



NEW SFE TARIFF

In July 2018 PPL published a consultation paper on possible revisions to the scope, fees and structure of its tariff for Specially Featured Entertainment (“SFE”). This followed previous phases of public consultation and discussions with relevant trade associations.

The provisional views put forward in the consultation paper were based on economic and other evidence available to PPL, but PPL actively sought and welcomed input on those views from licensees. The consultation closed in October 2018. PPL has now considered the responses that it received from both individual licensees and trade associations and, in doing so, PPL has made several changes to its provisional views.

PPL has now decided on the terms of a new SFE tariff.

This document sets out PPL’s approach to the new SFE tariff, covering Nightclubs, Pubs/Bars, Restaurants/Cafes, and Hotels (the “**New SFE Tariff**”), along with a summary of the relevant consultation responses.

The New SFE Tariff can be found at www.ppluk.com/sfetariff (together with the consultation paper and the consultation responses).



THE NEW SFE TARIFF - KEY POINTS

- The New SFE Tariff will apply to SFE events in nightclubs, pubs/bars, restaurants/cafés, and hotels.
- The New SFE Tariff will come into effect on 1 July 2019. It will be applied to new SFE licensees (where relevant) from that date, and to existing SFE licensees (where relevant) at their first annual renewal on or after that date.
- The New SFE Tariff will measure the audience at an SFE event by using the total number of admissions to the event. PPL has decided not to use capacity as an alternative means of measuring the audience.
- The fee under the New SFE Tariff will increase in direct proportion to the size of the audience (measured in bands of 25 persons) so that events with different audiences are treated fairly and consistently.
- One feature of this new structure is the introduction of two new smaller tariff bands, for events with attendances of 1-25 and 26-50 persons. As a result of this change and PPL's phasing in of the New SFE Tariff (see below), licensees with small SFE events will in many cases initially pay less for such events than they are paying under the current SFE tariff.
- The New SFE Tariff will continue to take account of the duration of each SFE event and, in view of the general support from consultation respondents, duration will be treated in the same way as under the current SFE tariff.
- Currently, the average fee paid under the SFE tariff is equivalent to around 3.9 pence per person per hour. Under the New SFE Tariff, the fees will be increasing but these will be phased in over 5 years to give licensees time to adapt to the changes:
 - The fees under the New SFE Tariff will initially be set by reference to a rate of **4 pence** per person per hour when it comes into effect on 1 July 2019 (i.e. **£1.00** for 25 persons, per hour).
 - The fees under the New SFE Tariff will then rise over the following four years to correspond to a rate per person per hour of: **5 pence** in 2020, **6.25 pence** in 2021, **7.5 pence** in 2022 and **9 pence** in 2023 (subject in each case to an annual adjustment for indexation).
- Indexation of the fees under the New SFE Tariff will be applied each year at the tariff anniversary date and, as requested by consultation respondents, will be by reference to changes in the Consumer Prices Index, rather than the Retail Prices Index.
- Under the New SFE Tariff, if a licensee fails to obtain or pay for the appropriate licence on time, a surcharge of 50% will be applied to the affected fees. Such a surcharge is in line with other PPL tariffs. However, the surcharge will not be introduced until the first anniversary of the New SFE Tariff on 1 July 2020, i.e. for licences with a commencement or renewal date after 1 July 2020, and will be subject to an annual cap of £1,000 per site. This will be a maximum limit (where the surcharge applies) and not a minimum charge.



SUMMARY OF CONSULTATION RESPONSES

Tariff scope

Venue types covered by the new tariff

In the consultation paper, PPL set out its view that a revised SFE tariff should apply (equally) to SFE events in nightclubs, pubs/bars, restaurants/cafés, and hotels. Generally, respondents saw no reason to distinguish between SFE events at these site types.

PPL has therefore decided that, as per its consultation position, the New SFE Tariff will apply to SFE events in nightclubs, pubs/bars, restaurants/cafés and hotels.

Some respondents did query the exclusion of other venue types. PPL explained in the consultation paper that it would consider separately, in due course, how a revised tariff for SFE events should apply to other types of venue and to large individual events such as festivals. This remains PPL's intention and therefore:

- PPL has not yet decided whether the value of the SFE licence for other venue types is different (or whether a different tariff structure is more appropriate for them); and
- in the meantime, the current SFE Tariff will continue to apply to SFE events held at those other venue types.

Definition of SFE

PPL also consulted on the definition of SFE. Whilst there was general agreement among respondents that the tariff should apply where there is a DJ and/or dancing, some specific comments were provided on the drafting of the definition, and PPL has taken note of those.

