

Committee Name and Date of Committee Meeting

Cabinet – 10 June 2019

Report 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

Paul Woodcock, Strategic Director Regeneration and Environment

Report Author(s)

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Ward(s) Affected

Borough-Wide

Report 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.

The Council is now seeking to develop a revised Gambling Act 2005 Statement of Licensing Policy that, whilst acknowledging that gambling is a legitimate leisure activity that many people enjoy and one that generates income, seeks to protect residents from the potential harm that can be caused by problem gambling.

To support this, the Council proposes to undertake consultation to seek the views of key stakeholders and residents of Rotherham, to inform the development of a draft Policy.

In addition the Council proposes to develop 'Area Risk Profiles', to identify any potential parts of the Borough where further granting of licences or variations to licences could impact on the Council's obligations in respect of the Licensing Objectives. This would be used to support determinations under the Policy.

This report is presented to Cabinet for consideration and comment, and for approval to commence a consultation process to inform the development of a Gambling Act 2005 Statement of Licensing Policy.

Recommendations

1. That approval be given to begin public consultation, in line with Option 3 (section 3), to inform the development of the Council's Gambling Act 2005 Statement of Licensing Policy.
2. That Cabinet agree to the commencement of a study into the individual and cumulative impact of gambling across the Borough to develop a Local Area Risk Profile, to support the Gambling Act 2005 Statement of Licensing Policy.

List of Appendices Included

Appendix A Gambling Act 2005 Statement of Licensing Policy

Appendix B Gambling Act 2005 Equalities Analysis initial screening

Background Papers

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. Background

1.1 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.

1.2 The Act regulates the following sectors:

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

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

1.4 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 is:

- 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.

1.5 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.

1.6 The Gambling Act 2005 Statement of Licensing Policy (the 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.

1.7 The Council is now in a position to review the Statement of Licensing Policy, and this report is brought before Cabinet to agree the commencement of a consultation process to support the development of such a Policy.

2. Key Issues

2.1 The Council is required to publish a Gambling Act 2005 Statement of Licensing Policy. Each statement covers a three year period.

2.2 It is accepted that:

“...the legislative framework for gambling recognises it as a legitimate leisure activity that many people enjoy. It generates income, employment and tax revenue. Set against this, it also generates significant dis-benefits such as working days lost through disordered gambling, or the cost of treatment for ill-health caused by stress related to gambling debt ...”¹

2.3 Importantly, there is increasing consciousness of the harm associated with problem gambling upon individuals, families and wider groups. In Rotherham estimates suggest that between 1,700 and 3,716 individuals would fall within this problem gambling category. It is also estimated that each problem gambler affects a further six to ten people directly by their associated activity. In addition, estimates suggest that between 10,321 and 12,386 individuals are at risk of problem gambling. This is therefore a significant issue of concern for the Borough.²

2.4 Problem gambling is not simply an issue affecting adults; it also affects children and young people. Recent research has suggested that nationally, 1.7% of children between the ages of 11 and 16 are problem gamblers, with a further 2.2% at risk of problem gambling.³

2.5 The harms that can be associated with problem gambling include suicide and other health harms, divorce, unemployment, bankruptcy, domestic violence and intergenerational impacts for children of problem gamblers. The Gambling Commission’s new ‘National Strategy to Reduce Gambling Harms’, launched in April 2019, seeks to use prevention and education, alongside treatment and support, as the main priority areas for action. One of the critical elements is the need to move away from simply counting the numbers of problem gamblers, to understanding the actual harm experienced and how to protect against it. The Council needs to better understand the relationships between licensing decisions and the risk of experiencing such harm, and the scope that there is within the licensing objectives, to protect those people considered to be most at risk harm.

¹ Gambling-related harm as a public health issue: Briefing paper for Local Authorities and local Public Health providers, Gambling Commission, February 2018, 2.2

² <http://modgov-p-db/documents/s119771/Item%205%20Harmful%20gambling%20paper.pdf> ;

³ Young People & Gambling 2018 A research study among 11-16 year olds in Great Britain, Gambling Commission, November 2018

- 2.6 The Council's role in licensing gambling establishments, and setting conditions within which operators need to conduct their business, therefore provides an opportunity to influence the sector in respect of the harm that might be caused by problem gambling.
- 2.7 Gambling is a significant public health concern that has resulted in joint guidance to Councils being drawn up between Public Health England and the Local Government Association. This work clearly recognises the importance of the licensing regime in mitigating harmful gambling, particularly in light of the services that Councils provide to deal with the consequences of problem gambling. In particular the regulatory role of Licensing Authorities and the health and social justice roles of Public Health, are identified as key to engaging with the issue. ⁴
- 2.8 A Gambling Task and Finish Group led by Public Health has been set up focussing on the treatment and support of problem gambling in Rotherham. The Group has already moved to set up awareness and skills-based training for frontline staff, with respect to understanding harms arising from gambling, and training staff to identify, advise and refer people who are experiencing harm (or are at risk of experiencing harm) due to gambling. The judicious use of licensing powers fits with the preventative aspect of this work, as it can influence the gambling environment and therefore exert influence on gambling behaviour.
- 2.9 A significant amount of research has been undertaken detailing the harms that problem gambling might present. However, there is a gap in local knowledge as to how residents and the public view gambling and its potential impacts in Rotherham.
- 2.10 There is currently limited information about the type and numbers of gambling venues that are present within the Borough (see Table 1) and how they impact in respect of harm to communities and individuals. Whilst the numbers and types are licensed and recorded, the impact they potentially have on individuals and communities is not fully understood. It is therefore imperative that this position is better known through seeking the views of local people and through commissioning research with colleagues in Public Health to map the impacts, both cumulative and individually, of gambling across the Borough.

