

Halesowen Area Committee – 12th September 2006

Report of the Director of Law and Property

Area Committee Consultation in Relation to The Gambling Act 2005 and Draft Policy

Purpose of Report

1. To consider the draft Statement of Licensing Policy produced in accordance with the Gambling Act 2005.

Background

2. The Gambling Act 2005 creates a new system of licensing and regulation for commercial gambling. It vests in the Council new and extended responsibilities for licensing premises for gambling, in some instances, such as gaming machine arcades, building upon existing responsibilities. In other major areas, including betting, casino gaming and bingo the legislation transfers to the Council responsibilities, which previously lay with the Magistrates.
3. The Act provides for three categories of Licence:-
 - Operating Licence
 - Personal Licence
 - Premises Licence

The Council will be responsible for issuing Premises Licences and the Gambling Commission will be responsible for issuing Operating and Personal Licences.

4. There are three licensing objectives which are central to the regulatory regime created by the Act:-
 - Preventing gambling from being a source of crime and disorder, being associated with crime and disorder, or being used to support crime.
 - Ensuring that gambling is conducted in a fair and open way.
 - Protecting children and other vulnerable persons from being harmed or exploited by gambling.

5. The main functions for the Council, are to:-
- Licence premises for gambling activities,
 - Licence premises for gambling and gaming machines in clubs,
 - Grant permits for gambling and gaming machines in clubs,
 - Regulate gaming and gaming machines in alcohol-licensed premises,
 - Grant permits to family entertainments centres for the use of certain low stake gaming machines,
 - Grant permits for prize gaming,
 - Consider notices for the temporary use of premises for gaming,
 - Consider occasional use notices for betting at tracks,
 - Register small societies lotteries,
6. The new Act comes fully into force in September 2007. In preparation, the Council is required to develop, consult on and publish a statement of licensing policy. The statement must set out the principles, which the Council proposes to apply in exercising its licensing functions under the Act.
7. The statement will be considered by full Council in November/December 2006 and will be published on the 3rd January 2007. The Council will then receive and process applications for licences referred to in paragraph 5 from the 31st January 2007 onwards.
8. The Department of Culture Media and Sport are expected to issue the Transitional Regulations during 2006, which will be reported verbally to the meeting.
9. The draft Statement of Principle is attached to this report and is also available on the Council's licensing web-site at <http://www.dudley.gov.uk/business/licences-and-street-trading/gambling-act-2005-consultation>. In accordance with the required consultation process the views of the Committee and the public are welcomed.

Finance

10. The financial implications of producing copies of the draft statements and the costs incurred during the consultation process will be met out of the Council's Licensing Budget.

The fees to be charged for the various Licences have yet to be confirmed by the government.

Law

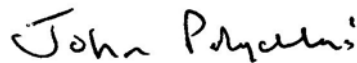
11. The law relating to gambling is covered by the Gambling Act 2005 and section 349 of the Gambling Act deals with the production, consultation and publishing of the statement of licensing principles.

Equality Impact

12. This report takes into account the Council's policy on equality and diversity.
13. A Statement of Licensing Principles will impact equally on all racial groups.
14. A Statement of Licensing Principles will impact on children and young persons through their permitted attendance at certain categories of licensed premises.
15. There will be consultation and involvement of young people in developing this statement as part of the consultation process through the Area Committee and the Directorate of Children's Services.

Recommendation

16. That the Area Committee considers and comments upon the draft Statement of Principles attached to this report as appendix 1.



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DIRECTOR OF LAW AND PROPERTY

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List of Background Papers

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DUDLEY METROPOLITAN BOROUGH COUNCIL

GAMBLING ACT 2005

STATEMENT OF PRINCIPLES

Introduction

The Metropolitan Borough of Dudley is a conurbation situated on the western edge of the West Midlands and includes part of the Black Country industrial region. The Local Authority provides services to approximately 300,000 residents.

The Licensing Section is situated within the Legal Division of the Law and Property Services Directorate.

Gambling Act 2005

This Statement of Principles is intended to meet the Council's obligations under Section 349 of the Gambling Act 2005 (referred to in this Statement as "the Act").

