

North Tyneside Council Report to Council Date: 19 November 2015

ITEM 8

Title: Three Year Review of
North Tyneside Council
Statement of Licensing
(Gambling) Policy

Portfolio(s): Housing and Transport

Cabinet Member(s): Councillor J
Harrison

Report from Service

Area: Environment, Housing and Leisure

Responsible Officer: Phil Scott
Head of Environment, Housing and Leisure

(Tel:
(0191)
643 7295)

Wards affected: All

PART 1

1.1 Executive Summary:

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. It provides guidance as to how the Authority will exercise its functions under the Act.

The Statement of Licensing Policy (Gambling) forms part of the Authority's Policy Framework. This report also outlines the final proposals to Council in relation to the draft Policy.

1.2 Recommendation(s):

It is recommended that Council:

- (1) approve the draft revised Statement of Licensing Policy (Gambling) appearing at **Appendix 1** to this report, including the delegation scheme included in the Policy attached at Appendix 1 to this Report; and
- (2) make a 'no casino' resolution under section 166 of the Gambling Act 2005.

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 5 October 2015.

1.4 Council Plan and Policy Framework

This report relates to the following priority in the 2014/18 Our North Tyneside Plan:

Our people will be cared for and kept safe if they become vulnerable.

The Local Authorities (Functions and Responsibilities) (England) Regulations 2000, as amended, specifies that the Statement of Licensing (Gambling) Policy is to be the shared responsibility of the Council and Cabinet (the Executive). Accordingly, the Policy Statement forms part of the Authority's Policy Framework. A report on the draft Policy was taken to Cabinet on 11 May 2015 and thereafter referred to Overview, Scrutiny and Policy Development Committee on 1 June 2015 in accordance with the Authority's Budget and Policy Framework rules contained in Part 4.7 of the Constitution. The draft Gambling Policy was further considered by the Overview, Scrutiny and Policy Development Committee on 5 October 2015 and Cabinet on 9 November 2015 and is now referred to Council for approval.

The procedure as set out at section 4.7 of the Constitution allows for Members to submit written objections to the Chief Executive (via the Head of Law and Governance) to the draft Policy by 4.00pm on the 18 November 2015. Any objections received will be circulated to all Members by 12 noon on the day of the Council meeting (19 November).

1.5 Information:

1.5.1 Background

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 focused on 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
- Protecting children and other vulnerable persons from being harmed or exploited by gambling.

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

Within this framework 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 and is determined by the Gambling Act 2005 (Licensing Authority Policy Statement)(First Appointed Day) Order 2006.

Under the Act, the Authority 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; and
- Betting Premises.

In terms of Permits, the Authority 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; and
- Prize Gaming Permits.

Section 153 of the Act sets out the principles to be applied by the Authority, acting as a 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 section 349 (subject to paragraphs (a) to (c).

Section 153 therefore 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 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; and
- 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 given to the Commission's statutory guidance and the Regulations issued in order to assist licensing authorities in the preparation of their policy statements. A summary of the amendments made to the draft policy are attached at **Appendix 2**.

1.5.2 Casino resolution

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.

Council on 29 November 2012 passed a 'no casino' resolution which meant that the Authority would not grant any Casino Premises Licences in the Borough if it was given the power to do so. This resolution remains in place for the duration of the Policy.

The decision whether or not to pass a further 'no casino' resolution formed part of the consultation process concerning the revision of the Licensing Policy. If Council passes a 'no casino' resolution, then it will bind the Authority for a further three years (unless another resolution is passed in the interim) and will prohibit the Authority from issuing Casino Premises Licences in that period, even if the Authority is given the power to grant such Licences .

The Overview, Scrutiny and Policy Development Committee at its meeting on 5 October 2015 considered the question of whether or not Council should resolve to pass a 'no casino' resolution and recommended that Council should pass a further 'no casino' resolution. This was further considered by Cabinet on 9 November 2015.

As will be seen from the consultation responses, the majority of respondents to the consultation who considered the question of whether or not the Council should pass a further 'no casino' resolution considered that such a resolution should be made. Whether or not such a resolution should be included in the policy is a matter for Council but is included in the draft Policy for approval by Council.

1.5.3 Consultation

The draft revised Policy Statement was subject to a 12 week period of public consultation that began on 18 May 2015 and ended on 10 August 2015.

