

Item No. 8.1.	Classification: Open	Date: 10 July 2013	Meeting Name: Council Assembly
Report title:		Gambling Act 2005 – Southwark Statement of Gambling Licensing Policy 2013-2016	
Ward(s) or groups affected:		All wards	
From:		Strategic Director of Environment & Leisure	

RECOMMENDATION

1. That the assembly approves the Southwark Statement of Gambling Licensing Policy for 2013-2016, attached at Appendix A, with effect as of 1 September 2013.

BACKGROUND INFORMATION

2. The Gambling Act 2005 introduced a new licensing regime for gaming and betting administered through a combination of the Gambling Commission and local licensing authorities.
3. The Act regulates the following sectors:
 - Arcades
 - Betting
 - Bingo
 - Casinos
 - Gambling software
 - Gaming machines
 - Lotteries
 - Remote (online) gaming.
4. The Gambling Commission is responsible for licensing operators and individuals involved in providing the above activities.
5. Licensing authorities are responsible for:
 - Issuing gambling operators with premises licences
 - Issuing gambling operators with permits (which allow low stakes gambling in venues which are primarily not for gambling)
 - Registering societies – allowing them to hold small lotteries
 - Compliance and enforcement of the Act locally.
6. Licensing authorities are required to prepare and publish, every three years, a statement of the principles (the Southwark statement of gambling licensing policy) which they propose to apply when exercising their licensing functions. The Act requires that before the licensing authority publishes its statement of licensing principles it must carry out a public consultation exercise.

7. Section 153 of the Act provides that licensing authorities shall aim to permit the use of premises for gambling in so far as they think it:
 - In accordance with relevant codes of practice
 - In accordance with the guidance for licensing authorities issued by the Gambling Commission
 - Reasonably consistent with the licensing objectives
 - In accordance with the authority's statement of licensing policy.
8. This authority's statement of principles was first published in January 2007. It was compiled having regard to a broad range of contributions from responsible authorities; representatives of the industry; and of the community. It has been subject of several reviews and amendments as policy and guidance has changed over the years. The current version was approved by council assembly in October 2010 and is now overdue for renewal.
9. In October 2012, the Gambling Commission published the fourth edition and most recent version of its guidance to local licensing authorities.
10. Following publication of the revised guidance, the Southwark statement of licensing policy has been compared with the guidance for consistency and revised where the guidance has been developed.
11. The revised statement of policy went out for public consultation through December 2012 and January 2013. No other policy changes were incorporated beyond the revisions made to maintain consistency with the commission guidance.
12. Following the consultation exercise, the few responses received have been considered and some additions incorporated. A final version of the revised policy was put to the council's licensing committee for consideration on 12 June 2013.
13. The committee decided to recommend the revised policy to council assembly for approval. If the assembly approves the document it must be published and made available on the council's website and at its offices for at least four weeks before it may have effect. It is proposed, therefore, that the effective date of the revised policy should be 2 September 2013.

KEY ISSUES FOR CONSIDERATION

Main changes to the statement of policy

14. Detailed below are the main changes made to the statement of policy in order to ensure consistency with the commission's guidance:
 - **Interested parties** (pages 15 and 16, Appendix A) – Further qualification is now provided as to the circumstances under which the authority may determine either that a 'person lives sufficiently close to a premises so as to be affected by the authorised activities' and 'the nature and scope of business interests that could be affected'
 - **Primary gambling activity** (page 22, Appendix A) – Clarification is now incorporated in the policy that the primary activity of the premises should be

that for which it is authorised, for instance in a licensed bingo hall the primary activity should be bingo. This clarification is important in terms of establishing that gaming machines provided at premises should be 'ancillary offers'

- **Relationship between planning permission, building regulations and granting of a premises licence / provisional statements** (page 23 to 25) – The policy now quotes extensively from the latest commission guidance, on how the authority must approach applications for licences made in respect of premises that are intended for future use
- **Premises licence conditions** (pages 34 to 37) – For purposes of completion, the policy now incorporates mandatory licence conditions required in respect of each category of premises licence in full.

