

Summary Sheet

Council Report

Licensing Committee – 30th October 2017

Title

Gambling Act 2005 – Statement of Licensing Policy

Is this a Key Decision and has it been included on the Forward Plan?

Yes

Strategic Director Approving Submission of the Report

Damien Wilson, Strategic Director of Regeneration and Environment

Report Author(s)

Alan Pogorzelec, Licensing Manager, Community Safety and Street Scene

Ward(s) Affected

All

Summary

Section 349 of the Gambling Act 2005 requires a licensing authority to prepare and publish a statement of its licensing policy at least every three years.

Rotherham MBC's Gambling Act Statement of Licensing Policy was last due for review and republication in 2016, however this review did not take place due to the Council's focus on taxi and private hire licensing.

The Council is now in a position to review and publish a revised Statement of Licensing Policy (following a brief period of consultation). However this policy will cover the period 2016 – 2019 and will require further review toward the end of 2018 (to cover the period 2019 – 2022). Although the revised policy will quickly become in need of a further review, publication of a 2016 – 2019 policy will bring the Council into compliance with s349 of the Act. This policy can then be subjected to a further review (and more formal consultation) ready for the publication of the new policy in 2019. This approach has been discussed with the Gambling Commission which has agreed that this is the most effective means of the Council obtaining compliance with the requirements of the Gambling Act 2005.

Recommendations

1. To note the attached Gambling Act 2005 Statement of Licensing Policy (and associated appendices).
2. To provide any comments on the Policy to the Licensing Manager for inclusion in the final consultation version.

List of Appendices Included

- Rotherham MBC Gambling Act 2005 Statement of Licensing Policy

Background Papers

The following documents have been considered when preparing this report:

- Gambling Act 2005 - guidance to licensing authorities (5th Edition)

Consideration by any other Council Committee, Scrutiny or Advisory Panel

None

Council Approval Required

No

Exempt from the Press and Public

No

Gambling Act 2005 – Statement of Licensing Policy

1. Recommendations

- 1.1. To note the attached Gambling Act 2005 Statement of Licensing Policy (and associated appendices).
- 1.2. To provide any comments on the Policy to the Licensing Manager for inclusion in the final consultation version.

2. Background

2.1 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.

2.2 The Act regulates the following sectors:

- Arcades
- Betting
- Bingo
- Casinos
- Gambling software
- Gaming machines
- Lotteries
- Remote gambling

2.3 The Gambling Commission is responsible for licensing operators and individuals involved in providing the above activities.

2.4 Licensing authorities are responsible for:

- Issuing gambling operators with premises licenses • Issuing gambling operators with permits (which allow low stakes gambling in venues which are not primarily for gambling)
- Registering societies – allowing them to hold small lotteries
- Compliance and enforcement of the Gambling Act 2005 locally

2.5 In carrying out their functions under the Gambling Act 2005, particularly with regard to premises licenses and temporary use notices, all licensing authorities must aim to permit the use of premises for gambling in so far as they think it:

- In accordance with any relevant code of practice issued by the Gambling Commission
 - 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 principles
- 2.6 Licensing authorities are required to review and publish, every three years, a statement of the principles which they propose to apply when exercising their licensing functions.
- 2.7 Rotherham MBC's Statement of Licensing Policy was last published in 2011, and was therefore due for review and republication in 2016 – however this review did not take place due to the Council's focus on taxi and private hire licensing.
- 2.8 The Council is now in a position to review and publish a revised Statement of Licensing Policy, and this report is brought before the Licensing Committee for consideration and comment prior to the commencement of the formal consultation process.
- 2.9 At this stage, it is not proposed to make fundamental changes to the policy and simply re-adopt the current statement of principles with some small revisions, further detail on these is provided below.