In carrying out its licensing functions under the Act, particularly with regard to premises licences, the Council will generally aim to permit the use of premises for gambling as long as it is considered to be :-

- in accordance with any relevant Codes of Practice issued by the Gambling Commission
- in accordance with any relevant Guidance issued by the Gambling Commission
- in accordance with this Statement of Principles, and
- reasonably consistent with the licensing objectives.

There are 3 licensing objectives which are central to the regulatory regime created by the Act. These are :-

- preventing gambling from being a source of crime and disorder, being associated with crime or disorder, or being used to support crime
- ensuring that gambling is conducted in a fair and open way
- protecting children and other vulnerable persons from being harmed or exploited by gambling

The Act provides for 3 categories of licence :

- operating licences
- personal licences
- premises licences

The Council will be responsible for issuing premises licences. The Gambling Commission will be responsible for issuing operating and personal licences.

The Gambling Commission

The Gambling Commission regulates gambling in the public interest. It does so by keeping crime out of gambling; by ensuring that gambling is conducted fairly and openly; and by protecting children and vulnerable people.

The Commission provides independent advice to the government about the manner in which gambling is carried out, the effects of gambling, and the regulation of gambling generally.

The Commission has issued Guidance under Section 25 regarding the manner in which local authorities exercise their licensing functions under the Act and, in particular, the principles to be applied by local authorities.

The Commission will also issue one or more codes of practice under Section 24 of the Act about the manner in which facilities for gambling are provided, which may also include provisions about the advertising gambling facilities.

The Gambling Commission can be contacted at: www.gamblingcommission.gov.uk

Authorised Activities

‘Gambling’ is defined in the Act as either gaming, betting, or taking part in a lottery.

- gaming means playing a game of chance for a prize
- betting means making or accepting a bet on the outcome of a race, competition, or any other event ; the likelihood of anything occurring or not occurring; or whether anything is true or not
- A lottery is where persons are required to pay in order to take part in an arrangement, during the course of which one or more prizes are allocated by a process which relies wholly on chance

The main functions of the Council are to:

- licence premises for gambling activities
- grant permits for gambling and gaming machines in clubs
- regulate gaming and gaming machines in alcohol licensed premises
- grant permits to family entertainment centres for the use of certain lower stake gaming machines
- grant permits for prize gaming
- consider notices given for the temporary use of premises for gaming
- consider occasional use notices for betting at tracks
- register small societies lotteries

Spread betting is regulated by The Financial Services Authority

Remote Gambling is dealt with by the Gambling Commission

The National Lottery is regulated by The National Lottery Commission

General Statement of Principles

The Council recognises the wide variety of premises which will require a licence or a permit. These include casinos, betting shops, bingo halls, pubs, clubs and amusement arcades.

In carrying out its licensing functions the Council will have regard to any guidance issued by the Gambling Commission from time to time.

The Council will not seek to use the Act to resolve matters more readily dealt with under other legislation.

To ensure the licensing objectives are met the Council will establish a close working relationship with the police, the Gambling Commission and, where appropriate, other responsible authorities.

Where children, young persons and other vulnerable people are allowed access to premises where gambling takes place, the Council may take whatever steps are considered necessary to either limit access generally or by introducing measures to prevent under age gambling where it believes it is right to do so for the prevention of their physical, moral or psychological harm, especially where it receives representations to that effect.

Applicants seeking premises licences are encouraged to propose any prohibitions or restrictions of their own in circumstances where it is felt that the presence of children would be undesirable or inappropriate.

However, the overriding principle is that all applications and the circumstances prevailing at each premises where there are relevant representations will be considered on their own individual merits.

Preventing gambling from being a source of crime and disorder

The Gambling Commission will play a leading role in preventing gambling from being a source of crime and will maintain rigorous licensing procedures that aim to prevent criminals from providing facilities for gambling.

Anyone applying to the Council for a premises licence will have to hold an operating licence from the Commission before a licence can be issued. Therefore, the Council will not generally be concerned with the suitability of an applicant and where concerns about a person's suitability arise the Council will bring those concerns to the attention of the Commission.

If an application for a licence or permit is received in relation to premises which are in an area noted for particular problems with organised crime, the Council will, in consultation with the police and other relevant authorities, consider whether specific controls need to be applied to prevent those premises from being a source of crime. This could include a requirement for door supervisors.