15. Following consultation 3 additional new references have been added:

- **The Southwark SPA card** (page 29) – At the request of the council's trading standards service reference to the Southwark proof of age (SPA) card has been incorporated into the policy document. The SPA card is available to 16-25 year olds by direct application or may be issued via their school or other educational establishment
- **Conflict resolution training** (page 30) – At the request of the council's occupational health and safety team, reference is now made to the availability of business support in dealing with workplace violence and aggression
- **London Safeguarding Children Board (LCSB) policy for licensed premises** (page 39) – Reference is now included within the policy to this document. Operators of gambling premises lawfully permitted to allow children and young persons upon their property (i.e. unlicensed family entertainment centres and alcohol licensed premises with gaming machine permits) are asked to display an adapted version of the LCSB policy for staff information.

Proliferation of betting shops

16. Though not reflected within the consultation response, this authority is acutely aware of increasing local community concerns over the perceived clustering or over-proliferation of betting shops, particularly within more deprived areas. This authority is itself concerned with the restrictive framework for considering licence applications provided under current statute (as set out in Appendix C).
17. However, this authority's position may be strengthened by the inclusion within the policy revision of the commission's advice on primary activity (section 14 above). With specific regard to this, this authority is monitoring the situation in the matter of the application by Power Leisure Ltd (t/a Paddy Power) under s153 of the 2005 Act for a new betting premises licence in Green Street, Upton Park, Newham. In February 2013, Newham Council became the first council in the country to use the 'primary activity' of a betting shop in their decision to reject this application. The council contended that the premises would add to the 'cluster' of betting shops that already operate in the area and decided the application did not meet the criteria for a betting shop licence, as the premises would not be

primarily used for betting. It was considered that the purpose of the application was to increase the number of fixed odds betting terminals (FOBTs) in the street rather than enable traditional betting.

18. On 17 June 2013, Thames Magistrates Court considered this matter upon appeal and overturned the decision by Newham Council. Newham Council is currently considering its position and the courses of action that are available to it. Whilst the judgement does not materially affect our policy any significant changes will be brought back to the licensing committee.
19. In the meantime, it is this authority's intention to work to develop relevant aspects of this policy in the light of any changes that may arise to the current legal position.

Consultation

20. Under the Act, when compiling its licensing policy, each licensing authority is required to consult with:
 - The chief officer of police
 - One or more persons who appear to the authority to represent the interests of persons carrying on gambling businesses in the authority's area
 - One or more persons who appear to the authority to represent the interests of persons who are likely to be affected by the exercise of the authority's functions under the Gambling Act 2005.
21. The consultation exercise in respect of this policy ran through December 2012 and January 2013. It comprised:
 - Information and a questionnaire made available on the licensing web site;
 - A public notice placed in the Southwark News
 - A public notice exhibited at the council's main office
 - Direct letter drops to all responsible authorities (including the chief officer of the police); Southwark licence holders; ward councillors; and bodies and individuals who have subscribed to the licensing service's licensing email alert scheme.
22. Very few responses were received to the consultation. This may be explained by the frequency of review of the policy and absence of new policy development.
23. Responses received to the consultation are set out in full in Appendix B.

Policy implications

24. The policy has four main objectives. These are:
 - To reinforce to elected members on the licensing committee, the boundaries and power of the local authority as licensing authority and provide the parameters under which these licence decisions are made
 - To inform licence applicants of the parameters under which this authority will make licence decisions and how a licensed premises is likely to be able to operate within an area

- To inform residents and businesses of the parameters under which licence decisions will be made and how their needs will be addressed
- To support licensing decisions that may be challenged in a court of law.

