

Committee Name and Date of Committee Meeting
Delegated Officer Decision – 31 March 2023

Report Title
Gambling Act 2005 – Statement of Licensing Policy

Is this a Key Decision and has it been included on the Forward Plan?
No

Assistant Director Approving Submission of the Report
Sam Barstow, Assistant Director, Community Safety & Street Scene

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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's current Gambling Act Statement of Licensing Policy was approved and adopted by full Council on 3rd June 2020 and is now due for review.

The Licensing Service are satisfied that the current policy accurately reflects the Council's position in relation to the regulation of gambling in Rotherham and is therefore not proposing to make any amendment to the current policy. However, despite this, the Gambling Act specifies that the Council must carry out consultation with a variety of stakeholders when carrying out a review of its policy.

This report recommends that a decision is made to commence a 12-week period of consultation (which will be conducted in accordance with the requirements of the Gambling Act 2005 and associated guidance).

Recommendations

1. That approval be given to undertake consultation in respect of the review of the Council's Gambling Act 2005 Statement of Licensing Policy.

List of Appendices Included

- Appendix 1 Gambling Act Equalities Analysis Initial Screening
- Appendix 2 Gambling Act Carbon Impact Assessment
- Appendix 3 Gambling Act 2005 Statement of Licensing Policy 2020-2023
(including the following appendices):

Appendix A: Map of the Rotherham Borough

Appendix B: Details of Consultees

Appendix C: Delegation of Functions

Background Papers

Gambling Act 2005 – Guidance to Licensing Authorities (5th edition) Available at: <https://www.gamblingcommission.gov.uk/for-licensing-authorities/GLA/Guidance-to-licensing-authorities.aspx>

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 Currently, through the Gambling Act, the Council license the following:

Bingo premises	2
Adult Gaming Centres	5
Betting premises	30
Family entertainment centre	1
Club gaming machine permits	4
Gaming machine permits in licensed premises	38
Games machine notifications in premises	184

1.5 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 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.

- 1.6 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.
- 1.7 The Gambling Act 2005 Statement of Licensing Policy (the Statement of Licensing Policy) was last published in 2020, and is therefore due for review. This report seeks the commencement of a formal consultation process.
- 1.8 The current Gambling Act Statement of Licensing Policy and accompanying appendices is attached to this report at Appendix 3.

2. Key Issues

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

2.2 The Council accepts that:

'...gambling is 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' (Gambling-related harm as a public health Issue, Gambling Commission 2018).

2.3 There is increasing awareness of the harms associated with problem gambling. Previous studies have suggested that in Rotherham there are between 1,700 and 3,716 individuals that have problems with gambling. However, a further 6-10 people are directly affected by each problem gambler and their associated activity.

2.4 The same study estimated that between 10,321 and 12,386 individuals were at risk of problem gambling within Rotherham. It is therefore important that gambling activity is appropriately regulated by the Council.

2.5 This is not a problem which only affects adults; it can also affect children and young people. A 2018 Gambling Commission report suggested that 1.7% of children between 11 and 16 are problem gamblers, with a further 2.2% at risk of problems associated to gambling.

2.6 Gambling can lead to serious social consequences for both the individual and their families. The Gambling Commission's National Strategy to Reduce Gambling Harms seeks to use prevention and education, alongside treatment and support, as the main priority areas for action.

2.7 One critical element is the need to move away from simply counting the number of problem gamblers, but instead understanding the actual harm experienced and how to protect against it.

- 2.8 The Council's role is to license local gambling establishments and set conditions within which operators need to operate to conduct their business lawfully. This responsibility provides an opportunity to influence the local sector and minimise where possible, the harm that might be caused by problem gambling. However, the Licensing Authority does not have the power to regulate remote or online gambling which is instead the responsibility of the Gambling Commission.
- 2.9 The current policy was drafted with the above considerations in mind, and it includes a number of clauses that are intended to promote safer gambling practices and protect vulnerable individuals.
- 2.10 In addition, the policy takes into account national guidance which has been published by the Gambling Commission, the Local Government Association and Public Health England. This guidance provides the framework for a whole Council approach to the issues associated with problem gambling and subsequent individual and social harms.
- 2.11 As a consequence of the above, the Licensing Service is not proposing significant amendments to the existing policy but are recommending a period of consultation in order to establish the views and opinions of appropriate stakeholders. The consultation responses will be reviewed and assessed and the current policy will be revised as appropriate prior to submission to Cabinet and then full Council for ratification.