As far as disorder is concerned, there are already powers in existing anti-social behaviour and licensing legislation to deal with measures designed to prevent nuisance, whether it arises as a result of noise from a building or from general disturbance once people have left a building. The Council does not therefore intend to use the Act to deal

with general nuisance issues, for example, parking problems, which can easily be dealt with using alternative powers.

Issues of disorder should only be dealt with under the Act if the disorder amounts to activity which is more serious and disruptive than mere nuisance, and it can be shown that gambling is the source of that disorder. A disturbance might be serious enough to constitute disorder if police assistance was required to deal with it. Another factor which could be taken into account is how threatening the behaviour was to those who could see or hear it, and whether those people live sufficiently close to be affected or have business interests that might be affected.

When making decisions in this regard the Council will give due weight to any comments made by the police.

Ensuring gambling is conducted in a fair and open way

The Gambling Commission does not expect local authorities to become concerned with ensuring that gambling is conducted in a fair and open way as this will either be a matter for the management of the gambling business or will relate to the suitability and actions of an individual. Both issues will be addressed by the Commission through the operating and personal licensing regime.

Because betting track operators do not need an operating licence from the Commission the Council may, in certain circumstances require conditions of licence relating to the suitability of the environment in which betting takes place.

Protecting children and other vulnerable people from gambling

Apart from one or two limited exceptions, the intention of the Act is that children and young persons should not be allowed to gamble and should therefore be prevented from entering gambling premises which are 'adult-only' environments.

In practice, steps will generally be taken to prevent children from taking part in, or being in close proximity to, gambling especially with regard to premises situated in areas where there may be a high rate of reported truancy. There may also be restrictions on advertising so that gambling products are not aimed at children or advertised in such a way that makes them particularly attractive to children. In relation to casinos only, the Gambling Commission will be issuing a code of practice about access to casino premises for children and young persons.

When considering whether to grant a premises licence or permit the Council will consider whether any measures are necessary to protect children, such as the supervision of entrances, the segregation of gambling from areas frequented by children and the supervision of gaming machines in non-adult gambling specific premises, such as pubs, clubs, betting tracks etc.

In seeking to protect vulnerable people the Council will include people who gamble more than they want to, people who gamble beyond their means, and people who may not be able to make informed or balanced decisions about gambling, perhaps due to a mental impairment, alcohol or drugs.

The Council will always treat each case on its own individual merits where there are relevant representations and when considering whether specific measures are required

to protect children and other vulnerable people will balance its considerations against the overall principle of aiming to permit the use of premises for gambling.

Premises licences

A premises licence can authorise the provision of facilities at the following :

- casino premises
- bingo premises
- betting premises, including betting tracks
- adult gaming centres
- family entertainment centres

Premises can be 'any place' but the Act generally prevents more than one premises licence applying to any one place. A single building could be subject to more than one premises licence provided they are for different parts of the building and those parts can be genuinely regarded as being separate 'premises'.

A particular requirement might be for entrances and exits from parts of a building covered by one or more licences to be separate and identifiable so that the separation of the premises is not compromised and that people are not allowed to 'drift' accidentally into a gambling area.

Where the Council has concerns about the use of premises for gambling these will generally be addressed through licence conditions.

Other than an application for a betting premises licence in respect of a track, the Council is not able to issue a premises licence unless the applicant holds the relevant operating licence from the Gambling Commission.

When considering applications for premises licences where there are relevant representations. the Council will not take into consideration either the expected 'demand' for facilities or the likelihood of planning permission being granted.

The Council will maintain a register of premises licences issued and will ensure that the register is open for public inspection at all reasonable times.

Responsible Authorities

These are generally public bodies that must be notified of all applications and who are entitled to make representations to the Council if they are relevant to the licensing objectives.

Section 157 of the Act defines those authorities as:

- The Gambling Commission
- The Police
- The Fire Service
- The local planning authority
- Environmental health
- Child Protection Committee
- HM revenue and Customs
- A licensing authority in whose area the premises is situated

Any concerns expressed by a responsible authority in relation to their own functions cannot be taken into account unless they are relevant to the application itself and the licensing objectives. In this regard the Council will not generally take into account representations which are deemed to be irrelevant, ie :

- there are too many gambling premises in the locality
- the premises are likely to be a fire risk
- the location of the premises is likely to lead to traffic congestion
- the premises will cause crowds to congregate in one area causing noise and nuisance

Each representation will, however, be considered on its own individual merits.

