

Item: 9.1	Classification: Open	Date: December 6 2006	Meeting Name: Council Assembly
Report title:		Gambling Act 2005 – The Statement of Gambling Licensing Policy	
Ward(s) or groups affected:		All wards	
From:		Licensing Committee	

RECOMMENDATIONS

1. That the Council Assembly
 - a) Considers and approves the draft statement of gambling licensing policy provided at Appendix A to this report;
 - b) Confirms the Local Safeguarding Children Board as the body that is competent to advise the authority on protection of children from harm issues for the purposes of the Gambling Act 2005;
 - c) Notes that any revision of this policy that may be necessary following the release of further Gambling Commission guidance, secondary regulations and codes of practice will be reported back to the Assembly; and
 - d) Notes the intention that a mid-term review of this policy will be conducted after six months experience of administering this new responsibility in March 2008.

BACKGROUND INFORMATION

2. The Gambling Act 2005 is due to come into effect on 1 September 2007. The Act gives effect to the government's proposals for reform of the law on gambling. The Act contains a new regulatory system to govern the provision of all gambling in Great Britain, other than the National Lottery and spread betting.
3. Responsibility for the new gambling licensing regime falls to the newly established Gambling Commission (which replaces the Gaming Board of Great Britain) and the local licensing authorities – being this Council within Southwark. The new regime introduces a three tier licensing system dealing with
 - a) Operator's licences (for bodies running gaming and betting operations);
 - b) Personal licences (for key personnel within gaming and betting operations); and

- c) Premises licences (for casinos, bingo establishments, betting tracks, betting offices, adult entertainment centres and family entertainment centres).
- 4. Operator's licences and personal licences are to be administered by the Commission. Premises licences will be administered by the local authority through a system that is very similar to the premises licensing processes established for the licensing of alcohol, entertainment and late night refreshment) premises under the Licensing Act 2003. The licensing authorities also take on responsibility for issuing a number of lesser permits.
- 5. With the introduction of the new legislation all existing gambling law is repealed. Gaming machines will no longer be allowed within shop premises, including fast food premises. Existing operators are being phased out – information on this will be circulated to members separately.
- 6. The Act introduces three licensing objectives that will underpin the functions that the Commission and licensing authorities will perform. These objectives are central to the new regulatory regime created by the Act. They are:
 - a) Preventing gambling from being a source of crime or disorder, being associated with crime or disorder, or being used to support crime;
 - b) Ensuring that gambling is conducted in a fair and open way; and
 - c) Protecting children and other vulnerable persons from being harmed or exploited by gambling.
- 7. In administering its responsibilities under the Act the Council is required to have regard to:
 - a) The Act itself;
 - b) Secondary regulations made by the Secretary of State;
 - c) Guidance issued by the Gambling Commission;
 - d) Codes of Practice issued by the Gambling Commission; and
 - e) The three licensing objectives.
- 8. The Council is also required to establish its own Statement of Gambling Licensing Policy which is to set out how the authority intends to approach its responsibilities under the Act. The policy is required to be established through public consultation and fully reviewed every three years.
- 9. On 22 June 2006, the Licensing Committee approved proposals for a public consultation exercise as part of the process of establishing this new Southwark statement of gambling licensing policy.

10. Public consultation ran from 3 July through to 30 September 2006 alongside the mid-term review of the Southwark statement of licensing policy under the Licensing Act 2003. As part of this consultation
 - a) Notices inviting contributions from any interested party were given in the local press and on the Council's licensing web site;
 - b) Direct invitations to submit comments were sent to all potential licence holders, known business and community representative groups, ward councillors and other relevant council departments;
 - c) The matter appeared on the agendas of the Council Action Teams and Community Councils;
 - d) A range of public and other meetings were staged; and
 - e) Discussions took place with responsible bodies under the Act.
11. This consultation did not generate the interest that the simultaneous consultation on the Southwark statement of licensing policy (which is to be reported to a later meeting of the Council Assembly) did. However, issues raised and the submissions received from the consultation exercise, have been considered by officers, and a draft statement of gambling policy has been prepared.
12. This draft policy was considered by the Council's Licensing Committee at its meeting of 16 November 2006 and is now forwarded on to Council Assembly for final approval.
13. A copy of the draft policy is attached for member's information at Appendix A to this report. An analysis of the submissions received as a result of the consultation is provided at Appendix B.
14. The Assembly is asked to note that while the Government's timetable for implementation of the Gambling Act 2005 has slipped from its initial timetable the final date for publication of licensing authorities statement of gambling licensing policy has remained set at 3 January 2007 as per the original timetable. This has meant that the policy has had to be prepared in advance of the secondary regulations and further guidance and codes of conduct that are still being prepared by the Commission. Because of this revisions of this policy are likely to be necessary after this policy has received the Assembly's approval. Any such revisions will be reported back to a further meeting.

