



Notice of meeting of

Gambling & Licensing Acts Committee

To: Councillors Merrett (Chair), Ayre, Funnell, Sue Galloway, Horton, Hyman, Looker, Moore, Orrell, Pierce, Reid, Runciman, Taylor, B Watson and Wiseman (Vice-Chair)

Date: Friday, 20 November 2009

Time: 2.00 pm

Venue:

A G E N D A

1. Declarations of Interest

At this point Members are asked to declare any personal or prejudicial interests they may have in the business on this agenda.

2. Minutes (Pages 3 - 6)

To approve and sign the minutes of the meeting held on 7 August 2009

3. Public Participation

At this point in the meeting members of the public who have registered their wish to speak regarding an item on the agenda or an issue within the Committee's remit can do so. The deadline for registering is **5:00 pm on Thursday 19 November 2009.**

4. Gambling Act 2005 - Triennial Review of the Statement of Policy (Pages 7 - 44)

This report advises members of the review of the Council's statement of gambling policy, of the consultation undertaken and of the changes made as a result of that consultation and revised guidance. Members are asked to recommend the full policy to Council for approval.

5. Licensing Act 2003 - Problem Premises (Pages 45 - 56)

This report advises members of recent advice from the Department of Culture Media and Sport (DCMS) in respect of the adoption of a 'Yellow and Red Card' approach to Licensing Reviews.

6. Regulation of Lap Dancing Clubs (Pages 57 - 84)

This report advises members of the introduction of the Policing and Crime Bill which is currently being scrutinised by Parliament. It will allow local authorities to regulate lap dancing clubs and similar venues. It also seeks members views on the transitional procedure and time scales on the proposals set out in the consultation document.

7. Any other business which the Chair considers urgent under the Local Government Act 1972

Democracy Officer:

Name: Laura Bootland

Contact Details:

- Telephone – (01904) 552062
- E-mail – laura.bootland@york.gov.uk

For more information about any of the following please contact the Democracy Officer responsible for servicing this meeting Laura Bootland

- Registering to speak
- Business of the meeting
- Any special arrangements
- Copies of reports

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Scrutiny Committees

The purpose of all scrutiny and ad-hoc scrutiny committees appointed by the Council is to:

- Monitor the performance and effectiveness of services;
- Review existing policies and assist in the development of new ones, as necessary; and
- Monitor best value continuous service improvement plans

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City of York Council

Committee Minutes

MEETING	GAMBLING & LICENSING ACTS COMMITTEE
DATE	7 AUGUST 2009
PRESENT	COUNCILLORS MERRETT (CHAIR), SUE GALLOWAY, HORTON, HYMAN, LOOKER, MOORE, ORRELL, PIERCE, REID, TAYLOR, B WATSON AND WISEMAN (VICE-CHAIR)
APOLOGIES	COUNCILLORS AYRE, FUNNELL AND RUNCIMAN

5. DECLARATIONS OF INTEREST

At this point in the meeting members are asked to declare any personal or prejudicial interests they may have in the business on the agenda. None were declared.

6. MINUTES

RESOLVED: That the minutes of the last meeting of the Committee held on 5 June 2009 be approved and signed by the Chair as a correct record, subject to the resolution at minute 4 being amended, as underlined, to read:

“That Members note the contents of the report and the published mandatory and discretionary codes as outline in the government published document Selling Alcohol responsibly and ask Officers to respond, incorporating points agreed by Members”.

7. PUBLIC PARTICIPATION

It was reported that there was no registered speakers for this meeting.

8. MINOR VARIATION REPORT

Members considered a report advising them of amendments to the Licensing Act 2003 in respect of minor variations of premises licences and club premises certificates and for the supervision of alcohol sales in church and village halls. The report also sought revision to the delegations under the Act to be consistent with the legislative changes.

The Licensing Act has been in force since November 2005 and since then it has been under constant review. As a result, the government has produced two amendments to the primary legislation under the Legislative and Regulatory Reform Act 2006. The first is a simplified process for minor variations to premises licences and club premises certificates and the second, the removal of the requirement for a designated premises supervisor and personal licence holder at community premises.

Officers advised Members that under the old process, obtaining a variation to a premises licence could be costly and lengthy. The new order is intended to simplify the process and save time, money and resources for both applicants and the Council. Under the new order, Officers will be authorised to determine all applications for minor variations.

In answer to Members questions, Officers advised that all variation applications would be carefully considered and treated with caution from the outset and that if Officers were not happy with an application it would be refused.

Certain Members expressed concern that there could be some problems resulting from the changes, and expressed particular concern over the fact that it is recommended by Parliament that the provision of live music is to be encouraged. The Legal Officer reminded Members that as an Act of Parliament, the changes would have to be embraced, but advised that how City of York Council now deals with variation applications is key.

Members queried whether they could receive a 6 monthly report that would outline how the new order is working in practice and highlight any problems. Officers agreed this could be done.

Following a discussion on Licensing Hearings in general, Members queried with the Legal Officer whether Solicitors working on the behalf of Licensed Premises should be allowed to add text to the official notices advertising a proposed licence or variation. The Legal Officer confirmed he would look into this matter.

In relation to the second order, Officers advised that designated premises supervisors for community facilities such as church halls are usually volunteers who do not wish to put their names to a licence. The order is proposing that such facilities can be run by formally constituted committees, rather than by an individual. Members noted the change.

RESOLVED: (i) That Option 1 be approved and the delegations under the Licensing Act 2003 be amended to authorise Officers to determine all applications for minor variations made under sections 41A and 86A of the Licensing Act 2003.

REASON: To maximise the resource efficiencies available to the Council by virtue of

the deregulatory order for minor premises licence and club premises certificate variations.

