

North Tyneside Council Report to Cabinet Date: 11 May 2015

ITEM 6(d)

Title: The Gambling Act
2005 - Draft Statement of
Licensing Policy
(Gambling) 2016- 2019

Portfolio(s): Housing and Environment

Cabinet Member(s): Cllr J Harrison

Report from Service Area: Environment and Leisure

Responsible Officer: Phil Scott (Tel: 643 7295)
Head of Environment and Leisure

Wards affected: All

PART 1

1.1 Purpose:

Each local authority is required by the Gambling Act 2005 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 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 Authority's Policy Framework.

1.2 Recommendation(s):

It is recommended that Cabinet:

- (a) approve the initial proposals for the draft Statement of Licensing Policy (Gambling), attached at **Appendix 1** to this Report for consultation purposes.

1.3 Forward plan:

Twenty eight days notice of this report has been given and it first appeared on the Forward Plan that was published on 7 April 2015.

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 Council and the Executive. Accordingly, the Policy Statement will form part of the Authority'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 has links to the planned priorities Concerning Wellbeing, Economy and Safety.

1.5 Information

Background

- 1.5.1** The Gambling Act 2005 (the Act) gives responsibility for the granting of premises licences and permits to local authorities who act as licensing authorities when discharging functions under the Act.
- 1.5.2** The Act established the Gambling Commission (the 'Commission') which shares responsibility for licensing and regulation under the Act with the licensing authorities. The Commission has been responsible for issuing 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 and Licence Conditions for the gambling trade.
- 1.5.3** The administration of the Act by both the Commission and licensing authorities has to be done 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 or being used to support crime;
 - Ensuring that gambling is conducted in a fair and open way; and
 - Protection of children and other vulnerable persons from being harmed or exploited by gambling.
- 1.5.4** The Authority 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.
- 1.5.5** The revised Statement of Licensing Policy (Gambling) must be in force by 31 January 2016 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.
- 1.5.6** Under the Act, the Authority as a licensing authority is responsible for issuing Premises Licences and Permits.
- 1.5.7** Premises Licences are specific to the type of premises offering gambling to the public and include:-
- Casino Premises
 - Bingo Premises
 - Adult Gaming Centre Premises
 - Family Entertainment Centre Premises
 - Betting Premises.
- 1.5.8** This Authority 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 and, until such time as the current limit on the number of casinos is increased, no further Casino Premises Licences will be issued.

1.5.9 In terms of Permits, the Authority as a 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.

1.5.10 Section 153 of the Act sets out the principles to be applied by the 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] under section 24 [of the Act]
- (b) in accordance with any relevant guidance issued by the Commission under Section 25 [of the Act]
- (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))”

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

1.5.12 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.

- 1.5.13** In preparing this draft revised Policy document, regard has been had to the Commission's statutory guidance and the Regulations issued in order to assist licensing authorities in the preparation of their Policy statements. Regard has also been given to the "Guidance to Licensing Authorities" document published by the Commission in March 2015 and which is currently being consulted upon.
- 1.5.14** The draft revised Policy statement includes a new chapter 4 which deals with Local Risk Assessments. Applicants for a Licence or Permit will be required to produce a Local Risk Assessment as part of the application process (or variation of an existing Licence). The Applicant will be required to assess the local risks to the licensing objectives posed by the provision of gambling facilities at the premises and will be required to have policies, procedures and control measures to mitigate those risks. In undertaking the Risk Assessment the Applicant will be required to have regard to the relevant matters included in the Authority's Policy statement contained in chapter 4.
- 1.5.15** The draft revised Policy statement will be subject to a 12 week period of public consultation that will begin on 18 May 2015 and end on 10 August 2015. The 12 week period of consultation is considered an appropriate period of time to consult on this important Policy document. A list of the 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 2016) and be available for inspection on the Authority's website, public libraries and Quadrant. Before the Policy comes into effect the Authority must also advertise the publication of the Policy statement by publishing a public notice on the North Tyneside Council 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 initial proposals for the draft revised Policy statement in its current form, subject to any further amendments following consultation.
- (b) Not endorse the initial proposals for the draft revised Policy statement.