KEY ISSUES FOR CONSIDERATION

Main Policy Considerations

15. As noted the current version of the draft policy is attached at Appendix A. A summary of some of the main provisions of the policy statement is provided below.

Part D – Administration, Exercise and Delegation of Function

16. Part D deals with a range of issues around the applications process. The following matters will be of particular interest

a) Responsible authorities (page 13)

17. Responsible authorities are defined under the Act. These include the police, fire service, customs and excise and the Council's own environmental health and planning departments. Importantly, however, under this legislation the licensing authority itself is a responsible authority and thereby may make representations and call for premises licence reviews through the licensing service.

18. The licensing authority is also required to designate in writing a body which is competent to advise the authority about the protection of children from harm issues. The guidance produced by the Gambling Commission proposes that this should be the Local Safeguarding Children Board. Council Assembly is asked to make such designation.

19. As this report is being written the government is also known to be intending to require licensing authorities to designate a further body to advise the authority about the protection of vulnerable people from harm. A further report on this matter is likely to be required to Council Assembly in due course.

b) Interested parties (page 14)

20. The Act defines "interested parties" as follows "*A person is an interested party in relation to an application for or in respect of a premises licence if, in the opinion of the licensing authority which issues the licence or to which the application is made: a) the person lives sufficiently close to the premises to be likely to be affected by the authorised activities; b) has business activities that might be affected by the authorised activities; or c) represents persons who satisfy a) or b)*".

21. The draft policy proposes that in determining whether a person can be classified as an interested party the authority will not apply rigid rules – thereby allowing cases to be considered upon their own merits. The phrase "has business interests" is to be given the broadest interpretation allowing such as partnerships, faith groups and medical practices to be included. The Commission's guidance specifically includes ward councillors as interested parties and thereby ward councillors may make representations on applications or call for review hearings without having to be either personally affected or specifically authorised to act.

c) Consultation arrangements (page 16)

22. As with the Licensing Act 2003, this Act and forthcoming regulations are expected only to require a minimal level of consultation – a public notice placed in a local newspaper and a similar notice prominently placed in the window of the application premises for a 28-day period.
23. This level of consultation is below that which the Licensing Service previously undertook in respect of public entertainment licences. Previously the Service would write directly to all known tenants and residents and associations and to all residents within a 100 metre radius of the application premises. Our experience of the Licensing Act 2003 has shown that even though the Licensing Service has looked to supplement these provisions by notifying local ward councillors of applications in their ward and also placing details of applications on the licensing web site some applications have not come to local residents attention in time for them to make representations as they may have wished.
24. The simultaneous consultation on the mid-term review of the licensing policy has considered effective improvements to the applications consultation arrangements that neither place the authority in a position where it may be seen to be canvassing representations nor acting inconsistently. Consideration has been given to the re-introduction of the direct letter drop. However, calculations made of the cost of conducting a letter drop to local residents across the last 20 Licensing Act 2003 application cases received by the Service, have shown that the cost of carrying out such letter drop alone would have left a net deficit to the service in excess of £1,500 after taking into account all the licence fees received in respect of those applications. Fee levels under the Gambling Act 2005 are expected to be more flexible than the 2003 Act but are still not expected to be high.
25. A more cost-effective approach is proposed for extended consultation which is supported by several respondents to the licensing policy review. The proposal is to establish an email licensing alert scheme whereby, anyone who lives or works in Southwark may ask to receive a short standard email alert that notifies them whenever a new premises licence or variation application in their area appears on the Southwark licensing web site. That email will contain a direct link to the licensing service web site where the application detail may be viewed at leisure. While it is recognised that this is only of direct use to people who have access to the internet, it is believed that many local community and business representative groups will have some access to the internet among its membership and will thereby be able to assist with the local dissemination of information.

c) Delegation of functions (page 19)

26. Table 1 on page 19 of the draft policy sets out the proposed delegation of functions under the Act
27. In effect the delegation proposes that matters of policy and fee setting are reserved to full council assembly and that all matters around contested premises licence applications and reviews of premises licences are reserved to the licensing committee by way of its sub-committees. It is proposed that officers deal with non-contested applications and the issue of a range of lesser permits.

