

REPORT TO: LICENSING COMMITTEE - 12 DECEMBER 2006

REPORT BY: LICENSING MANAGER

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Gambling Act 2005 – Adoption of Statement of Licensing Principles and other related matters

1. PURPOSE OF REPORT

The purpose of this report is to detail the representations received in response to the consultation process undertaken on the draft Statement of Licensing Principles that was undertaken between 1 October 2006 and 30 November 2006. The report also requests the approval of the Licensing Committee of the proposed final statement and to commend it for formal adoption by the City Council together with other related statutory functions associated with the Gambling Act 2005.

2. RECOMMENDATIONS

(i) That the Licensing Committee:

- a. Considers the responses received and approves the amendments to the proposed final statement of licensing principles;*
- b. Refers this report to the Council for information and guidance in respect of the requirements of the Gambling Act 2005;*

(ii) That the City Council be recommended

- a. That it adopts the statement of licensing principles in accordance with Section 349 of the Gambling Act 2005;*
- b. That, in accordance with Section 157(h) of the Act, the Licensing Authority designates in writing Portsmouth City Council to be the body which is competent to advise it about the protection of children from harm in its area and that this function be undertaken by the Strategic Director for Children, Families and Learning;*
- c. That the Licensing Committee be delegated to set appropriate annual licence fees under Section 212 of the Gambling Act 2005;*
- d. That the Licensing Authority's decision making powers be delegated in accordance with paragraph 30 of the final statement of licensing principles; and*
- e. That the responsibility for the consideration of applications for registration of small society lotteries in accordance with the Gambling Act 2005 be delegated to the Licensing Committee who may further delegate its decision making function to a sub-committee or the City Solicitor.*

3. BACKGROUND

The Gambling Act 2005 (“The Act”) creates a new system of licensing and regulation for commercial gambling in this country with the exception of the National Lottery and spread betting.

The Act repeals various Acts of Parliament which currently regulate gaming.

These are:

- Betting, Gaming and Lotteries Act 1963
- Gaming Act 1968
- Lotteries and Amusements Act 1976

The Act also introduces a new regulator for gambling, the Gambling Commission (“the Commission”) and introduces a new licensing regime for commercial gambling. The new regime will be conducted by the Commission or by local licensing authorities depending on the matter to be licensed.

The Act removes from licensing justices all responsibility for granting gaming and betting permissions. Instead, the Commission and licensing authorities will share between them responsibility for all those matters previously regulated by licensing justices.

Licensing authorities

Licensing authorities will have new powers to licence gambling premises within their area which include the following:

- Responsible for the licensing of premises where gambling activities are to take place by issuing Premises Licences;
- Issuing of Provisional Statements (in respect of premises yet to be built, altered or acquired);
- Regulating members’ clubs and miners’ welfare institutes who wish to undertake certain gaming activities by issuing Club Gaming Permits and/or Club Machine Permits;
- Issuing Club Machine Permits to Commercial Clubs;
- Granting permits for the use of certain lower stake gaming machines at unlicensed Family Entertainment Centres (existing function);
- Receiving notifications from alcohol licensed premises (under the Licensing Act 2003) of the use of two or fewer gaming machines;
- Issuing Licensed Premises Gaming Machine Permits for premises licensed to sell/supply alcohol for consumption on the licensed premises, under the Licensing Act 2003, where more than two machines are required;
- Registering small society lotteries below prescribed thresholds (existing function);

- Issuing Prize Gaming Permits (existing function);
- Receiving and Endorsing Temporary Use Notices;
- Receiving Occasional Use Notices;
- Providing information to the Gambling Commission regarding details of licences issued; and
- Maintaining registers of the permits and licences that are issued under these functions.

The Licensing Objectives

The Act contains three licensing objectives that 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:

- Protecting children and other vulnerable people from being harmed or exploited by gambling;
- Preventing gambling from being a source of crime or disorder, being associated with crime or disorder, or being used to support crime; and
- Ensuring that gambling is conducted in a fair and open way.

The Act sets out licensing functions to be exercised by the Commission in relation to operating and personal licences, and by licensing authorities in relation to the licensing of premises and the grant of certain permits. In exercising these functions, the Commission and licensing authorities must be guided by the licensing objectives.

Regulation of gambling

In accordance with Section 153 of the Act, in making its decisions about premises licences and temporary use notices, licensing authorities should aim to permit the use of the premises for gambling in so far as it thinks it:

- in accordance with any relevant code of practice issued by the Gambling Commission;
- in accordance with any guidance issued by the Gambling Commission;
- reasonably consistent with the licensing objectives; and
- in accordance with the Authority's statement of licensing principles.

Regulation of gambling in Great Britain will be achieved through a variety of measures established under the Act. These include:

- Secondary legislation;
- Conditions on licences;
- Codes of Practice; and
- Guidance.