Interested Parties

An interested party is someone who :

- lives sufficiently close to the premises to be likely to be affected by the authorised activities, or
- has business interests that might be affected by the authorised activities, or
- represents persons in either of the two groups above

In determining whether someone lives sufficiently close to a particular premises so as to be affected the Council will take into account, among other things :

- the size of the premises
- the nature of the premises
- the distance of the premises from the person making the representation
- the nature of the complaint
- the potential impact of the premises

In determining whether a person has a business interest which could be affected the Council will consider, among other things :

- the size of the premises
- the catchment area of the premises, and
- whether the person making the representation has business interests in the catchment area that might be affected

If an existing gambling business makes a representation that it is going to be affected by another gambling business starting up in the area the Council would not consider this, in the absence of other evidence, as a relevant representation as it does not relate to the licensing objectives and instead relates to demand or competition.

The Council may, in certain circumstances, consider a representation to be either frivolous or vexatious. This will generally be a matter of fact given the circumstances of each individual case but, before coming to a decision the Council will normally consider :

- who is making the representation and whether there is a history of making representations that are not relevant,
- whether it raises a 'relevant' issue or not, or
- whether it raises issues specifically to do with the premises which are the subject of the application

Conditions of licence

.Conditions imposed by the Council may be general in nature by applying to all licences, or those of a particular type, or they may be specific to a particular licence.

The Council will not generally impose conditions that limit the use of premises for gambling unless it is deemed to be necessary as a result of the requirement to act in accordance with the Gambling Commission's guidance, any codes of practice issued by the Commission, this Statement of Principles or in a way that is reasonably consistent with the licensing objectives.

Any conditions imposed by the Council will be proportionate to the circumstances they are intended to address. In particular, the Council will ensure that any conditions are :

- relevant to the need to make the premises suitable as a gambling facility
- directly related to the premises and the type of licence applied for
- fairly and reasonably related to the scale and type of premises
- reasonable in all other respects

Examples of some conditions which are likely to be attached in certain circumstances include those relating to opening hours, age limits, or keeping children and young persons away from gaming machines.

The Council will not consider imposing conditions :

- which make it impossible to comply with an operating licence condition imposed by the Gambling Commission
- relating to gaming machine categories or method of operation
- which specify that membership of a club or other body is required
- in relation to stakes, fees, winnings or prizes

Duplication with other statutory or regulatory regimes will be avoided as far as possible. Each case will be assessed on its own individual merits

Casinos

Existing casino operators will effectively have 'grandfather' rights and will be entitled to a casino premises licence issued by the Council.

The Gambling Commission will be responsible for issuing at least one code of practice about access to casino premises by children and young persons, which would mean that no one under 18 would be able to enter casino premises and entrances to the casino or gambling area would be required to be properly supervised.

Betting

Anyone wishing to operate a betting office will require a betting premises licence from the Council. Children and young persons will not be able to enter premises with a betting premises licence.

Betting premises will be able to provide a limited number of gaming machines and some betting machines.

The Council has the power to restrict the number of betting machines, their nature and the circumstances in which they are made available. It will not generally exercise this power though unless there are good reasons to do so taking into account, among other things, the size of the premises and the level of management and supervision especially where vulnerable people are concerned.

Each application where there are relevant representations will be considered on its own individual merits.

Only one premises licence can be issued for any particular premises at any time unless the premises is a 'track'. A track is a site where races or other sporting events take place.

Track operators are not required to hold an 'operators licence' granted by the Gambling Commission. Therefore, premises licences for tracks, issued by the Council are likely to contain requirements for premises licence holders about their responsibilities in relation to the proper conduct of betting. Indeed, track operators will have an important role to play, for example in ensuring that betting areas are properly administered and supervised.

Although there will, primarily be a betting premises licence for the track there may be a number of subsidiary licences authorising other gambling activities to take place. Unlike betting offices, a betting premises licence in respect of a track does not give an automatic entitlement to use gaming machines.

