

## **Meeting: Overview and Scrutiny Committee**

**Date:** 7 September 2009

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

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**Service:** Consumer Protection/Licensing

**Directorate:** Development Strategy and Planning

**Wards affected :** All

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### **1.0 Summary/Purpose of Report**

The Committee are invited to consider the information provided by the Cabinet Member for Environment in relation to the draft Statement of Licensing Policy (Gambling).

### **2.0 Recommendations**

The Committee is asked to consider the draft Statement of Licensing Policy (Gambling), and if necessary, make recommendations and observations to Councillor E Hodson the Cabinet Member for the Environment on the draft Policy.

### **3.0 Information**

In August 2009 Cabinet received a report from the Head of Development Strategy and Planning in relation to the draft Statement of Licensing Policy (Gambling) that must be published by the Council as a Licensing Authority under Section 349 of the Gambling Act 2005 and in force by the 31 January 2010. The revised Policy will replace the existing Policy that came into force on the 31 January 2007.

The draft Policy statement is currently subject to a 12 week period of consultation which commenced on 9 June 2009 and ends on the 4 September 2009. The period of consultation is in line with the revised Code of Practice and Cabinet Office Guidance on consultations undertaken within the public sector. Members of the public, all North Tyneside MPs, MEPs, Councillors and Strategic Directors have an opportunity of commenting on the draft Policy statement. At the end of the consultation process, with the agreement of the Party Leaders, it is proposed that an all party Member working group be established to consider the consultation responses.

As the Statement of Policy (Gambling) forms part of the Council's Policy Framework the process set out in the Council's Constitution for the preparation, consideration and approval of such plans must be followed. With that in mind, the initial proposals were presented to Cabinet on 10 August 2009. This Committee is now being presented with the initial proposals and is invited to comment with particular regard to the consultation proposals and timetable for the preparation and approval of the Statement.

Final proposals will be presented to this Committee on 5 October 2009. Thereafter, the final proposals will be presented to Cabinet on the 9 November 2009 together with any comments from this Committee and details of any consultation responses and then Council on the 19 November 2009.

#### **4.0 Appendices**

Appendix 1 – Report to Cabinet 10 August 2009

Appendix 2 – Copies of the Draft Statement of Licensing Policy (Gambling) have only been circulated to Members of the Overview and Scrutiny Committee as a separate document. Further copies are available from Michael Robson or from the Council's website [www.northtyneside.gov.uk](http://www.northtyneside.gov.uk)

#### **5.0 Background Information**

The following background papers have been used in the compilation of this report and are available for inspection at the offices of the author of this report.

- Minutes of Cabinet – 10 August 2009
- Gambling Act 2005
- Gambling Commission's Guidance issued under Section 25 of the Gambling Act 2005
- The Local Authorities (Functions and Responsibilities)(England) Regulations 2000
- LACORS policy statement template
- The Gambling Act 2005 (Licensing Authority Policy Statement)(England and Wales) Regulations 2006

# North Tyneside Council Report to Cabinet Date: 10 August 2009

## ITEM 5(f)

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

Portfolio(s): Environment

Cabinet Member(s): Cllr E Hodson

Report from Directorate: Strategic Director for Development

Report Author: Mr K Wilson (Tel: 6436091 )  
Head of Development Strategy and Planning

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, such endorsement being subject to any further amendments following the conclusion of the current consultation process.

(b) Note that consultation on the draft Policy Statement is ongoing and that Members have been asked to comment specifically as to whether or not the Council should pass a "no casino" resolution under Section 166 of the Gambling Act 2005.

#### 1.3 Forward plan:

This item does not appear on the current Forward Plan, however, in order to comply with the constitution initial proposals for Statement of Licensing policy (Gambling) must be endorsed by Cabinet at least three months prior to Council.

## 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 Section 8.2 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 'Growth' and 'Quality of Life' within the 'Council Delivery Plan: A Positive Future for North Tyneside'.

## 1.5 Information:

The Gambling Act 2005 received Royal Assent on 7 April 2005 and came fully into force on the 1 September 2007. It repealed dated legislation such as the Gaming and Lotteries Act 1963, the Gaming Act 1968 and the Lotteries and Amusements Act 1976. 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 new 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 crime 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.