25. The Southwark Statement of Gambling Licensing Policy 2013-2016 supports general policy objectives:

- Creating a fairer borough by ensuring the licensing process provides for the fair and equal consideration of each licence application and allowing every person to have the opportunity to be heard in the process
- Making Southwark a place to be proud of by helping business work together with local community to provide leisure opportunities that contribute to local quality of life
- Realising potential by providing a level playing field for traders
- Spending money as we would our own by ensuring an efficient and effective licensing process and service and by targeting resources to where they are needed most
- Transforming public services by setting out to provide a modern, accessible service.

Community impact statement

26. The Gambling Act 2005 establishes the following licensing objectives:

- 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
- Protecting children and vulnerable people from being harmed or exploited by gambling.

27. The licensing processes applied by this authority are consistent with those established by statute by way of the Act and related regulations and the further guidance and direction given by the Gambling Commission.

28. The council has a duty to consider every application for relevant licences and consents made to it. Each application is considered upon its own merits with all relevant matters taken into account. There are no artificial barriers provided by this policy or by any council process or practice, to any person wishing to make a licence application. Nor are there any artificial barriers applied to any person who qualifies as an 'interested party' under the Act from having their views on an application taken into account.

29. This policy revision forms a technical update to the original policy published in 2007.

30. The revision maintains local policy concerning the location of gambling premises in areas where there may be particular issues relating to children and vulnerable people. Furthermore, the policy provides commitment to supporting the commission as and 'eyes and ears' enforcement agency within the Southwark

area.

31. The initial statement of policy was subject of an equalities impact assessment. The assessment has been revisited in the light of the revisions. No new issues have been raised by the revisions.

Resource implications

32. There are no new resource implications introduced by this report. Any costs of implementing the proposed policy will be contained within existing revenue budgets.

SUPPLEMENTARY ADVICE FROM OTHER OFFICERS

Director of Legal Services

33. The Gambling Act 2005 (“the 2003 Act”) requires the council, as the licensing authority, to prepare and publish a statement of its gambling licensing policy every three years.
34. In determining its policy, the council is exercising a licensing function and as such must have regard to with codes of practice issued under section 24, the guidance issued by the Secretary of State under section 25 of the 2005 Act. It must also give appropriate weight to the views of those persons/bodies listed in the Act which it is required to consult before determining its policy.
35. Although the guidance represents best practice, it is not binding on the council. As long as the guidance has been properly and carefully understood and considered, licensing authorities may depart from it if they have reason to do so. In this event they will need to give full reasons for their decisions, which must be consistent with the objectives of the 2003 Act.
36. The council is required to have regard to the statement of licensing policy and make decisions in accordance with it. Licensing authorities may depart from their policy if the individual circumstances of any case merit such a decision in the interests of promoting the licensing objectives. In this event it is important that full reasons are given for departing from the published statement of licensing policy.
37. Members should note that the 2005 Act imposes a duty on the council, as the licensing authority, to carry out its functions under the Act with a view to promoting the three licensing objectives, namely:
 - 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
 - Protecting children and other vulnerable persons from being harmed or exploited by gambling.
38. Each of these objectives is of paramount and equal importance. There are no other licensing objectives and therefore the council cannot reject an application for a licence or impose conditions on a licence for any purpose unrelated to the promotion of these objectives.