1.7 Reasons for recommended option:

The revised draft Policy has been developed by licensing officers working closely with Legal Services. The Policy contains the information required by legislation and the Gambling Commission including the new requirement imposed on Licence holders to undertake a Local Risk Assessment when applying for a Premises Licence or variation of an existing Licence. It will be subject to extensive consultation involving, in addition to members of the public, those involved in the gambling trade, all North Tyneside MPs, MEPs and Councillors. All consultees will be given the opportunity of providing feedback and comments on the draft Policy up to 10 August 2015.

1.8 Appendices:

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

1.9 Contact officers:

Phil Scott – Head of Environment and Leisure (Tel: 6437295)

Catherine Lyons – Regulatory Services Manager (Tel: 643 7780)
Joanne Lee – Public Protection Manager (Tel: 6436901)
John Barton – Lawyer (Tel: 6435354)
Alison Campbell – Senior Business Partner (Tel 643 7038)

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
<http://www.legislation.gov.uk/ukpga/2005/19/contents>
- Gambling Commission's Guidance issued under section 25 of the Gambling Act 2005
<http://www.gamblingcommission.gov.uk/Licensing-authorities/Information-for-licensing-authorities/Guidance-to-licensing-authorities-4th-edition.aspx>
- The Gambling Act 2005 (Licensing Authority Policy Statement)(England and Wales) Regulations 2006
<http://www.legislation.gov.uk/uksi/2006/636/regulation/5/made>
- The Gambling Act 2005 (Licensing Authority Policy Statement)(First Appointed Day) Order 2006
<http://www.legislation.gov.uk/uksi/2006/637/introduction/made>
- The Local Authorities (Functions and Responsibilities)(England) Regulations 2000 (as amended)
<http://www.legislation.gov.uk/all?title=Local%20Authorities%20Functions%20Responsibilities%20England>

PART 2 – COMPLIANCE WITH PRINCIPLES OF DECISION MAKING

2.1 Finance and other resources

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

2.2 Legal

The Authority is required to produce and publish a Statement of Licensing Policy under the Gambling Act. This Policy must be reviewed, and if necessary revised, every three years. This new draft Policy must be brought into effect by 31 January 2016. The revised Policy must however be formally approved by Council before December 2015 to enable the revised Policy to be publicly advertised at least 4 weeks prior to the date it comes into effect as required by the legislation.

It is clear that the Licensing Policy is to be the shared responsibility of Council and the Executive. The Policy will form part of the Authority'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 within the report, the draft Policy will be widely consulted upon. Members of the public, the gambling trade, North Tyneside MPs, MEPs, Councillors and senior officers will all have an opportunity of commenting on the draft revised Policy statement. The 12 week consultation period will run until 10 August 2015. Notice of this consultation will be given through a press release and copies of the draft Policy statement will be made available at the Authority's offices, customer service centres, libraries and on the North Tyneside Council website.

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 will be advised in the Members Briefing for May 2015 that the Policy is being consulted upon. The Timetable for the consultation and the approval of the Policy, having regard to the Constitution, is as follows:-

Cabinet – 11 May 2015 – Presentation of initial proposals

Overview, Scrutiny and Policy Development Committee – 1 June 2015 – Presentation of initial proposals

Overview, Scrutiny and Policy Development Committee – 5 October 2015 – Presentation of final proposals

Cabinet – 9 November 2015 – Presentation of final proposals

Council – 19 November 2015 – Presentation of final proposals

A Member Working Group is to meet in August and September 2015 to consider the consultation responses and make recommendations. Officers are 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 would 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

The Authority will ensure that anyone wishing to take part in the consultation process has an equal opportunity to participate.

It will also ensure that any decision taken under the Gambling Act 2005 will not discriminate against any person or group in society.

The introduction of this policy has the potential to contribute to the achievement of the requirement, under the Public Sector Equality Duty of the 2010 Equality Act, to eliminate unlawful discrimination, victimisation and harassment.

2.6 Risk management

Risks associated with the service are managed via the Operational Risk Management Group. By having this policy in place the Authority is and risks associated with the associated practices.

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 Authority 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 directly arising from this report.

PART 3 - SIGN OFF

- Deputy Chief Executive
- Head of Service
- Mayor/Cabinet Member(s)
- Monitoring Officer
- Chief Finance Officer
- Head of Corporate Strategy