

Committee Name and Date of Committee Meeting

Cabinet – 23 March 2020

Report Title

Gambling Act 2005 Statement of Licensing Policy 2020-2023

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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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's Gambling Act Statement of Licensing Policy was last 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.

In June 2019, Cabinet took the decision to undertake a two-stage consultation process. This process has now concluded, and the outcome of the consultation has informed a finalised Statement of Licensing Policy, which is presented to Cabinet for consideration and recommended for approval.

Recommendations

1. That Cabinet recommend to Council that the proposed Gambling Act 2005 Statement of Licensing Policy 2020-2023 be adopted.

2. That officers work with colleagues in Public Health, alongside Licensing Committee and Health and Wellbeing Board, to produce a Local Area Risk Profile for the Borough.

List of Appendices Included

Appendix 1 Equality Impact Assessment

Appendix 2 Gambling Act 2005 Statement of Licensing Policy 2020-2023

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>

Cabinet Report, 10th June 2019, Review of Licensing Act 2003 Statement of Licensing Policy

Cabinet Report, 23rd December 2019, Review of Licensing Act 2003 Statement of Licensing Policy

Consideration by any other Council Committee, Scrutiny or Advisory Panel
Overview and Scrutiny Management Board – 18 March 2020

Council Approval Required

Yes

Exempt from the Press and Public

No

Gambling Act 2005 Statement of Licensing Policy 2020-2023

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 Within the legislation, 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 Licensing authorities are required to review and publish a statement of the principles which they propose to apply when exercising their licensing functions, every three years.

1.5 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.

1.6 The Council has undertaken a two-stage consultation process outlined in Section 4 of this report. A revised policy has been written and consulted upon, with a final version brought before Cabinet for consideration for recommendation to Council for adoption. The proposed policy is attached to this report as Appendix 2.

2. Key Issues

2.1 The revised policy which has been subject to consultation, contained a number of changes and the consultation has broadly supported these changes.

- 2.2 Firstly, the Council has included a full section identifying the clear links between different priorities and strategies of the Council. For example, the Health and Wellbeing Strategy, Safer Rotherham Partnership, Planning, and Culture and Tourism all have a role to play in protecting the public from the harms of gambling, as well as promoting regeneration and an inclusive economy.
- 2.3 Furthermore, a section has been included in the draft policy which provides more detailed information to emphasise each individual licensing objective and how these can be promoted by applicants. This has included further detail as to the appropriate layout of gambling establishments, how to work effectively with the Council and the police when deciding on appropriate crime prevention measures, and about receiving advice regarding child exploitation from Rotherham Safeguarding Children's Board.
- 2.4 Finally, the Council proposed that further work should be carried out to create a 'Local Area Risk Profile', which would set out the Council's position, based on available data, as to which areas of the borough may have a higher sensitivity to problem gambling. The draft policy already includes substantially more information than previously and gives advice to applicants about how they should undertake a risk assessment of their local area and what types of evidence should be included in this. This section is based on the national guidance published in 2016 which is seen as best practice.
- 2.5 However, the Council have not currently completed a Local Area Risk Profile, in part due to a lack of data, both nationally and locally. However, work is ongoing with colleagues in Public Health to identify proxies that could inform this assessment, which would also include the presence of services identified through the consultation outlined in Section 4. This work will continue until the profile is published.
- 2.6 The Local Area Risk Profile does not form part of the policy, but instead sits alongside and gives further information to potential applications about the areas in which licences are being considered. Officers therefore propose to undertake further work to develop this profile, working alongside Licensing Committee, Health and Wellbeing Board and colleagues in Public Health.
- 2.7 Nonetheless, all applicants and variations to licences must complete their own risk assessment of their local area, which is shared and verified by the Licensing Authority. This puts the onus on the applicant to consider the risks that the premise poses to the community, which was a clear theme from the consultation.

3. Options considered and recommended proposal

- 3.1 The Council is statutorily obliged to publish a Statement of Licensing Policy, and to consult on that policy in a way that the Council deems appropriate.
- 3.2 The Statement of Licensing Policy has now been revised based on the second stage of consultation which was concluded in February. There are now further options for the Council to consider.

- 3.3 **Option 1:** The Council could agree the revised Gambling Act 2005 Statement of Licensing Policy, alongside agreeing a framework for how the Council aims to publish a Local Area Risk Profile.
- 3.4 **Option 2:** The Council could agree the revised Gambling Act 2005 Statement of Licensing Policy, and not undertake work to develop a Local Area Risk Profile.
- 3.5 **Option 3:** The Council could decide to not agree a revised policy and continue to use the currently published statement.
- 3.6 The preferred option is Option 1. This option takes into account the responses received to both stages of consultation and reflects the views of forums, group and boards that were attended through the consultation process, alongside the views of the public. The proposed changes in the report reflect the views of the public, the Council and its partners, and form a policy that would have a positive impact on the regulation of gambling across the Borough.

