

Committee Name and Date of Committee Meeting

Cabinet – 23 December 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

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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 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.

In June 2019, Cabinet took the decision to undertake a two-stage consultation process. The first stage of the process has now been completed. This initial consultation focused on broad issues associated with the impact of gambling establishments on the Borough and in localities, and has helped to inform the development of a draft policy.

The Council is now in a position to review and publish a revised Statement of Licensing Policy, and this report is presented to Cabinet for consideration and comment, and for approval to commence the formal consultation process.

Recommendations

1. That approval be given to undertake consultation, in line with the option agreed by the Council in June, in respect of the Council's revised Gambling Act 2005 Statement of Licensing Policy.

List of Appendices Included

- Appendix 1 Gambling Act Equalities Analysis Initial Screening
- Appendix 2 Gambling Act 2005 Statement of Licensing Policy 2020-2023
 - 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>

Gambling-related harm as a public health Issue – Available at:
<https://www.gamblingcommission.gov.uk/PDF/Gambling-related-harm-as-a-public-health-issue.pdf>

Consideration by any other Council Committee, Scrutiny or Advisory Panel

No

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 2011, and was therefore due for review and republication in 2014; however this review did not take place due to the Council's focus on taxi and private hire licensing.
- 1.8 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 formal consultation process. A draft copy of the proposed Statement of Licensing Policy and accompanying appendices is attached to this report at Appendix A.

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. In Rotherham, estimates suggest that between 1,700 and 3,716 individuals have problems with gambling. However, a further 6-10 people are directly affected by each problem gambler and their associated activity.
- 2.4 In addition, estimates suggest that between 10,321 and 12,386 individuals are at risk of problem gambling within Rotherham. This is therefore a significant issue of concern for the Borough.
- 2.5 This is not a problem which only affects adults; it can also affect children and young people. Recent research suggests 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 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.

- 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 draft policy includes a number of proposed changes including:
- The addition of clauses regarding the promotion of the licensing objectives;
 - The introduction of the requirement to assess data and proxy measures to inform the licensing of gambling establishments and conditions locally;
 - The introduction of additional information in relation to safeguarding of children and vulnerable adults;
 - Amendments to address and contact details.
- 2.10 Section E of the draft policy takes into account national guidance which has been published since 2016 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 well as Licensing, other services within the Council have responsibilities in helping to reduce the impact of problem gambling. In particular, reducing the harm associated with gambling is a priority for Public Health, who are attempting to better understand how gambling impacts on communities and individuals within Rotherham.
- 2.12 A multi-agency Gambling Task and Finish Group led by Public Health is focused on treatment and support for people affected by problem gambling in Rotherham, whilst promoting support to residents who may need it. Initial training sessions for Council employees and partner organisations have focused on raising awareness of problem gambling. This included training to identify, advise and refer people who are experiencing harm due to gambling.

The work being carried out by the Group is still ongoing and its scope will widen in the coming months to further target those who are at risk of problem gambling.

- 2.13 There is a substantial lack of data which reports on gambling impacts and a lack of national measures regarding the impact of gambling on individuals and communities. It is not currently possible through national datasets to identify particular areas of the country where problem gambling is more prevalent, or if there is a higher risk of problem gambling being prevalent. Therefore, data at a more local scale would be extremely difficult to identify and is likely to not be appropriate or a valid sample size. In terms of more local data collected, the number of individuals recorded as having gambling related issues is very low. For example, only 30 people have presented at hospitals across Yorkshire and Humber with gambling related issues in the last year. Given this and the lack of available data nationally, this is likely to mean that any locally available data is significantly underestimating the scale of any problems.
- 2.14 Section E of the draft policy also details the procedure for creating a 'Local Area Risk Profile'. It is recommended that the Licensing Authority should have an up to date Local Area Risk Profile for the borough published and available. However, at present this does not form part of the draft Statement of Licensing Policy, given the challenges with data described above. Whilst at present there is little data available to develop a Local Area Risk Profile, the Council will reassess this position during the consultation process.
- 2.15 Further work will be undertaken with Public Health, prior to implementation of the Policy, to attempt to better understand the impacts of problem gambling locally and to develop proxy measures to support licensing decisions at a neighbourhood scale. The requirement for Licensing Committee to consider this data and proxy measures when making licensing decisions is proposed to be enshrined within the new Policy. This will ensure that Public Health concerns are addressed by the Policy, and that Licensing Committee will be able to introduce mitigating measures to protect residents from the associated harms of problem gambling.