PPL has therefore decided that the New SFE Tariff will apply where:

- a DJ is used to play the sound recordings; and/or
- there is dancing by patrons in the venue to the sound recordings, unless the playing of the sound recordings is specifically covered by another PPL tariff.

The consultation paper also stated that a revised SFE tariff would apply in such cases regardless of how the sound recordings are played (i.e. whether they are played at the venue or transmitted to the venue). Whilst respondents generally objected to this, no compelling reasons for this objection were put forward.

PPL has therefore decided that, as per its consultation position, it will not matter under the New SFE Tariff whether the recordings are played at the venue or are transmitted to the venue.

Tariff structure

Attendance

In the consultation paper PPL explained that the current SFE Tariff has an inconsistent "fee per person per hour", because it mostly measures attendance in bands of 25 persons but has different attendance bands for larger audiences and the very smallest audiences. This results in larger SFE events incurring a much lower "fee per person per hour" than smaller events. PPL therefore consulted on using attendance bands of 25 persons throughout a revised SFE tariff, to ensure a consistent "fee per person per hour". Respondents did not provide any convincing reasons why the inconsistent approach in the current tariff should be continued.

PPL has therefore decided that, as per its consultation position, the New SFE Tariff will use attendance bands of 25 persons so that there will be a consistent "fee per person per hour" for all events and to ensure that events with small attendances pay a fairer fee. (PPL acknowledges that this change will affect the fees payable by some SFE licensees –



particularly for licensees holding SFE events with very large attendances – but has taken this into account both in setting the fees and in phasing in the New SFE Tariff.)

Duration

In the consultation paper, PPL's position was that the duration bands in the current SFE tariff should be retained. PPL received no objections to this approach.

PPL has therefore decided that, as per its consultation position, the New SFE Tariff will retain the same duration bands, with the fee for an SFE event continuing to rise in direct proportion to the duration of the event.

Admissions and capacity

In the consultation paper, PPL expressed concern that the current tariff allowed for inconsistent reporting approaches. To address this, PPL consulted on the position that attendances at SFE events should be reported on the basis of actual admissions or, as a secondary measure in certain circumstances, on the basis of capacity (which PPL considered might have administrative advantages for licensees).

Respondents expressed some concern about what they perceived as the burden of reporting actual admissions. However, their responses also indicated that SFE licensees already in effect had access to this information. Multiple respondents stressed that the current reporting based upon average attendance did “give an accurate record of how many customers attend” an SFE event, with one trade association saying that “Whilst inevitably, there may be a small margin of error in smaller venues without door staff who are counting people in and out, this is likely to be small”.

PPL has therefore decided that, as per its consultation position, attendances at SFE events should be reported under the New SFE Tariff, on the basis of actual admissions. PPL plans to take a sensible, pragmatic and fair approach to the implementation of this requirement.

Respondents objected strongly to the use of capacity as an alternative means of reporting attendance, expressing concern that this could result in licensees paying for customers who were not present.

PPL has therefore decided not to include capacity as a measure of attendance under the New SFE Tariff. PPL will instead reserve the right to ask SFE licensees for certain capacity information as a means of sense-checking reported actual attendance figures.

Fees

In the consultation paper, PPL reiterated its long-held view that the current SFE tariff does not fairly reflect the value of the PPL licence for an SFE event, considering the central role that music plays at an SFE event and the comparison of the tariff fees to the other costs of putting on an SFE event.

PPL also explained how it had commissioned choice modelling surveys (a specialised, established economic research method) to obtain an indication as to the willingness of patrons to pay for music at an SFE event – that is, the “value of music” to those patrons. The design of the most recent survey took on board comments from trade associations and licensees regarding PPL's previous surveys.

PPL set out its view that the “value of music” figure derived from choice modelling does not directly translate into a licence fee to be paid by the operators of SFE events, but provides a framework within which a fair and reasonable fee can then be determined (on the basis that the operator of the SFE event can obtain at least some of that value from its SFE patrons).



In summary, PPL explained its approach as follows:

- Taking conservative results from the most recent survey, the “value of music” to a customer at an SFE event is around 75 pence per person per hour (exclusive of VAT).
- PPL then made an adjustment for the “ebb and flow” of patrons (i.e. the fact that not all patrons are present at an SFE event for its full duration, because they may arrive late and/or leave early) and allocated one third of the “value of music” to PPL (with the other two thirds being allocated to PRS and the SFE operator respectively).
- This suggested that a reasonable licence fee would be around 22 pence per person per hour (exclusive of VAT). However, PPL recognised that such a fee would have a significant impact for operators of SFE events, especially bearing in mind that such impact could be further affected by reforms to the structure of the SFE tariff.