The draft revised Policy Statement, once approved, must be published at least 4 weeks before it comes into effect on 31 January 2016 and be made available for inspection on the Authority's website, at public libraries and at 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 Authority's website and in a local newspaper indicating when the policy will be published and when it comes into effect.

In total 20 responses were received to this consultation exercise from a mixture of residents, residents' associations, church associations and members and the gambling trade. A Member Working Group met in September 2015 to consider the consultation responses and to make recommendations. Each response was considered by the working group. Where the group recommended amendments to the policy officers have amended the draft policy accordingly. A summary of the responses received and the amendments made are attached at **Appendix 3** to this report.

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

Option 2

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

Option 1 is the recommended option.

1.7 Reasons for recommended option:

Option 1 is recommended for the following reasons:

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 2015.

1.8 Appendices:

Appendix 1: Draft revised Statement of Licensing Policy (Gambling)

Appendix 2: Summary of amendments to Policy

Appendix 3: Summary table of consultation responses and Member Working Group comments.

1.9 Contact officers:

Phil Scott – Head of Environment, Housing and Leisure (Tel: 6437295)
Colin MacDonald – Senior Manager, Technical and Regulatory Services (Tel: 6436620)
Joanne Lee – Public Protection Manager (Tel: 6436901)
John Barton – Lawyer (Tel: 6435354)
Catherine Lyons, Regulatory Services Manager, Tel: (0191) 643 7780
Alison Campbell, Financial Business Manager, Tel: (0191) 643 7038

1.10 Background information:

The following background papers/information have been used in the compilation of this report and are available at the office of the author:

- (1) Gambling Act 2005
<http://www.legislation.gov.uk/ukpga/2005/19/contents>
- (2) Gambling Commission's Guidance (5th Edition) issued under section 25 of the Gambling Act 2005
<http://www.gamblingcommission.gov.uk/Licensing-authorities/Information-for-licensing-authorities/Guidance-to-licensing-authorities-5th-edition.aspx>
- (3) Gambling Commission's proposed Guidance (5th Edition) consulted on between 30 March and 22 June 2015
<http://www.gamblingcommission.gov.uk/pdf/GLA5---March-2015.pdf>
- (3) The Gambling Act 2005 (Licensing Authority Policy Statement)(England and Wales) Regulations 2006
<http://www.legislation.gov.uk/uksi/2006/636/regulation/5/made>
- (4) The Gambling Act 2005 (Licensing Authority Policy Statement)(First Appointed Day) Order 2006
<http://www.legislation.gov.uk/uksi/2006/637/introduction/made>
- (5) 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 have been met from the existing gambling revenue budget.

2.2 Legal

The Authority is required to produce and publish a Statement of Licensing Policy under the provisions of the Gambling Act. This Policy must be reviewed, and if necessary revised, at least 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 forms part of the Authority's Policy Framework and this report is submitted to Council in pursuance of the established process set out in Part 4.7 of the

Constitution in relation to the formulation and approval of plans and strategies comprised in the Policy Framework.

The procedure as set out at section 4.7 of the Constitution allows for Members to submit written objections to the Chief Executive (via the Head of Law and Governance) to the Draft Policy by 4.00pm on the 18 November 2015. Any objections received will be circulated to all Members by 12 noon on the day of the Council meeting (19 November).

2.3 Consultation/community engagement

2.3.1 Internal 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. The Policy was considered by Overview, Scrutiny and Policy Development Committee and two Members Briefing sessions were held in July 2015 during the consultation period. In addition officers have been available to discuss the draft Policy Statement in detail at the request of any Member.

2.3.2 External Consultation/Engagement

The draft Policy has been widely consulted upon. Members of the public, the gambling trade, North Tyneside MPs, MEPs, Councillors and senior officers have had an opportunity of commenting on the draft revised Policy statement. The 12 week consultation period ran until 10 August 2015. Notice of this consultation was given through a press release and in the residents' magazine and on the Authority's website. Copies of the draft Policy statement were made available at the Authority's offices, customer service centres, libraries and on the North Tyneside Council website.

A Member Working Group met in September 2015 to consider the consultation responses and make recommendations. Each response was considered by the working group. Where the group recommended amendments to the Policy officers have amended the draft policy accordingly. A summary of the responses received and the amendments made are attached at **Appendix 3** to this report.

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 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 through the licensing objectives within the Act.

2.6 Risk management

Risks associated with the service are managed via the 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 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(s) of Service
- Mayor/Cabinet Member(s)
- Chief Finance Officer
- Monitoring Officer
- Head of Corporate Strategy