3. Key Issues

- 3.1 The Council is required to publish a Statement of Licensing Policy under the Gambling Act 2005, each statement covers a three year period.
- 3.2 There is a statutory requirement for the Council to publish a statement covering the current period (2016 – 2019). Advice from the Gambling Commission is clear that statements must cover the prescribed three year cycle, therefore the 2016 – 2019 statement will itself require review in late 2018 (ready for the 2019 – 2022 period).
- 3.3 The Gambling Commission have confirmed that the most effective way of addressing the current situation in Rotherham is to undertake a review of the current policy and make appropriate minor amendments (addresses, key issues etc.) and then undertake a short period of consultation that meets the minimum statutory requirements. This policy can then be published in a relatively short timescale and will bring the Council into statutory compliance.

3.4 Once published, the 2016 – 2019 statement can be subjected to a more comprehensive review and wider consultation ready for publication of the 2019 – 2022 statement.

3.5 Key changes introduced in the 2016 – 2019 statement are as follows:

- Amendment of address and contact details.
- Addition of clauses regarding the promotion of the licensing objectives.

3.6 The revised statement is attached to this report as Appendix 1.

3.7 Any comments / amendments suggested by the Licensing Committee will be incorporated into the revised statement prior to presentation to the Cabinet Member for Waste, Roads and Community Safety. This policy will then be subjected to the consultation process detailed above, with a final report presented to Cabinet in Spring 2018.

4. Options considered and recommended proposal

4.1 The options are limited as the requirement for such a policy is set out in the legislation, although there is considerable discretion as to the content of the statement.

4.2 The recommended proposal is for the Licensing Committee provide comments in relation to the proposed policy prior to submission to the Council's Cabinet and the commencement of formal consultation.

5. Consultation

5.1 Section 349 of the Gambling Act 2005 specifies those persons and groups with whom we must consult for the purposes of this report.

5.2 If the Committee approves the proposed statement of principles, we will consult with all statutory consultees, namely:

- The chief officer of police
- One or more persons who appear to the authority to represent the interests of persons carrying on gambling in the authority's area, including the following responsible authorities identified under the Act:
 - the Gambling Commission,
 - HM Revenue and Customs,
 - South Yorkshire Fire and Rescue,
 - Rotherham's Planning, Environmental Health and Children's Services

- 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, including:
 - The individuals and organisations who hold Premises Licences issued by the authority under the Act
 - The organisations who have applied for or hold gaming machine permits for multiple or high-profile premises within the borough
 - Representative bodies within the gambling and leisure industry
 - All elected ward councillors and members of parliament

5.3 In addition to the above we will:

- Host an online questionnaire on the council's website
- Use social media to inform the public about this consultation and direct them to the questionnaire

5.4 We will then analyse the comments received and prepare any changes considered appropriate to the statement of principles for final approval and present a further report to Cabinet Member for Waste, Roads and Community Safety in early 2018 prior to adoption by full Council shortly afterwards.

6. Timetable and Accountability for Implementing this Decision

6.1 Following review of the draft policy by the Licensing Committee, the policy will be amended as appropriate and then submitted to the next meeting available meeting of the Cabinet Member for Waste, Roads and Community Safety.

6.2 Once approved by the Cabinet Member, it is proposed that a four week consultation period commences. Once responses have been incorporated into the revised policy, the policy will be presented to Cabinet with a view to obtaining final approval from the Council. It is expected that the policy will be introduced in early 2018.

7. Financial Implications

7.1 The costs of undertaking the statutory duties as a licensing authority are met within the Licensing revenue budget.

7.2 Fee levels are set at a level to provide full cost recovery of all licensing functions including the preparation and publication of a statement of licensing policy, but this will be based on the statutory requirements.