In the consultation paper, PPL therefore consulted on a range of fees from 3.8 pence per person per hour (the average fee under the current SFE tariff, based on the data available to PPL at the time of the consultation) to 22 pence per person per hour. In response, some respondents objected to PPL’s use of the choice modelling research, and most respondents expressed general concern about increased fees against the backdrop of numerous other pressures on SFE licensees.

As regards the use of choice modelling:

- Some respondents objected to this valuation process on the basis that there are a range of attractions to a venue and to an SFE event (of which music is just one element). However, the reason for using the choice modelling research technique is that it is specifically designed to identify the value of one element from a package of elements.
- Some respondents put forward an opinion from a firm of economists that sought to argue that the results from the survey were unreliable and that PPL had not used the results properly. However, PPL has reviewed those arguments with its experts and remains confident that the survey results are robust and the application of those results is sound.

As regards respondents’ more general concerns about increased fees, these included concern about wider issues such as the uncertainties surrounding Brexit and the changes in business rates. Against this backdrop, respondents asserted that an increase in SFE licence fees would result in a substantial reduction in the number of SFE events (or even SFE venues). Whilst PPL does not agree with all of the concerns and objections raised by respondents in respect of increasing the SFE licence fees, PPL has listened to those respondents.

PPL has therefore decided that, while a higher fee could be justified, the licence fees under the New SFE Tariff will be based on a rate of **9 pence per person per hour** (exclusive of VAT), equating to £2.25 (exclusive of VAT) for each band of 25 persons. PPL considers this to be a fair and reasonable approach. Further, to allow licensees to adapt to the changes PPL will phase in this fee over 5 years.

While some licensees will see significant increases in their SFE fees, the changes from the current tariff also mean that for smaller events there will be little change in the fees (and in some cases a reduction). For example, an SFE event with 1-25 persons currently costs £2.33 per hour under the current SFE Tariff, whereas the fee under the New SFE Tariff will be £1.00 per hour in the first year of the tariff, rising to £2.25 per hour in year 5 (subject to indexation).

Indexation

In the consultation paper, PPL’s view was that there should be an annual adjustment of SFE licence fees by reference to changes in the Retail Prices Index (RPI). Respondents generally felt that the Consumer Prices Index (CPI) would be more appropriate.



PPL has therefore decided that the fees in the new tariff will be adjusted annually by reference to CPI.

Surcharge

In the consultation paper, PPL set out its view that, if a licensee fails to obtain or pay for the appropriate SFE licence on time, a surcharge of 50% should be applied to the affected fees. This would be in line with a number of PPL’s background music tariffs (some of which were settled by the Copyright Tribunal), which feature a similar surcharge. The purpose would be to deter copyright infringement and late payment, as well as providing compensation for the additional time and expense incurred in dealing with infringing/non-paying SFE event operators.

Given that the licence fees for SFE can be higher than under a background music tariff, PPL explained that in the context of SFE such a surcharge would be subject to a cap of £1,000 per site. Some respondents objected to the introduction of a surcharge but did not put forward any effective alternatives or provide sufficient grounds for PPL not including such a surcharge in line with other PPL tariffs.

PPL has therefore decided that, as per its consultation position, if a licensee does not obtain or pay for the appropriate licence on time under the New SFE Tariff, a 50% surcharge (subject to an annual cap of £1,000 per site) will be applied to the affected fees. However, the surcharge will not apply for the first year of the New SFE Tariff.

Implementation and phasing in

In order to give appropriate notice ahead of the introduction of the New SFE Tariff, PPL has decided that the New SFE Tariff will take effect from 1 July 2019 and so will apply to any licensees with Licence Years starting on or after that date.

In the consultation paper, PPL recognised that SFE licensees would wish to have time to plan and budget for any revised SFE fees. PPL therefore consulted on the basis of phasing in a revised tariff over a period of 3 years. However, as part of listening to respondents’ concerns about the potential impact of increased fees (even though PPL does not agree with all of those concerns), PPL is willing to provide a longer phasing-in period.

PPL has therefore decided to phase in the New SFE Tariff over a 5-year period as follows:

	Year 1	Year 2	Year 3	Year 4	Year 5
Start of customer’s Licence Year	1 July 2019 to 30 June 2020	1 July 2020 to 30 June 2021	1 July 2021 to 30 June 2022	1 July 2022 to 30 June 2023	1 July 2023 to 30 June 2024
Underlying rate per person per hour	4 pence	5 pence	6.25 pence	7.5 pence	9 pence
Rate per unit of 1-25 persons per hour	£1.00	With effect from Year 2, the fees in this tariff will be adjusted annually by indexation using the Consumer Prices Index (“CPI”)			