

# North Tyneside Council Report to Council Date: 29 November 2012

## ITEM 8

Title: The Gambling Act 2005 –  
Revised Statement of  
Licensing Policy  
(Gambling) – Final  
Proposals

Portfolio(s): Community and Regulatory Services

Cabinet Member(s): Cllr G Westwater

Report from Directorate: Chief Executive's Office

Report Author: Mr Ken Wilson, Head of Regeneration,  
Development and Regulatory Services

(Tel:  
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Wards affected: All

### PART 1

#### 1.1 Purpose:

This Report has been prepared 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 final proposals to Council 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 Council:-

- (a) Agree the final proposals in respect of the revised Statement of Licensing Policy(Gambling) attached at **Appendix 1** to this report, and
- (b) Determine whether or not to pass a 'no casino' resolution under section 166 of the Gambling Act 2005.

#### 1.3 Forward plan:

This item appears on the Forward Plan for the period 10 October 2012 to 28 February 2013.

#### 1.4 Council plan and policy framework:

The Local Authorities (Functions and Responsibilities)(England) Regulations 2000 as amended specify that the Policy Statement is to be the shared responsibility of the Council and the Executive. Accordingly, the Policy Statement forms part of the Council's

Policy Framework and formulation and approval of the Statement is therefore required to be undertaken pursuant to the established process set out in Part 4.7 of the Council's Constitution in relation to plans and strategies comprised in the Council's Policy Framework. This report in respect of Cabinet's final proposals is accordingly submitted to Council for consideration and approval following Cabinet's agreement of those proposals at its meeting on 12 November 2012,

## 1.5 Information:

The Gambling Act 2005 received Royal Assent on 7 April 2005 and came fully into force on 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 or being used to support crime
- Ensuring that gambling is conducted in a fair and open way;
- Protection of 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.

## Casino Resolution

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) 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 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 wording in Paragraph 9.1 of the current Policy, then it 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 25
- (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 to 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 had to 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.

### **1.5.2 Consideration of proposals in respect of the Statement of Licensing Policy (Gambling)(the Policy Statement)**

The initial proposals in respect of the Policy Statement were agreed by Cabinet at its meeting on 10 September 2012. Cabinet noted on that date that the Council would be requested to determine whether or not to pass a 'no casino' resolution under section 166 of the Act.

The Overview and Scrutiny Committee considered the initial proposals referred to it by Cabinet when it met on 1 October 2012. In particular, the Overview and Scrutiny Committee considered the issue of whether or not the Council should pass a 'no casino' resolution. Following such consideration the Committee recommended that the Council should pass a 'no casino' resolution. As Overview and Scrutiny made only one recommendation, the Committee did not consider it necessary for the matter to come back before it on 5 November 2012 for consideration of the final proposals.

At its meeting on 12 November 2012 duly considered the recommendation made by the Overview and Scrutiny Committee and considered it appropriate to amend the initial proposals and to include in the final proposals in respect of the Policy Statement a 'no casino' resolution. Accordingly in this regard **Appendix 1** at paragraph 9.1 of Section B of the Policy Statement for consideration by Council has therefore been amended and now includes the following proposal:- "This Licensing Authority passed a no casino resolution on 29 November 2012, such resolution taking effect on 31 January 2013. This resolution will remain in force for a period of 3 years commencing on 31 January 2013 unless the Licensing Authority passes a further resolution revoking the no casino resolution".

**1.5.3** The decision as to whether or not to pass a 'no casino' resolution is a matter for Council at its meeting on 29 November 2012.

### **1.6 Decision options:**

The following decision options are available for consideration by Council:

#### Option 1

To approve the final proposals in relation to the Statement of Licensing Policy (Gambling) including the delegation scheme contained in the Statement.

#### Option 2

Not approve the final proposals in relation to the Statement of Licensing Policy (Gambling) including the delegation scheme contained in the Statement.

#### Option 3

Pass a resolution not to issue any Casino Premises Licences in the Borough under Section 166 of the Gambling Act 2005.

#### Option 4

Not pass a 'no casino' resolution so that there is no prohibition on issuing Casino Premises Licences in the Borough (should this become possible in the future).

### **1.7 Reasons for recommended option:**

Options (1) and (3) are recommended.

The revised draft Policy Statement has been developed over many months by licensing officers working closely with Legal Services. The Policy Statement 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 Statement up to 10 August 2012.

Should any amendments be required by Council, then, depending upon the significance of these proposed changes, it may be necessary to undertake further consultation. This would delay the process for the approval of the Policy and the Policy could not be published and implemented within the required timescales.

If the Statement of Licensing Policy (Gambling) is not approved by Council then there would be a clear risk of the Council not having a Statement of Licensing Policy (Gambling) in place by 31 January 2013 in contravention of Section 349 and the Gambling Act (Licensing Authority Policy Statement) (First Appointed Day) Order 2006 which states that each Policy Statement must run from 31 January. The Council as a consequence would not be in a position to exercise its functions under the Act.

In relation to Option (3) Overview and Scrutiny Committee and Cabinet have both commented that consideration be given to passing such a 'no casino' resolution.