The revised Statement of Licensing Policy (Gambling) must be in force by 31 January 2010 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 be increased.

The current Statement of Licensing Policy (Gambling) at Paragraph 9.2 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."

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 2010 and, it could be argued, that the decision not to pass a 'no casino' resolution taken by Council on 23 November 2006 also lapses. If Council decides to adopt the current wording in Paragraph 9.2 of the existing Policy, then it will 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 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 had not only to the Commission’s statutory guidance and the Regulations, but, also to the template provided by LACORS (the Local Authorities Co-ordinating and Regulatory Services) in order to assist Licensing Authorities in the preparation of their draft revised policy statements. A Member working group will be established to consider any responses received during the 12 week consultation period.

As required by the Act, the draft revised policy statement is currently subject to a period of public consultation that began on 9 June 2009 and ends on 4 September 2009. This 12 week period is in line with the Revised Code of Practice and Cabinet Office Guidance on consultations undertaken within the public sector. 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 2010) 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.

### **Decision options:**

Cabinet may:-

- (a) Endorse the draft revised policy statement in its current form, subject to any further amendments following the current consultation process.
- (b) Not endorse the draft revised policy statement.

### **1.6 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 is currently subject to extensive consultation involving, in addition to members of the public, 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 4 September 2009.

### **1.7 Appendices:**

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

### **1.8 Contact officers:**

Ken Wilson – Head of Development Strategy and Planning (Tel: 6436091)  
Colin MacDonald – Consumer Protection Group Manager (Tel: 6436620)  
Trevor Torpy – Environmental Health Manager (Tel: 6436664)  
Joanne Lee – Principal Licensing Officer (Tel: 6436901)  
John Barton – Lawyer (Tel: 6435354)

### **1.9 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)
- LACORS policy document template.

## **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 Development Directorate's revenue budget.

### **2.2 Legal**

The Council was required to produce and publish a Statement of Licensing Policy under the Gambling Act 2005 that came into effect on the 31 January 2007. That statement must be reviewed and if necessary revised and that new policy brought into effect by the 31 January 2010. The revised policy must however be formally approved by December 2009 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 Section 8.2 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 is being widely consulted upon. Members of the public, the gambling trade, North Tyneside MPs, MEPs, Councillors and Strategic Directors all have an opportunity of commenting upon the draft revised policy statement. The 12 week consultation period runs until the 4 September 2009. Notice of this consultation has been given through a press release and copies of the policy statement have been made available at Council offices, customer service centres, libraries and on the North Tyneside Council website.

#### **Member Consultation**

The content of this Statement of Licensing Policy (Gambling) is driven by statutory requirements. Consultation with Members provides a key element to the formulation of the Policy. The Timetable for the consultation and the approval of the Policy, having regard to the Constitution, is as follows:-

Cabinet – 10 August 2009 – Presentation of initial proposals

Overview and Scrutiny Committee – 7 September 2009 – Presentation of initial proposals

Overview and Scrutiny Committee – 5 October 2009 – Presentation of final proposals

Cabinet – 9 November 2009 – Presentation of final proposals

Council – 19 November 2009 – Presentation of final proposals.

The timetable to date has been:-

Formal consultation period from 9 June 2009 to 4 September 2009.

All Members have received a copy of the draft Policy Statement. Officers are available to discuss the draft Policy Statement in detail at the request of any Member.

An all party Member Working Group will be formed with the agreement of Party Leaders to consider the consultation responses following the closure of the consultation period.



## **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 will include a licence. 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 Development Directorate 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**

The proposal should have no direct implications in this regard. Obviously, if a premises licence is granted in respect of a premises this may result in employment opportunities.

### **PART 3 - SIGN OFF**

- Strategic Director(s)  X
- Mayor/Cabinet Member(s)  X
- Chief Finance Officer  X
- Monitoring Officer  X
- Head of Serving Communities  X
- Chief Executive  X

**Report author...**Ken Wilson, Head of Development Strategy and Planning