The Act addresses the significant technological advances that have taken place within this field in the last 40 years. The Act requires regulation of gambling where the player is not present on the operator's premises. For example, operators based in Great Britain must obtain an operating licence to authorise the provision of gambling via remote communication e.g. via interactive television or the internet. This particular type of gambling will be regulated by the Gambling Commission. Moreover, the new licensing system has been designed to keep pace with technological developments, so that, subject to appropriate Parliamentary approval, gambling delivered by new, unforeseen methods can be regulated in the future.

The Act revises the law of gambling. For example, commercial bingo premises and casinos will no longer have to operate as clubs with a 24 hour membership rule (making them places to which the public will now have access). A brief overview of those changes are outlined below:

Casinos

The Act makes significant changes to the regime for casinos. It removes certain regulatory controls which existed under the Gaming Act 1968. Three categories of new casinos are introduced consisting of regional, large and small. These are defined according to a casino's size. A casino's category affects what forms of gambling can be provided at the casino. For example, a casino's gaming machine entitlement depends upon which category it falls into. There will be a minimum size limit for new casinos established under the Act.

The Act imposes an initial limit of 1 regional casino, 8 small and 8 large casinos to be licensed under the Act. There are powers to amend these limits or remove them entirely, subject to appropriate Parliamentary approval. Casinos which are currently licensed before the new provisions of the Act come into force will be allowed to continue to operate. This will be provided for by means of transitional provisions.

A power is provided for licensing authorities to pass resolutions not to licence any new casino premises in their area.

Gaming machines

The Act introduces a new regime for gaming machines. A new definition of gaming machine is provided, together with power to prescribe categories. The Act provides certain entitlements for commercial operators to use specified numbers and categories of machines under their licence. It also establishes permit procedures for authorising use of the lower stake gaming machines in specific locations.

Lotteries

A revised regime for the regulation of lotteries is contained within the Act which builds upon the existing provisions contained within the Lotteries and Amusements Act 1976 which will subsequently be repealed when the Act comes into effect.

The Act regulates lotteries in two ways: either as exempt lotteries, or as licensable lotteries.

Responsible authorities and interested parties

The Act sets out two categories of organisations and individuals (“responsible authorities” and “interested parties”) which may make representations in respect of an application having regard to the licensing objectives.

Responsible authorities

Responsible authorities are public bodies that must be notified of applications and that are entitled to make representations to the licensing authority in relation to applications for, and in relation to, premises licences.

Section 157 of the Act identifies the bodies that are to be treated as responsible authorities. They are:

- a. a licensing authority in England and Wales in whose area the premises is wholly/partly situated;
- b. the Gambling Commission;
- c. the Chief Officer of Police for the area in which the premises is wholly or partially situated;
- d. the fire and rescue authority for the same area;
- e. the local planning authority;
- f. an authority which has functions in relation to pollution to the environment or harm to human health;
- g. any body, designated in writing by the licensing authority as competent to advise about the protection of children from harm;
- h. HM Revenue & Customs; and
- i. any other person prescribed in regulations by the Secretary of State.

Also, in relation to a vessel, but no other premises, responsible authorities will also include navigation authorities within the meaning of section 221(1) of the Water Resources Act 1991 that would include:

- j. the Environment Agency;
- k. the British Waterways Board; and
- l. the Maritime and Coastguard Agency.

The Act contains a similar list of responsible authorities to that contained within the Licensing Act 2003, despite the lack of the corresponding licensing objective of public safety. The result the Act aims to achieve through the inclusion of a wide range of responsible authorities is one where all relevant regulatory bodies and organisations are made aware of the applications for gambling premises licences or other permissions. In many instances comments that responsible authorities make will be relevant to the licensing authority’s determination.

Equally, in some cases, representations may not relate to matters that lead to the licensing authority refusing a premises licence. However, a policy of wide dissemination of applications allows responsible authorities to take action under their own legislation and enforcement powers, even if there is no direct role for them in the gambling licence process. The Act contains no obligation on responsible authorities to respond to applications for premises licences if they do not wish to do so.

Interested parties

To accept a representation from an interested party, the licensing authority must take the view that the person:

- a. lives sufficiently close to the premises to be likely to be affected by the authorised activities; or
- b. has business interests that might be affected by the authorised activities; or
- c. represents persons in either of these two groups.

Statement of licensing principles

In preparation for receiving applications for premises licences under the new Act, licensing authorities are required to publish every three years, a statement of the principles which they propose to apply when exercising their functions. This will set out how the authority will meet the licensing objectives of the Act. Authorities must consult on their draft statements and communities and businesses will have a chance to comment on the authority's proposed approach.

In determining its principles, the Act states that the Council must consult with the following:

- 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; and
- 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 this Act.