When considering whether to exercise its power to restrict the number of betting machines at a track the Council will consider the circumstances of each individual application and, among other things will consider the potential space for the number of machines requested, the ability of track staff to supervise the machines, especially if they are scattered around the site, and the ability of the track operator to prevent children and young persons and vulnerable people betting on the machines.

Bingo

The holder of a bingo operating licence will be able to provide any type of bingo game including cash and prize bingo.

Commercial bingo halls will require a bingo premises licence from the Council

Amusement arcades providing prize bingo will require a prize gaming permit from the Council.

In each of the above cases it is important that where children are allowed to enter premises licensed for bingo, in whatever form, they are not allowed to participate in any bingo game. When considering applications of this type with relevant representations the Council will therefore take into account, among other things, the location of the games or machines, access to those areas, general supervision of the premises and the display of appropriate notices.

A limited number of gaming machines may also be made available at bingo licensed premises.

Bingo is a class of equal chance gaming and will be permitted in alcohol licensed premises and in clubs provided it remains below a certain threshold, otherwise it will be subject to a bingo operating licence which will have to be obtained from the Gambling Commission.

Gaming

A gaming machine can cover all types of gambling activity which can take place on a machine, including betting on 'virtual' events.

The Act itself prescribes the number and category of gaming machines that are permitted in each type of gambling premises.

Subject to the provisions of the Act, gaming machines can be made available in a wide variety of premises, including :

- casinos
- bingo premises
- betting premises, (including tracks)
- adult gaming centres
- family entertainment centres
- clubs
- pubs and other alcohol licensed premises
- travelling fairs

A machine is not a gaming machine if the winning of a prize is determined purely by the player's skill. However, any element of 'chance' imparted by the action of the machine would cause it to be a gaming machine.

The Council will, where appropriate, seek to encourage permit and premises licence holders to adopt any codes of practice which may be introduced by the amusement industry from time to time.

Lotteries

All lotteries are unlawful unless they are run in accordance with an operating licence issued by the Gambling Commission or it is an 'exempt' lottery as defined by the Act.

One of those exemptions is in respect of what are termed "small societies lotteries" and the Council is responsible for registering these 'small' lotteries.

A society will be allowed to register with the Council if it is a 'non-commercial' lottery, in other words, it is established and conducted :

- for charitable purposes ;
- for the purpose of enabling participation in, or of supporting, sport, athletic or a cultural activity ; or
- for any other non-commercial purpose other than for private gain.

The Council will maintain a register of small societies lotteries which it has registered.

Exchange of Information

Subject to the provisions of the Data Protection Act 1998 the Council will share any information it receives, through the application process with the Gambling Commission. In doing so the Council will have regard to the Act itself, any guidance issued by the Commission from time to time and any Regulations issued by the Secretary of State.

Enforcement Protocols

In general, the Gambling Commission will take the lead role on the investigation and, where appropriate, the prosecution of illegal gambling.

The Council will work with the Commission, the police and other enforcing authorities to provide for the targeting of agreed problem or high-risk premises. A lighter touch will be applied to those premises which are shown to be well managed and maintained.

The overall aim is to permit the use of premises for gambling. With that in mind it is intended that action will generally be taken against 'problem' premises through the review process.

In cases where more formal action is considered to be appropriate, the key principles of consistency, transparency and proportionality will be observed.

The licensing process

The Council's licensing functions under the Act will be carried out by the Licensing Committee, supported by a number of sub-committees and by officers acting under the delegated authority of the committee.

Where there are no areas of contention it is considered that many of the functions will be largely administrative. In the interests of efficiency and effectiveness these will, for the most part, be carried out by officers.

Where there are relevant representations in respect of an application the matter will be determined by the Licensing Committee or one of its sub-committees, as will any application for the review of a licence.

This Statement is not intended to override the right of any person to make an application under the Act, and to have that application considered on its merits. Equally, this Statement of Principles is not intended to undermine the right of any person to make representations about an application or to seek a review of a licence where provision has been made for them to do so

The Council reserves the right to amend this Statement should it be necessary to do so following Regulations issued by the Secretary of State or further Guidance from the Gambling Commission.

List of Consultees attached

NB Key contact addresses and telephone numbers for each of the responsible authorities will be given on application.

7th June 2006