

North Tyneside Council Report to Cabinet Date: 10 September 2012

ITEM 7(e)

Title: The Gambling Act
2005 Draft Revised
Statement of Licensing
Policy (Gambling)

Portfolio(s): Regulatory Services

Cabinet Member(s): Cllr G Westwater

Report from Directorate: Regeneration, Development and Regulatory Services

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Wards affected: All

PART 1

1.1 Purpose:

This Report has been prepared in accordance with section 349 of the Gambling Act 2005 (the Act), which requires each council as a Licensing Authority to publish a Statement of Licensing Policy and to revise the Policy at least every three years. This Report concerns the revision of the Policy and provides guidance as to how the Council as a Licensing Authority will exercise its functions under the Act. The Report outlines the initial proposals to Cabinet in connection with the formulation and subsequent formal approval of the Policy, which forms part of the Council's Policy Framework.

1.2 Recommendation(s):

It is recommended that Cabinet:-

- (a) Endorse the draft revised Statement of Licensing Policy (Gambling), attached at **Appendix 1** to this Report; and
- (b) Note that the Council is requested to determine whether or not to pass a 'no casino' resolution under section 166 of the Act.

1.3 Forward plan:

This item appears on the current Forward Plan dated 1 August 2012 to 30 November 2012.

1.4 Council plan and policy framework

The Local Authorities (Functions and Responsibilities)(England) Regulations 2000 as amended specifies that the Policy Statement is to be the shared responsibility of the Council and the Executive. Accordingly, the Policy Statement will form part of the Council's Policy Framework and this initial Report is submitted to Cabinet in pursuance of the established process under Part 4.7 of the Constitution to be followed in relation to the formulation and approval of plans and strategies comprised in the Policy Framework.

This Report is relevant to the Council's Strategic Plan for 2012-2015.

1.5 Information:

The Gambling Act 2005 received Royal Assent on the 7 April 2005 and came fully into force on the 1 September 2007. The Act removed from the Magistrates' Court the responsibility for granting gaming and betting permissions and transferred this responsibility to Local Authorities, which act as Licensing Authorities.

The Act established a regulatory body for gambling in Great Britain, namely, the Gambling Commission (the 'Commission'). The Commission shares the responsibility for licensing and regulation under the Act with the Licensing Authorities. The Commission has been responsible for issuing statutory guidance to Licensing Authorities as to how to exercise their functions under the Act (including the compilation of this Policy Statement) and has issued Codes of Practice to the gambling trade.

The administration of the Act by both the Commission and Licensing Authorities has to be in such a manner as to promote the three licensing objectives laid down by the Act, which are:-

- Preventing gambling from being a source of crime and disorder, being associated with crime or disorder or being used to support crime
- Ensuring that gambling is conducted in a fair and open way;
- Protecting children and other vulnerable persons from being harmed or exploited by gambling.

The Council is required to produce and publish a Statement of Licensing Policy under the Gambling Act 2005 and the initial Policy came into force on 31 January 2007 and has been reviewed and where necessary amended every three years thereafter.

The revised Statement of Licensing Policy (Gambling) must be in force by 31 January 2013 when the existing policy will expire. The three year period for each policy runs from 31 January as determined by The Gambling Act 2005 (Licensing Authority Policy Statement)(First Appointed Day) Order 2006.

Under the Act, the Council as a Licensing Authority is responsible for issuing **Premises Licences** and **Permits**.

Premises Licences are specific to the type of premises offering gambling to the public and include:-

- Bingo Premises
- Adult Gaming Centre Premises
- Family Entertainment Centre Premises

- Betting Premises.

This Council does not have the Authority from the Secretary of State to issue Casino Premises Licences. Section 175 of the Act limits the overall numbers of types of casinos that will be permitted in Great Britain. Until such time as the current limits on the number of casinos is increased, no further Casino Premises Licences will be issued. Provided that the Council does not pass a 'no casino' resolution under Section 166 of the Act, the Council will be in a position to apply to the Secretary of State to be considered as a Licensing Authority with the power to issue Casino Premises Licences, should the limits on the number of casinos imposed by section 175 ever be increased.

The current Statement of Licensing Policy (Gambling) (and the revised draft which has been consulted upon) at Paragraph 9.1 of Section B states: - "This Licensing Authority has not passed a 'no casino' resolution under Section 166 of the Gambling Act 2005, but is aware that it has the power to do so. Should this Licensing Authority decide in the future to pass such a resolution, it will update this policy statement with details of that resolution. Any such decision will be made by Full Council."