3. Options considered and recommended proposal

- 3.1 In June 2019, the Council took the decision to undertake a two-stage consultation process. The first stage of the process has now been completed. This initial consultation focused on broad issues associated with the impact of gambling establishments on the Borough and in localities, and has helped to inform the development of a draft policy.
- 3.2 The drafted policy is now proposed to be subject to further formal public consultation prior to adoption. This will then lead to a revised policy based on the outcome of the second stage of consultation.
- 3.3 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.
- 3.4 **Option 1:** To consult on a detailed and complete draft policy which has been revised based on national guidance and based on the first stage of consultation. This approach would provide clear criteria upon which consultees might provide responses. This is the preferred option.

- 3.5 **Option 2:** To consult on a draft policy, leaving the sections of the policy where consultation is anticipated to inform the Statement of Licensing Policy incomplete subject to consultation. Although this would enable the Council to elicit a wide range of responses, it would not give consultees detailed text to consider which would provide clear evidence of the Council's position.

4. **Consultation on proposal**

- 4.1 The first stage of consultation was completed between August and October 2019.

- 4.2 A total of 70 responses were received in the consultation period, with several key themes emerging:

- The majority of respondents did not believe that excessive gambling was an issue in their area, or in other parts of the borough. Only 14.3% of responses agreed that excessive gambling was a problem in their area.
- The majority of respondents were unsure of the problems associated with excessive gambling, or did not know if this was an issue in their area. 52.9% of respondents did not know if there were issues with excessive gambling in the area where they live, whilst 77.14% of respondents did not know if excessive gambling was an issue in other parts of the borough.
- However, respondents agreed that gambling can lead to serious health and social problems, with 78.6% of respondents agreeing with this statement.
- Furthermore, 80% of respondents agreed that the Council has a role in protecting residents from the harms associated with problem gambling.
- Of those who provided written responses about areas where problem gambling occurred, the only area of Rotherham mentioned was the town centre. The majority of comments made related to online gambling and how this is difficult to control. Online gambling is not regulated by the Council.

- 4.3 As well as the responses to the consultation, the Council undertook six drop-in sessions across the borough to allow residents to share their experiences of licensed premises. These sessions focused on both the Licensing Act and Gambling Act. Across the sessions, the Council did not receive any responses suggesting that problem gambling was a specific local concern.

- 4.5 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
- 4.6 The second stage of consultation will not be limited to statutory consultees as there is still a need to further understand the local position which might vary between different locations. Consequently, a public consultation will be initiated to ensure that the Council is fully informed.
- 4.7 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
- 4.8 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.
- 4.9 The second stage of consultation will be live for a further period of eight weeks, following which a final Statement of Licensing Policy will be drafted.
- 5. Timetable and Accountability for Implementing this Decision**
- 5.1 The consultation is likely to begin within one week of a Cabinet decision to conduct the consultation.
- 5.2 It is expected at this stage that a final Policy, informed by consultation, will be presented to Cabinet in March 2020. If 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 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 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 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.

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 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 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 Officers

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

Approvals obtained on behalf of Statutory Officers:-

	Named Officer	Date
Chief Executive	Sharon Kemp	12/12/19
Strategic Director of Finance & Customer Services (S.151 Officer)	Judith Badger	01/11/19
Head of Legal Services (Monitoring Officer)	Bal Nahal	31/10/19

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