

COUNCIL

9th DECEMBER 2015

APPROVAL OF THE STATEMENT OF GAMBLING ACT POLICY 2016-2021

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PURPOSE OF THE REPORT

1. To seek Council's approval of the Gambling Act 2005: Licensing Policy Statement.

BACKGROUND

2. The Gambling Act 2005 gives powers and responsibilities to licensing authorities to issue licences for gambling premises. This legislation came into full effect in September 2007 and effectively modernised gambling legislation, providing an improved structure for gambling regulation.
3. The Act also created a new independent regulatory body; The Gambling Commission. The Gambling Commission regulates operators and deals with national gambling issues.
4. The Act contains three licensing objectives underpinning the function that the Gambling Commission and local authorities perform. The objectives are:-
 - Preventing gambling from being a source of crime or disorder, being associated with crime or 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.
5. The Act provides for three types of licences. Operating and Personal licences both of which are issued by the Gambling Commission. Premises Licences however, are issued by the Council and as their name suggests, they authorise the provision of gambling facilities on certain premises including casinos, bingo halls, betting shops, adult gaming centres and family entertainment centres. Councils may attach conditions to such licences. In carrying out this function, Members should note that

s153 of the Gambling Act stipulates that a licensing authority should (subject to the objectives above, relevant guidance and its Statement of Policy) aim to permit the use of premises for gambling and may not have regard to the expected demand for the proposed facilities. Neither, under the Gambling Commission's guidance, can moral or ethical objections to gambling be a valid reason to reject applications.

6. The Council, as a licensing authority, is required to prepare and publish a Gambling Act 2005 Licensing Policy Statement of principles that it proposes to apply in exercising its functions under the Act. In December 2006, the Council formally ratified its first Statement of Gambling Licensing Policy. The Policy was reviewed in 2009, reflecting changes as a result of the Council being approved as one of the Local Authorities permitted to issue a Large Casino Premises License. The Policy was once again amended and ratified by the Council on 5 December 2012 and subsequently implemented on 31 January 2013.
7. Licensing Authorities are required to keep their Gambling Policy under review and, as a minimum, perform a formal review every three years; therefore this authority is required to complete the formal review of its current policy by 31 January 2016.

CHANGES TO THE POLICY

8. A draft amended Policy was prepared by Officers for consultation. This did not contain any significant amendments except for the inclusion of a requirement for operators to submit a local risk assessment as part of the application process for a premises licence, with effect from April 2016. This will require applicants to consider the area where the premises is situated and to identify any issues of concern such as premises' proximity to schools, similarly sensitive locations, vulnerable person schemes and other information characteristics of the area relevant to the proposed activity. In addition, some further, minor amendments have been made in response to the consultation responses of 3 trade representatives.

CONSULTATION

9. A comprehensive consultation was carried out between 20 July 2015 and 18 September 2015. Details of the consultees appear in Appendix B to the policy document itself. At the end of the consultation period 3 responses/comments had been received. These responses are reproduced in full in Appendix 1 to this report. Members should note that as these responses were prepared on behalf of trade associates and large businesses they contain a great deal of general comment that is not specific to Middlesbrough's policy document. Licensing and Legal Officers have therefore considered and addressed the issues raised which directly concern this authority's Statement of Policy. Details of these specific issues and the additional proposed amendments which have resulted are reproduced below.

a) Gosschalks Solicitors, for the Association of British Bookmakers

'At paragraph 43 of the draft statement of principles a 'use it or lose it' policy appears to be laid out in that the authority may initiate a review of the premises licence if it has not been used for a period of 12 months. We accept that s202 (3) Gambling Act 2005 entitles a licensing authority to review a premises licence if it

has not been used although we submit that this section should be amended to recognise that there may be good reasons why the licence has not been used for 12 months and a review may not be appropriate.'

Officer Comment

Officers believe that the concerns raised are already addressed by the use of the word 'may' in paragraph 43 of the draft policy. However, for the avoidance of doubt, Officers have added the statement that 'each case will be considered on its own merits'.

'The policy contains a statement on page 14 at paragraph 59 that "Should any specific policy be decided upon as regards areas where gambling premises should not be located, this statement will be updated. It should be noted that any such policy does not preclude any application being made and each application will be decided on its merits, with the onus upon the applicant showing how potential concerns can be overcome." We respectfully submit that any decision to designate an area as one where gambling premises should not be located may be unlawful and is directly contrary to the overriding principles of "aim to permit" contained within s153 Gambling Act 2005. Furthermore, the qualification of this statement by adding the applications may still be submitted and will be determined on their own merits then appears to reverse the burden of proof in the same way that the burden is reversed where a cumulative impact policy is in force. We respectfully submit that consideration should be given to removing these two sentences.'

Officer Comment

Officers note the comments in relation to this part of the policy and have deleted the wording referred to in paragraph 59 of the draft document.

'At paragraph 62, the draft statement of principles explains that the licensing authority is aware of the distinction between disorder and nuisance. The policy would be assisted by an expansion of this statement for the benefit of both applicants and those wishing to lodge representations that in the opinion of the Gambling Commission, disorder is intended to mean an activity that is more serious and disruptive than mere nuisance.'

Officer Comment

Officers have noted the comments in relation to this part of the policy and have amended the wording referred to in paragraph 62 of the draft document in line with the response made.

'At paragraph 93 of the draft statement of principles the policy is clear that the number of betting machines an operator wishes to offer may be subject of conditions limiting the number. This paragraph should be expanded to acknowledge the fact whilst the number of betting machines may be limited by condition, the holder of a betting premises licence is authorised to offer up to 4

gaming machines of category B, C or D by virtue of s172 (8) Gambling Act 2005.'