The decision whether or not to pass a 'no casino' resolution is purely discretionary and there is no requirement to pass such a resolution. However, it would seem prudent, and indeed good practice, to reconsider the issue of whether the Council, as a Licensing Authority, wishes to pass a 'no casino' resolution when it is reviewing its Statement of Licensing Policy. The current Licensing Policy lapses on 31 January 2013 and, it could be argued, that the decision not to pass a 'no casino' resolution taken by Council on 19 November 2009 also lapses. If Council decides to adopt the current wording in Paragraph 9.1 of the draft revised Policy, this will mean the Council has not passed a 'no casino' resolution. This would keep the option open for the Council as Licensing Authority to apply to issue Casino Premises Licences should the current limit on the number of casinos in Great Britain be increased. If on the other hand, a 'no casino' resolution is passed, it will bind the Council for three years (unless another resolution is passed in the interim) and will prohibit the Council from issuing Casino Premises Licences in that period.

In terms of **Permits**, the Council as Licensing Authority can issue the following types of permit:-

- Unlicensed Family Entertainment Centre Gaming Machine Permit
- Club Gaming Permit
- Club Gaming Machine Permit
- Alcohol Licensed Premises Gaming Machine Permits
- Prize Gaming Permits.

Section 153 of the Act sets out the principles to be applied by the Council as Licensing Authority when considering an application for a Premises Licence. It states:-

'(1) In exercising their functions under this Part [of the Act] a Licensing Authority shall aim to permit the use of the premises for gambling in so far as the authority think it –

(a) in accordance with any relevant code of practice [issued by the Gambling Commission]'

(b) in accordance with any relevant guidance issued by the Commission under Section

- (c) reasonably consistent with the licensing objectives (subject to paragraphs (a) and (b), and
- (d) in accordance with the Statement [of Policy] published by the authority under section 349 (subject to paragraphs (a) to (c))'

Section 153 emphasises the importance of the Council's Statement of Licensing Policy (Gambling) in determining any application for a Premises Licence made to the Council as Licensing Authority.

The draft revised Statement of Licensing Policy (Gambling) attached to this Report at **Appendix 1** contains the information that The Gambling Act 2005 (Licensing Authority Policy Statement)(England and Wales) Regulations 2006 have prescribed should be included in the policy document. Such information includes:-

(a) an introductory section that should include:-

- a description of the geographical area in respect of which the authority exercises its functions under the Act, and
- a list of persons that the authority has consulted in preparing the statement.

(b) the following matters in separate sections of the policy statement:-

- the principles to be applied by the authority in designating in writing the body which is competent to advise the authority about the protection of children from harm
- the principles applied by the authority in determining whether a person is an interested party in relation to a premises licence application
- the principles to be applied by the authority in the exchange of information between it and the Gambling Commission and other bodies listed in the Act
- the principles to be applied by the authority in relation to the inspection of premises and investigating criminal proceedings under the Act.

In preparing this draft revised Policy document, regard has been taken of the Commission's statutory guidance and the Regulations issued in order to assist Licensing Authorities in the preparation of their policy statements.

The draft revised policy statement was subject to a 12 week period of public consultation that began on 21 May 2012 and ended on 10 August 2012. This 12 week period for consultation was chosen because it is in line with best practice as set out by the Department for Business, Innovation and Skills. A list of the extensive number of consultees will appear in the policy document.

The draft revised policy statement once approved must be published at least 4 weeks before it comes into effect (31 January 2013) and be available for inspection on the Council's website, public libraries and Town Hall/Quadrant. Before the policy comes into effect the Council must also advertise the publication of the policy statement by publishing a public notice on the Council's website and in a local newspaper indicating when the policy will be published and when it comes into effect.

1.6 Decision options:

Cabinet may:-

- (a) Endorse the draft revised policy statement in its current form,
- (b) Not endorse the draft revised policy statement.

1.7 Reasons for recommended option:

The revised draft policy has been developed over many months by licensing officers working closely with Legal Services. The policy contains the information required by legislation and the Gambling Commission. It has been subject to extensive consultation involving, in addition to members of the public, all North Tyneside MPs, MEPs and Councillors. All consultees were given the opportunity of providing feedback and comments on the draft policy up to 10 August 2012.

1.8 Appendices:

Appendix 1 – Draft Revised Statement of Licensing Policy (Gambling).
Appendix 2 – Consultation responses

1.9 Contact officers:

Ken Wilson – Head of Regeneration, Development and Regulatory Services (Tel: 6436091)
Colin MacDonald – Consumer Protection Group Manager (Tel: 6436620)
Joanne Lee – Principal Licensing Officer (Tel: 6436901)
John Barton – Lawyer (Tel: 6435354)
Alison Campbell- Finance Business Manager (Tel 6437038)

1.10 Background information:

The following background papers have been considered in the preparation of this Report and are available for inspection at the offices of the authors.