3. Options considered and recommended proposal

- 3.1 Options are, to an extent, dictated by statute, which requires the Council to publish a 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: Undertake consultation on the current policy.

The current policy is considered to accurately reflect the Council's position with regard to the regulation of gambling in Rotherham. In addition, the policy already takes into account current national guidance and best practice.

Taking this into account, there is considered to be limited value in adopting a more complex approach to reviewing the policy and therefore option 1 is the preferred option.

- 3.3 Option 2: Consult on changes to the current policy, redraft and then undertake further consultation on the redrafted policy.

- 3.4 This two stage approach to policy review has been adopted previously, and would be preferable should significant changes to the existing policy be required.

- 3.5 However, as significant changes are not proposed this approach is not recommended on this occasion.

4. Consultation on proposal

4.1 Before determining its final policy, Section 349 of the Gambling Act 2005 sets out a statutory requirement to consult with specific persons and groups, 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

4.2 The Licensing Service considers that there is a need to further understand the local position which might vary between different locations. As a result, a public consultation will be initiated to ensure that the Council is fully informed in relation to local concerns.

4.3 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

4.4 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.

4.5 The responses from both statutory and non-statutory consultees will be assessed and where appropriate incorporated into a final draft policy that will be reviewed by Cabinet prior to ratification by full Council.

5. Timetable and Accountability for Implementing this Decision

5.1 The consultation will begin within 10 days of the officer decision to conduct the consultation and will run for three months from April 2023.

5.2 It is expected that the final Policy, informed by consultation where appropriate, will be presented to Cabinet in October 2023. If the Statement of Licensing Policy is recommended by Cabinet for adoption, full Council must then pass a resolution stating this decision.

6. Financial and Procurement Advice and Implications (to be written by the relevant Head of Finance and the Head of Procurement on behalf of s151 Officer)

6.1 The costs of undertaking its statutory duties as a licensing authority, of which this consultation process forms part, are contained within the Council's approved Licensing revenue budget, 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.

6.3 There are no direct procurement implications arising from the recommendations detailed in this report.

7. Legal Advice and Implications (to be written by Legal Officer on behalf of Assistant Director Legal Services)

7.1 Section 349 of the Gambling Act 2005 requires the Council in its role as Licensing Authority to prepare and publish a statement of the principles they propose to apply in exercising their functions under the Act. The statement must be reviewed and if necessary revised every three years with the revised statement then being published.

7.2 The consultation requirements have been set out within the content of the report but for the avoidance of any doubt, the consultation is a statutory consultation in accordance with section 349(3) of the Act. The Council must consult with the following:-

- 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.

- 7.2 The form of the statement or any revision is a matter for the Council, but 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. Regulation 7 also sets out the procedure to be followed in preparing and then publishing a revised statement. In accordance with these Regulations a minimum of 4 weeks is required between publication and the Policy coming into effect.
- 7.4 Option 1 as the preferred option will ensure that the Council is complying with statutory requirements and allow for policy development where required. This will also minimise the risk of any legal challenge in respect of the statement itself and any decisions made surrounding the process. A decision not to formally review the policy could leave the Council open to potential challenge by way of judicial review.
- 7.5 Any consultation should be carried out over a sufficient period of time, the proposal of 12 weeks would be sufficient and is in line with Government guidance.

8. Human Resources Advice and Implications

- 8.1 There are no direct human resources 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 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 scoping exercise has been undertaken and at this stage a full Equalities Analysis is not anticipated to be required in light of consultation to be undertaken with a view to informing changes to Policy. It is expected that a full 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 CO2 Emissions and Climate Change

- 11.1 There are no CO2 emissions or climate change implications introduced by this report.

12. Implications for Partners

- 12.1. A range of partners and stakeholders will be asked for response to the consultation. Other than providing a response to the consultation, there are not considered to be any other implications for partners 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 Failure to carry out the required consultation process would also expose the Council to legal challenge.
- 13.3 In addition, the absence of an up to date policy may lead to inappropriate decisions being made in relation to licence applications.
- 13.4 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.

14. Accountable Officers

Alan Pogorzelec, Licensing Manager

Approvals obtained on behalf of Statutory Officers: -

	Named Officer	Date
Chief Executive	Sharon Kemp	Click here to enter a date.
Strategic Director of Finance & Customer Services (S.151 Officer)	Judith Badger	Click here to enter a date.
Head of Legal Services (Monitoring Officer)	Phil Horsfield	Click here to enter a date.

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