⁴ Tackling gambling related harm: A whole council approach, Local Government Association and Public Health England

Table 1 – Gambling Act Licences – May 2019

License Type	Number
Adult Gaming Centre Premises Licence (e.g. Arcade area for adults only)	5
Bingo premises licence	2
Betting Premises License (e.g. betting shop)	35
Club Machine/Gaming Machine Permit (e.g. for a fruit machine in a private club)	41
Family Entertainment Centre Gaming Machine Permit (e.g. amusement arcade for all ages)	1
Notification of Intent to Have Gaming Machines (e.g. pub with fruit machine)	184
Licensed Premises Gaming Machine Permit (e.g. pub with high-stakes fruit machine)	37
Small Society Lotteries (e.g. lottery solely to fund raise for charity)	192
TOTAL	497

2.11 The Council will therefore consider a number of aspects in the development of a revised Statement of Licensing Policy including:

- Addition of clauses regarding the promotion of the licensing objectives.
- Introduction of additional information in relation to the safeguarding of children and vulnerable adults.
- Consideration of Local Risk Profiles.
- Amendment of address and contact details.

2.12 It is anticipated that consultation will also provide a view on a number of potential key conditions, including:

- Sensitive locations where the granting of further licenses or variations in relation to gambling establishments might have a negative impact on licensing objectives
- Consideration of types of venues that might not be considered to be appropriate in Rotherham such as casinos
- Whether appropriate training for industry workers should include gambling awareness and recognition of individuals at risk of harm
- Conditions that might be included to oblige licence holders to instigate measures to mitigate the risk of harm, e.g. ensuring signage is unobtrusive, or enhanced training for staff.

2.13 To support this, it is proposed that a Local Area Risk Profile will be completed alongside the development of the Statement of Licensing Policy. This Local Area Risk Profile is likely to change over time, and whilst not forming part of the policy, will be a key supporting document to aid the determination of matters under the Gambling Act by Licensing Committee. The Local Area Risk Profile for the Rotherham will include data and maps which show the distribution of gambling premises, sensitive locations and vulnerable communities.

3. Options considered and recommended proposal

- 3.1 Options are, to an extent, dictated by statute, which requires the Council to publish a Gambling Act 2005 Statement of Licensing Policy and to consult with prescribed statutory consultees. However, there is considerable discretion as to the content of the Statement and to the consultation approach.
- 3.2 **Option 1:** to develop and seek views on a draft policy, including proposals relating to potential sensitive locations for further gambling establishments; types of gambling venues that might not be suitable in Rotherham; gambling awareness training for industry workers; and measures to address harms from gambling. This approach would provide clear criteria upon which the consultation might provide responses. However this provision of a fully written text in key areas would limit the scope of the consultation by limiting responses to views based on a pre-determined text, and potentially lead to challenge on the basis that the Policy is fully developed, rather than being at a development stage during consultation (see paragraph 7.4 below).
- 3.3 **Option 2:** to publish a draft policy, leaving the sections of the policy where consultation is anticipated to inform the Statement of Licensing Policy incomplete subject to consultation. These sections would include those relating to potential sensitive locations for further gambling establishments; types of gambling venues that might not be suitable in Rotherham; gambling awareness training for industry workers and; measures to address harms from gambling. This would enable the Council to elicit a wider range of responses based on a Policy that is clearly in the formative stages of its development (see paragraph 7.4 below).
- 3.4 In addition, concurrent work to understand the cumulative impact of gambling will be undertaken to provide solid analysis to inform the Statement of Licensing Policy, in particular where consultation might indicate sensitive locations where gambling might be an issue. This consultation will also inform the supporting Local Area Risk Profile. Although this option would not give consultees detailed text to respond to, it will prompt a fuller set of views without the risk of preconceptions being formed.
- 3.5 **Option 3:** to undertake a two-stage consultation process to the development of a Statement of Licensing Policy. The first stage would be to seek to consult widely on the issues associated with the impact of gambling premises on the Borough and in localities, and inform the development of both a draft Policy and a Local Area Risk Profile. This draft Policy would then be subject to further public consultation, prior to adoption. This option would enable the development of a draft Policy on the basis of public consultation, and enable the development of a Local Area Risk Profile to support the draft Policy during a formal consultation.
- 3.6 The preferred option would be option 3; whereby a two stage consultation would be undertaken, alongside an analysis of the cumulative impacts of gambling to form a Local Area Risk Profile. This way a Statement of Licensing Policy that has been more informed by public opinion, and that is more robust, will be delivered.