- Gambling Act 2005
- Gambling Commission's Guidance issued under section 25 of the Gambling Act 2005
- The Gambling Act 2005 (Licensing Authority Policy Statement)(England and Wales) Regulations 2006
- The Gambling Act 2005 (Licensing Authority Policy Statement)(First Appointed Day) Order 2006
- The Local Authorities (Functions and Responsibilities)(England) Regulations 2000 (as amended)

PART 2 – COMPLIANCE WITH PRINCIPLES OF DECISION MAKING

2.1 Finance and other resources

The costs of preparing and publishing the revised Statement of Licensing Policy (Gambling) and the associated consultation arrangements can be met from the Directorate's revenue budget.

2.2 Legal

The Council is required to produce and publish a Statement of Licensing Policy under the Gambling Act. This statement must be reviewed, and if necessary revised, every three years. This new draft policy must be brought into effect by 31 January 2013. The revised policy must however be formally approved by December 2012 to enable the revised policy to be publicly advertised at least 4 weeks prior to the date it comes into effect.

It is clear that the Licensing Policy document is to be the shared responsibility of the Council and the Executive. The Policy will form part of the Council's Policy Framework and this initial report is submitted to Cabinet in pursuance of the established process under Part 4.7 of the Constitution to be followed in relation to the formulation and approval of plans and strategies comprised in the Policy Framework.

2.3 Consultation/community engagement

As previously stated, the draft policy has been widely consulted upon. Members of the public, the gambling trade, North Tyneside MPs, MEPs, Councillors, the Elected Mayor of North Tyneside and Strategic Directors have all had an opportunity of commenting upon the draft revised policy statement. The 12 week consultation period ran until the 10 August 2012. Notice of this consultation was given through a press release and copies of the draft policy statement have been made available at Council offices, customer service centres, libraries and on the North Tyneside Council website.

There has been 1 response received during the consultation period. This came from a member of the public and the response is appended to this report at **Appendix 2**.

Member Consultation

The content of this draft Statement of Licensing Policy (Gambling) is driven by statutory requirements. Consultation with Members provides a key element to the formulation of the Policy. Members were informed in the Members Weekly Briefing for May 2012 that the Policy was being consulted upon. The Timetable for the consultation and the approval of the Policy, having regard to the Constitution, is as follows:-

Cabinet – 10 September 2012 – Presentation of initial proposals
Overview and Scrutiny Committee – 1 October 2012 – Presentation of initial proposals
Overview and Scrutiny Committee – 5 November 2012 – Presentation of final proposals
Cabinet – 12 November 2012 – Presentation of final proposals
Council – 29 November 2012 – Presentation of final proposals.

The timetable to date has been:-

Formal consultation period from 21 May to 10 August 2012. Officers were available to discuss the draft Policy Statement in detail at the request of any Member.

2.4 Human rights

There are aspects of the administration of the Gambling Act 2005 that may impact on the human rights of individuals residing in the Borough and licence holders. Article 8 of the European Convention of Human Rights entitles a person to the right to enjoy a private and family life. However, unlike the Licensing Act 2003, there is no licensing objective relating to gambling dealing with the prevention of public nuisance. If there is an issue with nuisance being generated by a gambling establishment, it may be something that a Licensing Committee/Sub-Committee may be able to consider in determining an application. However, it may be more appropriate for such issues to be dealt with by environmental protection legislation.

Article 6 of the European Convention also entitles an individual to a fair hearing. Any individual appearing before a licensing sub-committee under the Gambling Act will be given an opportunity to express their views as provided by the Act.

Article 1 of the First Protocol entitles a person to the peaceful enjoyment of his possessions. A possession may include a licence or the goodwill that such a licence may generate. However, balanced against that is the ability of the Licensing Authority to enforce such laws under the Act as is necessary to control the use of such property, including a licence.

2.5 Equalities and diversity

All persons, groups and organisations consulted during the consultation process, and all applicants and other parties under the Gambling Act 2005, will be treated equally by the Licensing Authority. No decision taken under the Act should in any way discriminate against any person or group in society.

2.6 Risk management

Risks associated with the service are managed via the Chief Executives Operational Risk Management Group.

2.7 Crime and disorder

One of the three licensing objectives contained within the Gambling Act 2005 is the prevention of gambling from being a source of crime or disorder, or being used to support crime. Any decision that the Council takes as a Licensing Authority will have to have regard to this licensing objective. The police will also be notified of every application for a premises licence so that they have an opportunity of visiting premises and making a comment on the application.

2.8 Environment and sustainability

There are no environment and sustainability implications arising directly from this report.

PART 3 - SIGN OFF

- Strategic Director(s)
- Mayor/Cabinet Member(s)
- Chief Finance Officer
- Monitoring Officer
- Strategic Manager, Policy and Partnerships
- Chief Executive

Report author...Ken Wilson, Head of Regeneration, Development and Regulatory Services