39. The statement of gambling licensing policy cannot seek to impose blanket conditions. Each application must be considered on its own merits. Conditions can only be imposed on a licence if they are necessary to promote the licensing objectives in relation to the specific premises and are a proportionate response to the specific situation to be addressed. The guidance provides that if the situation the condition is intended to address is already addressed by a provision in the 2005 Act or any other legislation then the condition cannot be said to be 'necessary'.
40. The licensing is about regulating the carrying on of gambling activities within the terms of the 2005 Act. The statement of gambling policy should make it clear that gambling law is not the primary mechanism for the general control of nuisance and anti-social behaviour by individuals once they are beyond the direct control of the individual, club or business carrying on gambling activities. However, the guidance also states that gambling law is a key aspect of such control and should always be part of a holistic approach to the management of the evening and night-time economy. It is therefore desirable that the statement of licensing policy is in line with the council's wider objectives and consistent with other policies.
41. Members should note that the statement of gambling policy must not be inconsistent with the provisions of the 2005 Act and must not override the rights of any individual as provided for in that Act. Nor must the statement of gambling policy be inconsistent with obligations placed on the council under any other legislation, including human rights legislation. Members should also note that the council has a duty under section 17 of the Crime and Disorder Act 1998, when carrying out its functions as a licensing authority under the 2005 Act, to do all it reasonably can to prevent crime and disorder within the borough.
42. Positive equalities obligations are placed on local authorities, sometimes described as equalities duties, with regard to race, disability and gender. Race equality duties were introduced by the Race Relations Amendment Act 2000 which amended the Race Relations Act 1976. Gender equalities duties were introduced by the Equality Act 2006, which amended the Sex Discrimination Act 1975. Disability equality duties were introduced by the Disability Discrimination Act 2005 which amended the Disability Act 1995.
43. Equality impact assessments are an essential tool to assist councils to comply with our equalities duties and to make decisions fairly and equalities and human rights impact assessments that are carried out should be mindful of the protected characteristics under the Equality Act 2010.
44. Under the Local Authorities (Functions and Responsibilities) (England) Regulations 2000, as amended, decisions relating to licensing matters cannot be the responsibility of an authority's executive. The 2005 Act provides that whilst the majority of the functions of the licensing authority, are to be taken or carried out by its licensing committee, decisions relating to the statement of licensing policy cannot be delegated in such a way. The decision on whether to adopt the statement of licensing policy must therefore be taken by council assembly.

Gambling Act – Cumulative Impact

45. The adoption of a cumulative impact policy to address evidenced undermining of the licensing objectives in any given area would not be wrong in principle, or otherwise unlawful.
46. The statutory provisions for an authority's licensing policy under the section 349 Gambling Act are similar to the provisions in section 5 of the Licensing Act that deals with an authority's statement of licensing policy. Where there are differences, they do not impact on the legality of a cumulative impact policy under the Gambling Act 2005.
47. The Home Office guidance under the 2003 Act places great stress on the need for the adoption of a cumulative impact policy to be evidence-based. The same is required if a cumulative impact policy is to be introduced into Southwark's gambling licensing policy.
48. There is difficulty in demonstrating that problems are attributable to the cumulative impact of a number of betting premises, as opposed to problems being specific to individual premises and therefore capable of being dealt with by review or other targeted enforcement. If consideration is to be given to the introduction of a cumulative impact policy, then independent research to establish whether there is a sufficient evidential basis would need to be undertaken into the observed (rather than speculative) effects of over-licensing have perhaps been published, should be given consideration.

Strategic Director of Finance and Corporate Services (E&L/13/015)

48. The strategic director of finance and corporate services notes the proposal set out in this report and confirms that there are no direct financial implications arising. Officer time to implement this decision can be contained within existing resources.

BACKGROUND DOCUMENTS

Background Papers	Held At	Contact
The London Local Authorities Act 1991	The Licensing Service, 3 rd Floor, Hub 2 160 Tooley Street	Mrs Kirtikula Read 020 7525 5748

APPENDICES

No.	Title
Appendix A	The Southwark statement of gambling licensing policy 2013-2016
Appendix B	Summary of consultation responses
Appendix C	The licensing of betting shops

AUDIT TRAIL

Lead Officer	Deborah Collins, Strategic Director of Environment and Leisure	
Report Author	Richard Parkins, Health Safety Licensing and Environmental Protection Unit Manager	
Version	Final	
Dated	13 June 2013	
Key Decision?	No	
CONSULTATION WITH OTHER OFFICERS / DIRECTORATES / CABINET MEMBER		
Officer Title	Comments sought	Comments included
Director of Legal Services	Yes	Yes
Finance Director	Yes	Yes
Cabinet Member	Yes	Yes
Date final report sent to Constitutional Team	25 June 2013	