### **1.8 Appendices:**

Appendix 1: Statement of Licensing Policy (Gambling)

Appendix 2: Consultation responses

Appendix 3: Policy amendments log.

### **1.9 Contact officers:**

Mr Ken Wilson, Head of Regeneration, Development and Regulatory Services (Tel 643 6091)

Mr Colin MacDonald, Consumer Protection Group Manager (Tel 643 6620)

Joanne Lee, Principal Licensing Officer (Tel 643 6901)

John Barton, Lawyer (Tel: 643 5354)

Alison Campbell, Finance Business Manager (Tel: 643 7038)

### **1.10 Background information:**

- Gambling Act 2005  
[http://www.legislation.gov.uk/ukpga/2005/19/pdfs/ukpga\\_20050019\\_en.pdf](http://www.legislation.gov.uk/ukpga/2005/19/pdfs/ukpga_20050019_en.pdf)
- Gambling Commission's Guidance issued under section 25 of the Gambling Act 2005  
<http://www.gamblingcommission.gov.uk/pdf/GLA4%20September%202012.pdf>
- The Gambling Act 2005 (Licensing Authority Policy Statement)(England and Wales) Regulations 2006  
[http://www.legislation.gov.uk/uksi/2006/636/pdfs/uksi\\_20060636\\_en.pdf](http://www.legislation.gov.uk/uksi/2006/636/pdfs/uksi_20060636_en.pdf)
- The Local Authorities (Functions and Responsibilities)(England) Regulations 2000 (as amended)  
[http://www.legislation.gov.uk/uksi/2000/2853/pdfs/uksi\\_20002853\\_en.pdf](http://www.legislation.gov.uk/uksi/2000/2853/pdfs/uksi_20002853_en.pdf)
- Minutes from the Cabinet Meeting held on 10 September 2012  
[http://www.northtyneside.gov.uk/pls/portal/NTC\\_PSCM.PSCM\\_Web.download?p\\_ID=538020](http://www.northtyneside.gov.uk/pls/portal/NTC_PSCM.PSCM_Web.download?p_ID=538020)
- Minutes from the Overview and Scrutiny Committee Meeting held on 1 October 2012  
[http://www.northtyneside.gov.uk/pls/portal/NTC\\_PSCM.PSCM\\_Web.download?p\\_ID=538804](http://www.northtyneside.gov.uk/pls/portal/NTC_PSCM.PSCM_Web.download?p_ID=538804)
- Minutes from the Cabinet Meeting held on 12 November 2012

## **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 Directorate's revenue budget.

### **2.2 Legal**

The Council is required to produce and publish a Statement of Licensing Policy (Gambling) under the Gambling Act 2005. 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.

The Policy Statement is to be the shared responsibility of the Council and the Executive under the Local Authorities (Functions and Responsibilities) (England) Regulations 2000. The Policy Statement forms part of the Council's Policy Framework and this report in respect of the final proposals is submitted to Council pursuant to 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.

If Council decides to pass a 'no casino' resolution, that resolution will by its inclusion in the Statement of Licensing Policy (Gambling) be deemed to have been published by the Council as is made clear by section 166(5) of the Gambling Act 2005.

### **2.3 Consultation/community engagement**

As previously stated, the draft Policy Statement has been widely consulted upon. Members of the public, the gambling trade, North Tyneside MPs, MEPs, Councillors and Strategic Directors have all had an opportunity of commenting upon the draft revised Policy Statement. The 12 week consultation period ran from 21 May 2012 until 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 first service centres, libraries and on the North Tyneside Council website.

Only one response was received during the consultation period. This came from a member of the public and the response is appended to this report at **Appendix 2**. The resident requested the prohibition of fixed odds betting terminals in betting shops. The Gambling Act 2005 prevents the licensing authority from prohibiting such machines.

#### **Member Consultation**

The content of this draft Policy Statement 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. During the formal consultation period from 21 May 2012 to 10 August 2012 officers were available to discuss the draft Policy Statement in detail at the request of any Member.

The full timetable for the formal approval of the Policy Statement, having regard to the constitutional requirements, is as follows:-

**Cabinet** – 10 September 2012 – Consideration of initial proposals

**Resolved** - (1) the draft revised Statement of Licensing Policy (Gambling) initial proposals, be approved; and  
(2) it be noted that the Council is requested to determine whether or not to pass a 'no casino' resolution under section 166 of the Gambling Act 2005.



**Overview and Scrutiny Committee** – 1 October 2012 – Consideration of initial proposals. A recommendation was made that a 'no casino' resolution should be included in the draft Statement of Licensing Policy. As a final recommendation was made, the Committee did not consider it necessary for the final proposals to be presented to it for consideration.

**Cabinet** – 12 November 2012 – Consideration of final proposals

**Resolved** - (1) the final proposals in connection with the formulation and approval of the draft revised Statement of Licensing Policy (Gambling) be approved;  
(2) It be noted that Council will be requested to determine whether or not to pass a 'no casino' resolution under section 166 of the Gambling Act 2005; and  
(3) the draft Statement of Licensing Policy (Gambling) be referred to Council for consideration at its meeting on 29 November 2012.

**Council** – 29 November 2012 – Consideration of final proposals including determination as to whether or not to pass a 'no casino' resolution.

## **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

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