Part E – Premises Licences

28. Part E deals with a broad range of issues around the grant of premises licences including the following matters

a) Location (page 24)

29. Although the Council is directed by the Act and guidance to aim to permit the use of premises for gambling in so far as it thinks it to be in accordance with relevant Gambling Commission guidance and codes and reasonably consistent with the licensing objectives, the licensing authority has more discretion in its decision-making than under the Licensing Act 2003.
30. For one, in considering the grant of premises licences it may have regard to the location of the premises involved – both in terms of crime and disorder and prevention of children and vulnerable people from harm considerations.
31. The draft policy proposes that this authority should give special consideration to applications in relation to the proximity of premises to
- Local schools, youth clubs, shops, parks, leisure and recreational establishments and any other similar premises directed at, or primarily used by children or families
 - Places where vulnerable people are housed or treated, including clinics, recovery centres, outpatients clinics and homes
 - Residential areas where there is a high concentration of children and young people or vulnerable people
 - Areas where there is a high level of organised crime
 - Places of worship, community facilities or public buildings
 - Areas where there is considered to be an over-concentration of existing similar licensed premises
32. Furthermore, although nuisance is not one of the three stated licensing objectives and the guidance produced by the Commission states that disorder is intended to mean activity that is more serious than nuisance, the draft policy suggests that this authority will receive information from the Council's environmental health noise team on nuisance issues as being relevant to matters of location of premises

b) Licensing and planning (page 24)

33. The working experiences of the Licensing Act 2003 have also demonstrated the importance of the planning and licensing services being seen to be working closely together.
34. Licensing and planning are separate regimes in law. Refusal of one consent is not reason in itself for refusal of the other. Licensing should not be a rerun of the planning process. Licensing should concern itself with the impact of a premises on the licensing objectives while the planning process should consider issues of amenity.
35. However, the Act does enable interaction between the two. Planning is one of the named responsible authorities under both pieces of legislation and is therefore able to make representations on licence applications or call for licence reviews around issues relating to the objectives.
36. The draft policy looks to establish clearly the inter-relationship between the two and set down the licensing authorities expectations around this issue.
37. Furthermore agreements have been made that licensing and planning reports will carry information regarding the position of the other consent where these are applicable.

c) Licensing and the DDA (page 25)

38. The consultation on the mid-term review of the licensing policy also considered the matter of access for people with disabilities. The issue is relevant here also.
39. Discussions have taken place between the Southwark Licensing Service and the Southwark Disablement Association (SDA). Contact has been made with the government direct and London Councils (formerly the Association of London Government). Both responses have indicated that the government is unlikely to consider setting access for people with disabilities as a fourth licensing objective under the Gambling Act 2005 (or a fifth objective under the Licensing Act 2005) as there is independent legislation that deals with this issue and neither act is intended to duplicate any other statutory provisions.
40. The Licensing Service is mindful, however, that the Disabilities Discrimination Act 2005 places a duty on public bodies to actively promote disability equality and that there is general desire that the licensing process should not be seen to endorse premises where reasonable adaptations have not been made to make facilities available to all.

41. It is proposed therefore under the respective policies that the two services will instigate close working arrangements which will see the SDA notified of all new and varied premises licence applications. The SDA will visit each premises to gauge the access facilities and offer assistance in introducing improvements where necessary. In cases where any resistance is met the licensing service will lend its support to discussions to effect improvements at the premises concerned. The revised draft policy also provides a link to a web based access self-assessment tool, which some licensees may find helpful.

d) Conditions generally (page 26)

42. The draft policy sets out that the licensing authority must append mandatory conditions set down under the Act to all premises licences; may decide whether to attach default conditions to be established by the Gambling Commission; and may also attach its own conditions. Where it intends to attach its own conditions a hearing must be held.