Furthermore, this option shows the Council's commitment to further understanding the potential harms of gambling and will consider the completion of a Local Area Risk Profile to allow the Council to make informed decisions related to the grant of licences.

4. **Consultation on proposal**

- 4.1 The Council have carried out a full review of the policy, through a two-stage consultation process as agreed by Cabinet in June 2019. A total of twenty weeks of consultation have been carried out by the Council to review this policy, which has informed the final policy attached as Appendix 2.
- 4.2 The first stage of consultation focused on the broad issues associated with problem gambling and a total of 70 responses were received. Overall, it appeared that many respondents were unsure about the problems associated with harmful gambling in Rotherham. 37 of the 70 respondents were unsure if there was a problem with gambling within their area. This rose to 54 respondents when asked about any other areas of the borough.
- 4.3 Although respondents were unsure if problems existed, 56 (80%) did believe that the Council has a duty to protect residents from the harms associated with gambling. There was also clear evidence to suggest that respondents believed that gambling leads to health or social problems, both for individuals and the areas where gambling takes place. 55 (79%) respondents agreed with this statement, with only two individuals disagreeing.
- 4.4 A draft policy was produced based on the first stage of consultation. This policy was then subject to the second stage of consultation. All licensees within the Borough were informed of the consultation and encouraged to participate in the online consultation, or to attend the drop-in sessions which were planned across the borough. Furthermore, the Council has consulted with interested forums, committees and boards to ensure that the Council's partners have also been fully engaged

- 4.5 The online survey received 21 responses. This appears to be a low response but may reflect the current public position which has been seen through both consultation processes; i.e. that there may not be enough information in the public domain for residents to understand whether problem gambling is a serious issue in the borough. Nevertheless, the Council may have anticipated a larger amount of responses, considering that there are approximately 260 licensed gambling premises or gambling machines across the borough.
- 4.6 The main theme that has emerged through the consultation is that the public believe that it should be the responsibility of the betting company or licensee to assess the risk that their premise poses, before an application is submitted
- 4.7 Furthermore, respondents were asked to identify services where the proximity to a gambling premise may cause risk to the public. The presence of addiction centres, schools and colleges, youth clubs, pawn brokers, as well as areas of high crime were all felt to potentially increase the risk of gambling causing harm to an area.
- 4.8 Rotherham's Health and Wellbeing Board welcomed that harmful gambling has been identified as a concern within the policy and supports the commitment to ensure that prevention and support is embedded within the policy.
- 4.9 Additionally, the Board recognised the lack of currently available measures regarding the impact of gambling on individuals and communities. Therefore, there was support for the Council to utilise Public Health data to inform decision making and identify, where possible, locations in Rotherham where gambling is more likely to be harmful.
- 4.10 The Board, in line with national guidance, oversee Rotherham's local approach to reducing the impact of harmful gambling. The board have requested that updates are received by the Health and Wellbeing Board regarding the enforcement of this policy at suitable timescales to ensure ongoing strategic oversight.

5. Timetable and Accountability for Implementing this Decision

- 5.1 If Cabinet endorse the Gambling Act 2005 Statement of Licensing Policy, this must subsequently be adopted by Council.
- 5.2 If Council adopt the policy, this would be implemented following the standard call-in period. It is proposed to implement the policy on 1st May 2020.
- 5.3 If Cabinet take a decision to agree a piece of work on developing a Local Area Risk Profile, this could be published within twelve months of the decision being taken.

6. Financial and Procurement Advice and Implications

- 6.1 There are no direct procurement implications associated with the recommendations detailed in this report.

- 6.2 The costs of undertaking its statutory duties as a licensing authority, of which this consultation process and the enforcement of this Policy forms part, are contained within the Council's approved Licensing revenue budget, the costs of which are met by fees.
- 6.3 Fee levels in respect of the Gambling Act 2005 are set by Statute, however, the Council has discretion over these fees up to a prescribed maximum. Fees are reviewed annually as part of the Council's budget setting process.

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 Council must have regard to all relevant legislation and all consultation responses should be conscientiously taken into account when forming the Policy, in order to minimise the risk of legal challenge.
- 7.5 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 human resources implications associated with the recommendations detailed in 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 A full Equality Impact Assessment has been completed, as per the Council's policy, and is attached as Appendix 1.

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 Ward Priorities

11.1 This policy will apply directly and equally to all wards within the borough.

12. Implications for Partners

- 12.1 A range of partners and stakeholders were engaged through the consultation process. The Council recognise that a number of agencies work with the Council to regulate this sector, including South Yorkshire Police and the Gambling Commission.
- 12.2 The Council are proposing that further work is undertaken with colleagues in Public Health to develop a Local Area Risk Profile for the borough.

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

Paul Woodcock, Strategic Director of 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	09/03/20
Strategic Director of Finance & Customer Services (S.151 Officer)	Judith Badger	05/03/20
Head of Legal Services (Monitoring Officer)	Bal Nahal	05/03/20

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