The statutory guidance issued by the Gambling Commission in accordance with the Act advises that the list of person to be consulted when preparing the statement of licensing principles is deliberately wide. This enables licensing authorities to undertake a comprehensive consultation exercise with anyone who may be affected by or otherwise have an interest in the statement of licensing principles. In addition, some of the detail which will need to appear in the final statement of licensing principles will need to reflect guidance and regulations from the Gambling Commission and the Government, which have not yet been finalised. Notes of such matters appear in the statement, as and where necessary.

Compliance and implementation timescales

Compliance and enforcement

The Act provides the Gambling Commission, local authorities, licensing authorities and the police with the powers necessary to monitor compliance with the provisions of the Act and with licence conditions, and to investigate suspected offences.

In general, the Gambling Commission will take the lead on the investigation and prosecution of illegal gambling, but there may be occasions on which licensing authorities are better placed to take the lead, particularly where there is illegal activity on a smaller scale that is confined to one authority area.

Timetable for implementation

The current statutory timetable for implementation of the Gambling Act 2005 is as follows:

3 January 2007 – deadline for publication of statement of licensing principles;

31 January 2007 – statement becomes effective;

30 April 2007 – start of transitional period;

1 September 2007 – Act goes live and new licences/permits come into effect.

4. CONSULTATION PROCESS

Following consideration by the Licensing Committee on 15 September 2006, the draft Statement of Licensing Principles was made available for consultation in accordance with the statutory requirements together with other persons/bodies whom it was thought would have an interest and those who had previously requested sight of the document.

A list of those persons/organisations contacted in relation to the draft statement are outlined in the proposed final statement attached as Appendix A to this report.

In addition, the draft policy was published on the Council's website, copies were distributed to public libraries and the City Help Desk together with a press release being issued by the Council's Media Unit.

In addition, each Member of the Council received a copy of the draft statement and guidance notes. A copy of the Act and the statutory guidance was also distributed to each of the Member's Rooms within the Civic Offices.

5 RESPONSE TO THE CONSULTATION PROCESS

At the conclusion of the consultation period, a total of 11 responses had been received. A summary of the representations received is attached as Appendix B.

Members should also be aware that the statement of licensing principles was prepared in accordance with the statutory guidance issued by the Secretary of State. In addition, the content of the statement was in accordance with a "best

practice” template made available to all local authorities by LACORS (Local Authorities Coordinators of Regulatory Services). This template was prepared by LACORS in consultation with the Department of Media, Culture & Sport and the Gambling Commission so as to ensure a certain level of consistency across the country by licensing authorities. This template has been updated on a regular basis to take into account further advice and guidance emerging whilst this document was being prepared and the proposed final statement incorporates all the latest amendments issued by LACORS.

In addition, the Hampshire & IOW Licensing Officers Group established a working party to develop a template for the statement which incorporated LACORS guidance that could be used by all licensing authorities in Hampshire and the Isle of Wight.

6. OTHER STATUTORY REQUIREMENTS

Section 349 of the Act requires each licensing authority to prepare and publish a statement of licensing principles that they propose to apply in exercising their functions under the Act.

Before a statement or revision comes into effect, the statutory regulations prescribe that authorities must publish and advertise the publication of the statement or revision according to certain requirements.

Publishing

The statement or revision must be published by being made available for a period of at least 4 weeks before the date on which it will come into effect:

- (a) on the authority’s internet website; and
- (b) for inspection by the public at reasonable times in one or both of the following places –
 - (i) one or more public libraries situated in the local authority area;
 - (ii) other premises situated in the area.

Advertising

A notice must be published no later than the first day on which the statement or revision is published

- (a) on the authority’s internet website; and
- (b) in or on one or more of the following places:
 - (i) a local newspaper circulating in the area covered by the statement;
 - (ii) a local newsletter, circular or similar document circulating in the area covered by the statement;

- (iii) a public notice board in or near the principal office of the authority;
- (iv) a public notice board on the premises of public libraries in the area covered by the statement.

7. OTHER STATUTORY REQUIREMENTS

In accordance with Section 157(h) of the Act, the licensing authority must specify, in writing, a body who it considers is competent to advise the authority about the protection of children from harm. It is recommended that for the purposes of compliance with this statutory requirement, that body should be the Portsmouth City Council through the Strategic Director for Children, Families & Learning.

The Committee is also requested to recommend to the Council that it delegates the following matters to the Licensing Committee:

- a) the fee setting function in accordance with section 212 of the Act;
- b) the consideration of applications for registration of small society lotteries in accordance with Schedule 11, Parts 4 and 5 of the Gambling Act 2005 to the Licensing Committee (who may further delegate its decision making function to a sub-committee or the City Solicitor); and
- c) the Licensing Authority's decision making powers be delegated in accordance with Section 30 of the final statement of licensing principles;

as the Licensing Committee will undertake the statutory responsibility for undertaking all the day to day functions of the Act with the exception of the adoption/revision of the statement of licensing principles and any policy decision not to permit casinos.

8. APPENDICES

- A. Proposed final statement of licensing principles;
- B. Summary of responses.



Licensing Manager
For City Solicitor