e) The first licensing objective – Preventing gambling from being a source of crime or disorder, being associated with crime or disorder or being used to support crime (page 27)

43. This section sets out a range of matters the licensing authority will have regard to when giving appropriate consideration to this objective, including

- The configuration, design and layout of the premises, paying particular attention to steps taken to “design out” crime
- Security arrangements within the premises, including whether CCTV is installed and, if so, the standard of the CCTV and the positioning of cash registers
- Training provided to staff around crime prevention measures
- The level of staffing provided at the premises, including whether door supervisors are employed
- The arrangements in place to conduct age verification checks
- Steps taken to redress the recurrence of any historical crime and disorder issues
- The likelihood of any violence, public disorder or policing problems if the licence is granted.

f) The second licensing objective – Ensuring that gambling is conducted in a fair and open way (page 28)

44. This section establishes that the Commission has advised that it would not normally expect licensing authorities to become involved in issues within this area.

g) The third licensing objective – Preventing children and other vulnerable persons from being harmed or exploited by gambling (page 28)

45. This section sets out that it will expect licence applicants to demonstrate the steps that they intend to take to achieve this licensing objective. It is understood that the Commission will require as standard conditions of operators licences that operators will have and put into effect documented policies and procedures to prevent under-age gambling and monitor the effectiveness of these. The draft policy proposes that operators should provide copies of these documented policies and procedures as part of the premises licence applications process so that they may be examined by this authority and by the other responsible bodies and enable judgements to be made on the extent of other controls that may be necessary.
46. Guidance is given on this section on proof of age schemes and other potential controls for preventing access by children and young people to premises to which they are not permitted to enter and also to areas of premises or machines to which they should not have access.
47. A similar position as is detailed in paragraph 45 above is proposed in terms of operators' policies and procedures for ensuring socially responsible gambling.

i) Casinos (page 34)

48. This authority did not put itself forward for consideration under the bidding process for one of the 17 new national casino licences currently under consideration by the government. For this reason the Council will not be concerned with casino licensing until such time as the government may decide to extend the licensing of new casinos beyond this first group. However, this policy notes that the council has the ability to consider a "no casinos resolution" should it wish to do so. This resolution may be taken at any time. This matter was discussed at the recent Licensing Committee. While no formal recommendation was arrived at, the discussion did raise the view that it may be prudent not to make a resolution at this stage so as to enable the broader implications of such a decision to be considered in full at a later date. The Assembly may wish to consider whether it wishes to receive a further report on this matter at this time.

j) Matter not covered by the policy - hours of operation

49. Hours of operation of gambling premises are intended to be dealt with initially under default premises licence conditions set by the Commission which this authority may decide to apply or not. These default conditions will establish what the Commission determines to be the "industry norm". This authority may replace the default operating

times with earlier or later hours as maybe considered appropriate having taken all relevant matters into account.

k) Matter not covered by the policy - alcohol and gambling premises

50. Again the sale and consumption of alcohol is understood to be dealt with under default premises licence conditions set by the Commission. Draft default conditions out for consultation at the time of writing of this report set out different positions for different types of premises. The Local Authorities Co-Ordinating Body for Regulatory Services (LACORs) is currently seeking clarification on some aspects of this. However, where matters regarding the sale and consumption of alcohol are not dealt with in full by default premises licence conditions this authority will give consideration to establishing suitable arrangements under its own conditions.

Part F – Permits / Temporary & Occasional Use Notices

51. This section considers issues around a number of the lesser permits available under the new legislation. Of particular note

a) Unlicensed family centre gaming machine permits (page 39)

52. Where such premises do not hold premises licences but wish to provide gaming machines, the draft policy proposes a statement of principles which include that the applicant should demonstrate that there are policies and procedures in place to protect children from harm which include wider child protection issues.

b) (Alcohol) licensed premises gaming machine permits (page 40)

53. The policy also gives guidance on situations where higher category gaming machines (to which alcohol licensed premises have a limited right) are provided in premises where children have access.

Timetable for Progression

54. The current government timetable for implementation of this new legislation requires that licensing authorities policies must be published by 3 January 2007 in readiness for the first applications under the Act which may be made from 1 April 2007. In order for this timetable to be met this policy must be approved by council assembly at the December 2006 meeting. A notice of the Council's intention to publish the statement of policy must be published at least two weeks before the date the statement is published.