4. Consultation on proposal

4.1 Whilst there is no legal requirement for the Council to undertake formal consultation at this first, developmental, stage of the Policy, the Council will seek the views of all stakeholders that are identified under Section 349 of the Gambling Act 2005. These are:

- 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

4.2 The Consultation however will not be limited to statutory consultees as there is a clear need to understand the local position which might likely vary between different locations. Consequently, a public consultation will be initiated to ensure that the Council is fully informed.

4.3 In particular, there is a desire to canvas views on a number of key aspects including:

- Potential sensitive locations
- Types of venues
- Gambling awareness measures
- Measures to tackle harm from gambling

4.4 It is proposed that the consultation will include a range of communication tools including:

- Use social media to inform the public about this consultation and direct them to the questionnaire
- On-line consultation
- Consultation documents at Council reception areas
- Press Releases
- Direct correspondence to statutory consultees
- Information provision to all ward members
- Public Notice in the local press

- 4.5 The Council's Licensing Committee, who are responsible for considering and determining applications under the Gambling Act 2005, will be fully consulted as part of this approach.
- 4.6 The consultation will be live for a period of twelve weeks, following which the findings will be analysed and compared with the work undertaken to assess individual and cumulative impacts.
- 4.7 The responses will be fully considered and will be used to inform the development of a draft Gambling Act 2005 Statement of Licensing Policy and a Local Area Risk Profile, which will be subject to further consultation before formal adoption.

5. Timetable and Accountability for Implementing this Decision

- 5.1 The consultation is likely to begin within one month of the decision to conduct the consultation.
- 5.2 The assessment of individual and cumulative impacts of gambling, to develop a Local Area Risk Profile, will begin immediately after the decision and will include joint working with colleagues in Public Health. At this point it is anticipated that this work would be completed to coincide with the end of the first stage consultation.
- 5.3 It is expected at this stage that a draft proposed Policy, informed by consultation and Local Area Risk Profile, will be presented to Cabinet in October 2019, prior to a further formal consultation taking place.
- 5.4 If, following that formal consultation, the Statement of Licensing Policy is recommended by Cabinet for adoption, Council must then pass a resolution stating this decision.

6. Financial and Procurement Advice and Implications

- 6.1 The costs of undertaking its statutory duties as a licensing authority, of which this consultation process forms part, are met within the Licensing revenue account, the costs of which are met by fees.
- 6.2 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.
- 6.3 There are no procurement implications introduced as a result of this report.

7. Legal Advice and Implications

- 7.1 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.

- 7.2 The form of the statement or any revision is a matter for the Council; however this is subject to Regulations 4 to 6 of the Gambling Act 2005 (Licensing Authority Policy Statement) (England & Wales) Regulations 2006, which 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 Policy coming into effect.
- 7.3 Prior to publishing its 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.
- 7.4 The legislation makes it clear that the consultation process should be widespread. 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.
- 7.5 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.
- 7.6 In accordance with the Council's constitution, the Council's Gambling Policy is formulated by Cabinet. 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.

8. Human Resources Advice and Implications

- 8.1 There are no direct HR implications arising from this report.

9. Implications for Children and Young People and Vulnerable Adults

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

10. Equalities and Human Rights Advice and Implications

- 10.1 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.
- 10.2 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.
- 10.3 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.
- 10.4 An Equalities Analysis screening assessment has been undertaken (see Appendix B) in line with the Council's policy. Given this report recommends undertaking consultation to inform the development of a Policy, it is assessed that an Equality Analysis is not required at this stage. It is expected that a full Equality Analysis will be undertaken at the point that the Policy is developed and presented to Cabinet.
- 10.5 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.

11. Implications for Partners

- 11.1 A range of partners and stakeholders will be asked for response to the consultation.
- 11.2 There will be some detailed work sought from colleagues in Public Health to develop the individual and cumulative impact assessment.

12. Risks and Mitigation

- 12.1 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.
- 12.2 Failure to carry out the required consultation process would also expose the Council to legal challenge.
- 12.3 In addition, the absence of an up to date policy may lead to inappropriate decisions being made in relation to licence applications.
- 12.4 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), particularly in relation to the consultation process

13. Accountable Officer(s)

Paul Woodcock, Strategic Director Regeneration and Environment
Tom Smith, Assistant Director Community Safety and Streetscene

Approvals obtained on behalf of:-

	Named Officer	Date
Chief Executive	Sharon Kemp	23/05/19
Strategic Director of Finance & Customer Services (S.151 Officer)	Judith Badger	24/05/19
Head of Legal Services (Monitoring Officer)	Bal Nahal	24/05/19
Assistant Director of Human Resources (if appropriate)	John Crutchley	18/04/19
Head of Procurement (if appropriate)	Karen Middlebrook	23/04/19

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