8. Legal Implications (including procurement)

- 8.1 Section 349 of the Gambling Act 2005 (the Act) requires the Council to prepare and publish triennially a statement of the principles it proposes to apply in exercising its function under the Act (a document commonly known as a Gambling Policy or Statement of Gambling Policy – hereafter referred to as the Policy). A licensing authority may review and revise their Gambling Policy within each three year cycle.
- 8.2 Prior to publishing its Gambling Policy, the Council must undertake the statutory consultation as provided by section 349(3) of the Act and any Regulations made under it. This requires that the Council consult with:
- the chief officer of police;
 - one or more persons who represent the interests of gambling businesses in the borough, and
 - one or more persons who represent the interests of persons who are likely to be affected by the exercise of the Council's functions under the Gambling Act.
- 8.3 Regulations 4 to 6 of the Gambling Act 2005 (Licensing Authority Policy Statement) (England & Wales) Regulations 2006 set out the requirements for the content and form of the Policy and the procedure to be followed in preparing and then publishing it. In accordance with these Regulations a minimum of 4 weeks is required between publication and the Gambling Policy coming into effect.
- 8.4 Paragraph 5 refers to the consultation that is to be undertaken for the purposes of this report. The following principles of consultation were set out in a recent High Court case:
- A consultation had to be commenced at a time when proposals were still at a formative stage.
 - Those consulted had to be provided with accurate and sufficient information and reasons for any proposal to permit intelligent consideration; with adequate time given for the consulting party to respond and for those responses to be considered.
 - The product of consultation must be conscientiously taken into account.
- 8.5 Overall, the process of consultation had to be effective and looked at as a whole it had to be fair. Fairness might require consultation not only upon the preferred option, but also upon discarded or alternative ones.

8.6 Under the Council's constitution, the Licensing Committee's remit includes the power: "To exercise the functions, powers and duties of the Council in relation to all licensing matters, as required by statute". Pursuant to the Local Authorities (Functions and Responsibilities) (England) Regulations 2000 the Council's Gambling Policy is required to be part of the Council's policy framework and adoption of that Policy falls to be made by full Council.

9. Human Resources Implications

9.1 There are no human resource implications arising from these proposals.

10. Implications for Children and Young People and Vulnerable Adults

10.1 The protection of children and vulnerable adults is one of the Licensing Objectives, and the policy makes reference to a number of measures that are introduced to protect children and vulnerable people from the harmful effects of gambling.

11. Equalities and Human Rights Implications

11.1 Section 149 of the Equality Act 2010 sets out the public sector equality duty, i.e. that all public bodies are under an obligation to have 'due regard' to eliminating unlawful discrimination, advancing equality and fostering good relations in the contexts of age, disability, gender reassignment, pregnancy and maternity, marriage and civil partnership, race, religion or belief, sex and sexual orientation.

11.2 Section 149 (1) (b) of the Act states that: a public authority must, in the exercise of its functions, have due regard to the need to advance equality of opportunity between persons who share a relevant protected characteristic and persons who do not share it. Part of the duty to have "due regard" where there is disproportionate impact will be to take steps to mitigate the impact and the Council must demonstrate that this has been done, and/or justify the decision, on the basis that it is a proportionate means of achieving a legitimate aim.

11.3 The Equality Duty must be complied with before and at the time that a particular policy is under consideration or decision is taken – that is, in the development of policy options, and in making a final decision. A public body cannot satisfy the Equality Duty by justifying a decision after it has been taken.

11.4 A full Equality Impact Assessment will be undertaken prior to the submission of the final report to Council.

11.2 The Human Rights Act 1998 requires UK legislation to be interpreted in a manner consistent with the European Convention on Human Rights. It is unlawful for the Council to act in a way that is incompatible (or fail to act in any way that is compatible) with the rights protected by the Act. Any action undertaken by the Council that could have an effect upon another person's Human Rights must be taken having regard to the principle of proportionality: the need to balance the rights of the individual with the rights of the community as a whole. Any action taken by the Council which affects another's rights must be no more onerous than is necessary in a democratic society. The matter set out in this report must be considered in light of the above obligations.

12. Implications for Partners and Other Directorates

12.1 There are no specific implications for partners and other directorates introduced by this report.

13. Risks and Mitigation

13.1 Failure to publish a Gambling Act Statement of Licensing Policy exposes the Council to legal challenge as a result of failing to comply with statutory requirements.

13.2 In addition, the absence of a up to date policy may lead to inappropriate decisions being made in relation to licence applications.

13.3 In order to mitigate this risk, it is proposed that the Statement of Licensing Policy be introduced as soon as possible (ensuring that all statutory processes are observed).

14. Accountable Officer(s)

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