Officer Comment

Officers have noted the comments in relation to this part of the policy and have amended the wording referred to in paragraph 93 of the draft document in line with the response made.

b) Paddy Power Bookmakers Limited

'We refer the authority to the Regulators Code, which was introduced by the Legislative and Regulatory Reform Act 2006 and provided the code to which the Authority must have regard'.

Officer Comment

Officers note the comments in relation to this part of the policy and have amended the wording in paragraph 28 of the draft policy to accommodate the point raised.

'When considering crime and disorder, although the policy identifies that there is a clear distinction between disorder and nuisance, the Authority must consider that nuisance was specifically rejected by parliament as a licensing objective under the Gambling Act 2005.'

Officer Comment

Officers note the comments in relation to this part of the policy and have already amended the wording in paragraph 62 of the draft document following similar concerns raised by Gosschalks Solicitors above.

c) Elizabeth Speed, Group General Counsel on behalf of Luxury Leisure

'As the Authority will appreciate, in matters of regulation under the Gambling Act 2005, it is subject to the Regulators' Code. That code imposes a number of obligations on the Authority, including one that it should carry out its activities in a way that supports those it regulates to comply and grow. Additionally, when designing and reviewing policies, the Authority must, among other things, understand and minimise the negative economic impact of its regulatory activities and regulate and minimise the costs of compliance of those it regulates. Further, the Authority should take an evidence-based approach in determining priority risks and recognise the compliance record of those it regulates. These obligations go beyond those relating to enforcement and we suggest the Draft be amended to include a statement that the Authority recognises that it is subject to and will comply with the Regulators' code in relation to matters of gambling licensing and enforcement.'

Officer Comment

Officers note the comments in relation to this part of the draft policy and have already amend the wording in paragraph 28 following similar concerns raised by Paddy Power Bookmakers.

'We note the reference at Paragraph 59 to local risk assessments. While these are referred to in the draft GLA5, the obligation in respect of local risk assessments is contained within the LCCP and that obligation will become effective in April 2016.'

Officer Comment

Officers note the comments and have amended the draft policy at paragraph 59 to make reference to local risk assessments being a requirement within the LCCP (the Gambling Commission's Licence Conditions and Codes of Practice) with effect from April 2016.

'As the Authority will appreciate, premises licences are subject to the relevant mandatory and default conditions set out in secondary legislation. Matters dealt with by such conditions should not be subjected to further conditions imposed by the Authority. Accordingly, by setting out the potential conditions at Paragraph 72 (which repeat the provisions of the mandatory and default conditions) the Draft is duplicating existing legislation and is likely to confuse. Similarly, the sample conditions set out at Paragraph 77, 79, 90 and 92, are unnecessary and duplicatory.'

Officer Comment

Officers note the comments, however, they do not propose to make any amendments to the draft policy. The policy simply seeks to remind applicants and other parties of premises licence holders' responsibilities in respect of various premises licences and permits.

'Paragraph 55 deals with the concept developed by the Gambling Commission of "primary gambling activity", a phrase which the Gambling Commission proposes to drop. With respect, the Gambling Act 2005 does not set out the provisions contained at Paragraph 55, as the Draft suggests. The concept of primary gambling activity has of course been the subject of litigation which the Commission has not won. Further litigation is due to come before the Tribunals this autumn and we suggest that this paragraph be removed, as inaccurate and obsolete.'

Officer Comment

Officers note the comments in relation to this part of the draft policy and have removed the proposed paragraph 55 which made reference to primary gambling activity.

10. The final draft Policy is appended at Appendix 2.

EQUALITY IMPACT ASSESSMENT

11. An initial assessment has been carried out and no differential impact which would have an adverse impact on these groups has been identified in this policy.

OPTION APPRAISAL/RISK ASSESSMENT

12. In line with the Gambling Act, 2005, Licensing Authorities are required to review their Gambling Policy every three years. The current Policy was implemented on 31 January 2013, and therefore must be reviewed and implemented by 31 January 2016.
13. The process for reviewing the Gambling Act Policy is set down in the Gambling Act and associated Guidance. Failure to follow this process may leave the Council open to future legal challenges against its policy.
14. **Financial Implications** - The ongoing costs of the administration and regulation responsibilities under the Gambling Act 2005 are met through initial application and annual fees.
15. There are 39 betting premises, 1 casino and 1 bingo hall in Middlesbrough. The Council also issue licences for 11 amusement arcades, 85 pubs, 64 small lotteries and 27 club gaming permits.
16. **Legal Implications** – As stated above, in line with the Gambling Act 2005; Licensing Authorities are required to review their Gambling Policy every three years. The current Gambling Policy was implemented on 31 January 2013 and therefore must be reviewed and published by 31 January 2016.
17. The Licensing Authority is required by the Gambling Act to consult on the revisions to the Gambling Licensing Policy with the police, people who represent gambling businesses in the area and people who represent the interests of people likely to be affected by the Authority's actions in relation to exercising their functions under the Act.
18. Following the consultation, all responses have been duly considered in the production of the final Policy. The final Policy must be ratified by full Council.
19. **Ward Implications** – Gambling establishments are widely dispersed throughout the town in both commercial and residential areas.

RECOMMENDATIONS

20. That the responses to the consultation on the contents of the draft Licensing Policy are noted.
21. That Council approve the Gambling Act 2005: Licensing Policy Statement to enable it to be adopted by 31 January 2016.

BACKGROUND PAPERS

22. Gambling Commission, Guidance to Licensing Authorities, 5th Edition, September 2015.

AUTHOR

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