2 Payment received by cheque and subsequently returned by bankers. There is often a time delay when receiving notification of cheques being returned by banks, this will result in a delay with the suspension of the licence. Cheques may be used as a method to delay either a suspension, or as a means to reinstate a licence, knowing the funds are not available.
- 4.2.3 Payment might be taken by Exchequers/Recovery and licence holder not notified that suspension lifted.
- 4.2.4 Billing address updated without the licence being updated.

4.3 Legal

- 4.3.1 A legal challenge may result in costs being claimed against the council.
- 4.3.2 Financial risk may arise if suspension in a licence is challenged. A legal challenge may result in costs being claimed against the council.

4.4 Equality

- 4.4.1 No equality issues have been identified at this stage.

4.5 Consultees (Internal and External)

- 4.5.1 Recovery Team, Exchequers Team, Legal Team

4.6 Other Implications

- 4.6.1 None

5. Background Papers

- 5.1 Licensing Act 2003
- 5.2 S .182 Guidance of the Licensing Act 2003
- 5.3 Home Office Guidance

Louise Faulkner, Senior Licensing Officer, Ext 8393

Licensing Act 2003 – s.182 Guidance paragraphs 14.1 – 14.7

The 2003 Act requires a licensing authority to suspend a premises licence or club premises certificate if the annual fee is not paid when it is due. However, this does not apply immediately if the payment was not made before or at the time of the due date because of an administrative error, or because the holder disputed liability for the fee before or at the time of the due date. In either of these cases, there is a grace period of 21 days. This period is intended to allow the licensing authority and the licence or certificate holder an opportunity to resolve the dispute or error. If the dispute or error is not resolved during this 21-day period, the licence will be suspended.

Dispute

The 2003 Act describes a dispute as one relating to liability to pay the fee at all or relating to its amount. In either case, the licence or certificate holder must notify the licensing authority of the dispute on or before the date on which the fee to which it relates becomes due.

Administrative Error

There is no definition of “administrative error” in the 2003 Act, but it can include an error on the part of the licensing authority, the licence or certificate holder, or any other person. Therefore, “administrative error” will be given its plain, ordinary meaning. An example might be where post has been misdirected.

Suspension

If a licensing authority suspends a licence or certificate, it must notify the holder in writing and specify the date on which the suspension takes effect; this date must be at least two working days after the day the authority gives the notice. It should be noted that this is the minimum period only, and licensing authorities should consider applying longer periods. The authority may wish to inform the police and other responsible authorities that the licence or certificate has been suspended.

A suspension ceases to have effect on the day on which the licensing authority receives payment of the outstanding fee from the licence or certificate holder. To enable the licence holder to demonstrate that the licence has been reinstated, the licensing authority is required to give the holder written acknowledgment of receipt as soon as practicable following receipt, and:

- a) If payment was received on a working day, no later than the end of the next working day, or;

- b) If payment was received on a day when the authority is not working, no later than the end of the second working day after the day on which the fee was received.

Licensing authorities may wish to consider requesting, in the notice of suspension mentioned above, that subsequent payment of the outstanding fee may be made in such manner as would most expeditiously bring it to the attention of the authority. The licensing authority may also wish to inform the police and other responsible authorities that the licence or certificate has been reinstated.

Effects of Suspension

A premises licence or certificate that has been suspended does not have effect to authorise licensable activities. However, it can for example be subject to a hearing or, in the case of a premises licence, an application for transfer. The licence will nevertheless only be reinstated when the outstanding fee has been paid. Formally, the debt is owed by the holder who held the licence at the time it was suspended. However, it may be more likely in practice that the new holder will actually make the payment. In the case of a licence or certificate where more than one payment year has been missed (since the coming into force of sections 55A and 92A of the 2003 Act) payment of the outstanding fee in relation to each year will be required to reinstate the licence.