

Report from the Director – Environment, Transport and Planning

Gambling Act 2005 – Statement of Licensing Policy

Summary

1. At the meeting of ‘Council’ on 16 December 2021, Councillors resolved to ‘approve the recommendation of the Licensing and Regulatory Committee [namely to approve the Statement of Licensing Policy and Local Area Profile]. At Council a Councillor raised matters that following the Statement of Licensing Policy be reviewed at the next meeting [of the Licensing and Regulatory Committee] in order to examine those matters.
2. This report outlines those matters and invites Members to consider whether further revisions should be made to the Statement of Licensing Policy in light of them.

Recommendations

3. That Members approve Option 1 and determine that no further revision should be made to the Statement of Licensing Policy.

Reason: The Council has met the legislative requirements of the Gambling Act 2005 by reviewing the Statement of Licensing Policy in 2021, and publishing the revised Policy in January 2022.

Background

4. Section 349 of the Gambling Act 2005 (the Act) requires licensing authorities to determine and publish a Statement of Licensing Policy (Policy), every three years. By way of a reminder, the Statement of Licensing Policy sets out the general approach that will be taken by the authority in carrying out its duties under the Act and ensure the licensing objectives are met. The licensing objectives are as follows:

- preventing gambling from being a source of crime or 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
6. On 9th November 2021, Members of this Committee considered a report on the proposed Statement of Licensing Policy. The report included details of the consultees, the one response (from GambleAware) and the action taken in response to it. The proposed amendments were highlighted in the draft Policy as ‘track changes’. There were however no material changes. At the meeting a series of questions were asked by Members which were answered by the Officer. Concern however has been raised that the answers given may have led Members not to propose amendments that may have otherwise been made. Full details of the questions and the responses are detailed below. The Statement of Licensing Policy was subsequently ‘unanimously’ passed. In line with the requirements of the Act, the Policy (together with a Local Area Profile) was approved by Council on the 9 December 2021, and published on 10 January 2022.
7. The Gambling Commission has provided ‘Guidance to Local Authorities’ (April 2021) on, amongst other things, Policy Statements. The current Policy complies with that Guidance. Additionally, as mentioned above, Council have approved a ‘Local Area Profile’ which is not required by law, but according to the Guidance is seen to have ‘significant benefits’ (para 6.47)
8. The Guidance states that the Statement of Licensing Policy may be reviewed at any time within three years (para 6.62), and that only the areas where changes have been made need to be consulted upon (para 6.64). Therefore, if any changes are proposed by this Committee, the resulting consultation need only be on those changes.

Questions arising at the Gambling and Licensing Committee, 9th November 2021 and the responses given.

9. During the committee meeting, an Officer was asked questions by a Member. The responses to two of the questions in particular give rise to this report. Please note that both the questions and responses have been paraphrased for brevity, but the meeting was recorded and is available as a council webcast (link below) if full details are required.

- i) The Member asked that as enforcement will account for a large part of the licensing cost, how is the fee set?

The officer responded that the fees are statutory, set by the DCMS and not the Council. The officer also described some of the enforcement work undertaken including inspections to check premises are operating in line with the licensing conditions

- ii) The Member asked why there is no requirement in the Policy for premises to sign up to a 'best practice scheme' like Safe Bet Alliance for example?

The officer responded that Operators are required by the Gambling Commission to sign up to such schemes, and a premises licence can only be issued to an Operator who is so licensed.

10. After the meeting, a third issue was raised in relation to the Committee not being provided with an equalities risk assessment, and the Policy not including information about higher risk locations and factors expected to be included in premises' risk assessments.

Fees

11. The Gambling (Premises Licence Fees) (England and Wales) Regulations 2007 came into force on the 21 May 2007. These Regulations set the *statutory maximum* fee that licensing authorities can charge in relation to the:
- conversion;
 - grant;
 - variation;
 - transfer;
 - reinstatement;
 - provisional statement;
 - change of circumstance
 - copy of licence; and
 - annual fee
- of a premises licence.
12. The statutory maximum fees can be found in the table at Annex 1.

13. When setting licence fees the licensing authority can only recover the cost of the licensing function. Section 212(2)(d) of the Act specifically states that local authorities 'shall aim to ensure that the income from fees... as nearly as possible equates to the costs of providing the service to which the fees relates'. This includes matters such as processing and determining an application, and inspections of licensed premises.
14. The fees set by the Council with regards to the matters detailed at paragraph 11 can be found in the table at Annex 2. The current fees aim to meet the requirements of Section 212(2)(d). The fees applied do not form part of the policy.
15. Fees for lottery registrations and gaming machine notifications/permits are statutory. For completeness, these fees are also included within the table at Annex 2.