55. Because of the tight timetable this policy was reported to the Local Safeguarding Children Board in lieu of the Young Southwark Partnership Board on 21 December 2006. The policy will go on to the

Safer Southwark Partnership and Healthy Southwark, but for information only, after the 6 December Council Assembly.

56. As noted elsewhere in this report, this policy is expected to require amendment early in 2007 in order to accommodate any necessary changes arising from awaited further guidance, regulations and codes of practice. Revisions of the policy will be re-submitted to all bodies concerned.

57. Although this policy does remain effective for three years before a full review is required in law, it is recognised that particularly because this is a very new area for the Council a mid-term review of the policy will be a worthwhile exercise and this is proposed after the first six months of operation under the Act (i.e. March 2008).

COMMUNITY IMPACT STATEMENT

58. Potential community impacts arising from the introduction of the Gambling Act 2005 are managed by this policy. Some 100 premises within the borough have current gambling consents that may be transferred directly into the new licensing regime. Many of the alcohol-licensed premises have gaming machine permits which may be retained. The Licensing Service will facilitate all conversion processes. New and variation premises licence applications are subject to public consultation and consideration by the authority. An equalities impact assessment of this policy is being conducted alongside progression of this draft policy.

RESOURCE IMPLICATIONS

59. There are no further resource implications in connection with this policy, other than those raised in the main body of the text.

CONSULTATIONS

60. Consultation arrangements undertaken in respect of this policy revision are detailed in paragraph 10 of this report.

SUPPLEMENTAL ADVICE FROM OTHER OFFICERS

Borough Solicitor

61. The Council Assembly are asked to consider and approve Southwark Council 's draft statement of gambling licensing policy attached at Appendix A.

62. The Council Assembly are advised that the council is required to include in its statement of gambling policy the principles that it will apply in exercising its functions under section 29 and 30 of the Gambling Act. With respect to consultations and exchange of information with responsible Authorities and other persons as contained in Part 1 and 2 of Schedule 6 of the Act.
63. As a licensing authority, the council imply that it will act in accordance with the provisions of the Gambling Act. In doing so, that it will have regards to the guidance issued by the Gambling Commission whenever it is published as well as the regulations issued by the Secretary of State from time to time.
64. The Gambling commission and the Secretary of State's guidance are subordinate to the Act. The Act is binding. Local authority cannot depart from the guidance unless it is inconsistent with the Act.
65. Once the policy is in place the council will be required to have regard to its policy and make decision in line with it. In doing so, it must treat each case on its merit. Council may depart on occasion form its own policy if the circumstances of the case merits such a decision in the interest of promoting one of the three the Gambling Licensing objectives.
66. In respect of the policy, the council is under a duty to carry out its gambling licensing functions with a view to promote the following three objectives
- Preventing gambling from being a source of crime and disorder, being associated with crime or disorder or being used to support crime
 - Ensuring gambling is conducted in a fair and open way, and
 - Protecting children and other vulnerable persons from being harmed or exploited by gambling.
67. Members should note that each objective is of equal importance. Council Assembly is also advised that it cannot attach significance to other matters not provided for in the Act. It should have regards only to the three Gambling Licensing objectives and the relevant matters as contained in the Act, the Gambling Commission guidance, and any such regulations issued by the Secretary of State. Whilst it is possible to refer to other policies. It is desirable that it is linked to the council's corporate objectives on those three grounds
68. The Gambling Act requires the Council to prepare every 3 years statement of gambling licensing policy, to show how it would meet the conditions of the Act. It may however review it from time to reflect good practice and compliance with the Act, Guidance issued by the Gambling Commission and the Secretary of State regulations issued from time to time.

BACKGROUND INFORMATION

Background papers	Held at	Contact
Gambling Act 2005 DCMS Guidance Draft Secondary regulations Consultation responses and analysis	The Chaplin Centre, Thurlow Street, London, SE17 2DG	Mrs Kirty Read, C/O The Licensing Service. Telephone 020 7525 5748

AUDIT TRAIL

Lead Officer	Gill Davies, Strategic Director of Environment & Leisure	
Report Author	Richard Parkins, Licensing Manager	
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Consultation with other officers / Directorates / Executive Member		
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Borough Solicitor and Secretary	Yes	Yes
Executive Member	Yes	Yes
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