Gambling Commission – Conditions and Codes of Practice, and the requirement to belong to an organisation like Safebet for example

16. There are mandatory conditions set in the Act, as well as a number of default conditions that a licensing authority may choose to disapply. The Guidance for Local Authorities from the Gambling Commission provide the wording for national conditions for different types of premises. As noted, local authorities can also set local conditions to particular premises where necessary (there are also conditions which a local authority may not apply but these are not relevant here).
17. The Gambling Commission also has the power to issue two types of code of practice. The first is a social responsibility (SR) code. A SR code must be followed and has the force of a licence condition. One such SR condition is 'that Licensees must make information readily available to their customers on how to gamble responsibly and how to access information about, and help in respect of, problem gambling' (3.3.1).
18. The Commission may also issue ordinary codes (OC) which are intended to set out best industry practice. They are not mandatory but operators are expected to follow them unless they have alternative arrangements in place that they can demonstrate are equally effective.

19. Section 153 of the Act requires licensing authorities, in exercising their functions, to have regard to any code of practice issued by the Commission.
20. The upshot of this is that Operators must (and do) provide information on how to gamble responsibly and organisations from which to obtain help for problem gambling. GamCare is the leading provider for gambling support, it is part of the National Gambling Treatment Service and operates the National Gambling Helpline. Furthermore, Members may wish to note that paragraph 11.8 of the Council's Statement of licensing policy, states:

'The council may consider any of the measures detailed below as licence conditions should these not be adequately addressed by any mandatory conditions, default conditions or proposed by the applicant:

- leaflets offering assistance to problem gamblers should be available on gambling premises in a location that is both prominent and discreet*
- training for staff members which focuses on an employee's ability to detect a person who may be vulnerable and providing support to vulnerable persons*
- self-exclusion schemes*
- operators should demonstrate their understanding of best practice issued by organisations that represent the interests of vulnerable people*
- posters and leaflets with GamCare Helpline and website displayed in prominent locations*
- external advertising to be positioned or designed not to entice passersby.'**[sic]*

Equalities impact assessment

21. The purpose of the Statement of Licensing Policy is to ensure that the council's decision making processes in relation to gambling at premises in the city is fair and does not disadvantage vulnerable groups, particularly those with a protected characteristic such as children. Nevertheless, it is correct that an equalities impact assessment in the prescribed council format was not part of previous committee report. An equalities impact assessment in the prescribed format is therefore contained at Annex 3 of this report. The Local Area profile is intended to identify higher risk areas of the city, and this together with Parts B and

C of the Statement of Licensing Policy is intended to outline the factors to be risk assessed.

22. Finally, officers apologise if members felt they were misled by the answers given at the previous meeting. Please be assured that the information was provided in an honest but mistaken belief that it was correct. It was in no way intended to deliberately mislead or falsely represent the position to members.

Consultation

23. As noted in the previous report, consultation took place with regards to the revised Statement of Licensing Policy from 12 May to 8 August 2021. One response was received to the consultation.
24. The results of the consultation were taken into consideration by Members when the revised Policy was approved.

Options

25. Option 1 – determine that further revisions to the Statement of Licensing Policy are not required.
26. Option 2 – determine that further revisions to the Statement of Licensing Policy are required, advise officers of the revisions to be made, and ask officers to formally consult on the revised Policy.

Analysis

27. Option 1 – the Council has complied with the legal requirements of the Act, the Policy has been reviewed, consulted on, approved by Council, and published. No further action is necessary.
28. Option 2 – if Members determine that the Policy requires further revisions, the required revisions will be made to the Policy and the formal consultation, approval, and publication procedure will be followed in respect of those amendments.

Council Priorities

29. The implementation of a Licensing Policy will support the Council's plan of a prosperous city for all, where local businesses can thrive and a council that listens to residents.

Implications

30. The direct implications arising from this report are:

- (a) **Financial** – There are no financial implications.
- (b) **Human Resources (HR)** - There are no HR implications.
- (c) **Equalities** – An equalities impact assessment accompanies this report.
- (d) **Legal** – It is a legal requirement of the Gambling Act 2005 that the Council is required to publish a statement of licensing policy every three years. Failure to do so would result in the licensing authority being unable to discharge its legal duty under the Act.
- (e) **Crime and Disorder** – There are no direct crime and disorder implications. In exercising its function under the Act the council must have regard to the licensing objectives. Licence and permit holders must also have regard to the objectives.
- (f) **Information Technology (IT)** - There are no IT implications.
- (g) **Property** - There are no property implications.
- (h) **Other** - There are no other implications.

Risk Management

31. There are no known risks associated with this report.

Contact Details

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Report
Approved



Date 22/10/21

Specialist Implications Officer(s)

Wards Affected:

All

For further information please contact the author of the report

Background papers

Gambling Act 2005

<https://www.legislation.gov.uk/ukpga/2005/19/contents>

Gambling Commission – Guidance to licensing authorities

<https://www.gamblingcommission.gov.uk/guidance/guidance-to-licensing-authorities/part-6-introduction>

City of York Council Statement of Licensing Policy and Local Area Profile published in January 2022

<https://www.york.gov.uk/business-licences/gambling-act-2005/1>

Licensing and Regulatory Committee, 9th November 2021, webcast

<https://www.youtube.com/watch?v=VaJWyIFRTX0>

Annexes

Annex 1 – Statutory Maximum Fees

Annex 2 – Fees set by City of York Council

Annex 3 - Equalities impact assessment