(ii) That Members receive a 6 Monthly report to inform them on how the simplified process for minor licence variations is working.¹

REASON: To keep members informed.

iii) That Members noted the amendments to the Licensing Act 2009 in respect to the supervision of the supply of alcohol at community premises.

REASON: To keep members informed of changes in relevant legislation.

Action Required

1. Licensing Officers to note request for 6 monthly report and add to work plan.

DH

Councillor Merrett, Chair

[The meeting started at 2.05 pm and finished at 2.35 pm].

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Gambling and Licensing Acts Committee**20 November 2009**

Report of the Director of Neighbourhood Services

Gambling Act 2005 -Triennial Review of the Statement of Policy.**Summary**

1. This report advises members of the review of the councils statement of gambling policy, of the consultation undertaken and of the changes made as a result of that consultation and revised guidance. Members are asked to recommend the revised policy to full council for approval.

Background

2. Section 349 of the Gambling Act 2005 (the Act) requires licensing authorities to keep their statements of gambling policy under review and in any event before each successive period of three years. The current policy is due to expire on 31st January 2010.
3. When the current policy was drafted in 2006 a template was produced by the Department of Culture, Media and Sport (DCMS) for licensing authorities to use. This template was found to lack cohesion and logic so this council produced its policy in a modified format. The DCMS have now revised their template and producing this draft revision officers have adopted the DCMS standard layout which will allow for successive revisions to be made more easily.
4. Attached at Annex 1 is the revised policy which has been updated following comments received during the consultation .

Consultation

5. Consultation has been carried out in accordance with the Act and guidance. It commenced on the 16 July 2009 and finished on the 9 October 2009. Details of the consultees are listed at Annex 2 .
6. A table showing the comments received and the action taken by officers is attached at Annex 3.

Options

7. Members have the following options :
 - (a) To support the revised policy as set out in Annex 1
 - (b) To make amendments to the revised policy

Analysis

8. The Act and guidance does not allow local licensing authorities much discretion in the content of their policies. Where such discretion does exist the revised policy replicates those decisions made by members when adopting the first policy on the basis that no problems have been encountered in implementing that policy.

Corporate Strategy

9. The Gambling Act has 3 objectives:
 - (a) preventing gambling from being a source of crime and disorder, being associated with crime and disorder or being used to support crime.
 - (b) Ensuring that gambling is conducted in a fair and open way
 - (c) Protecting children and other vulnerable persons from being harmed or exploited by gambling.

These objectives support the Corporate Strategy .

Implications

10. **Financial:** None

Human Resources (HR): None

Equalities: None

Legal : Without the adoption of a new policy this authority would be unable to fulfil its licensing obligations under the Gambling Act 2005

Crime and Disorder: None

Information Technology (IT): None

Property: None

Other: None

Risk Management

11. The Council is statutorily required to review its gambling policy. Providing this has been done in accordance with the legislation then there is no risk in members recommending its approval. Should the Council not approve a policy then it will be in breach of statutory requirements and will be unable to fulfil the requirement of the Act.

Recommendations

12. Members are asked to consider any revisions they wish to make to the draft statement of gambling policy, and recommend the policy for approval by full Council on 3rd December 2009

Reason: to satisfy the requirements of section 349 of the Gambling Act 2005.

Author:
Richard Haswell
Head of Licensing and Safety

**Neighbourhoods and
Community Safety**

Tel No.01904 551515

Chief Officer Responsible for the report:
Andy Hudson
**Assistant Director of Neighbourhoods and
Community Safety**

Report Approved Date

Specialist Implications Officer
Legal - Martin Blythe
Tel No. 01904 551044

Wards Affected: All



For further information please contact the author of the report.

Background Papers:

Gambling Act 2005 and supporting guidance to local authorities

Statement of Gambling Policy 2006 - 2010

Annexes:

Annex 1 Draft revision of Gambling Policy

Annex 2 Consultation Process and list of consultees

Annex 3 Table of comments received and action taken

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GAMBLING ACT 2005
STATEMENT OF LICENSING POLICY

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This Statement of Principles was approved by City of York Council on XXXXX.

All references to the Guidance refer to the Gambling Commission's Guidance to Licensing Authorities, 3rd Edition, published May 2009.

PART A

1. The Licensing Objectives

1.1 In exercising most of their functions under the Gambling Act 2005, licensing authorities must have regard to the licensing objectives as set out in section 1 of the Act. The licensing objectives are:

- 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.

1.2 It should be noted that the Gambling Commission has stated: “The requirement in relation to children is explicitly to protect them from being harmed or exploited by gambling”.

1.3 This licensing authority is aware that, as per Section 153, in making decisions about premises licences and temporary use notices it should aim to permit the use of premises for gambling in so far as it thinks it:

- in accordance with any relevant code of practice issued by the Gambling Commission
- in accordance with any relevant guidance issued by the Gambling Commission
- reasonably consistent with the licensing objectives and
- in accordance with the authority’s statement of licensing policy

2. Introduction

2.1 City of York Council is a unitary authority covering an area of 105 square miles and a population of 193,300. It comprises the urban area of York that is surrounded by many small rural and semi-rural settlements covered by parish councils.

2.2 Tourism and leisure are important industries for York attracting over 4.1 million visitors a year who spend £363.6 million annually in the city. Over 9,970 jobs have been created in the tourist and leisure industry sector (2006/07 figures).

2.3 The following premises within the City of York area are currently concerned with the gambling industry: York racecourse, 30 betting offices, 2 bingo halls, 8 adult gaming centres, 219 premises with AWP (amusement with prize) machines and 164 small society lotteries.

2.4 Licensing authorities are required by the Gambling Act 2005 to publish a statement of the principles which they propose to apply when exercising their functions. This statement must be published at least every three years. The statement must also be reviewed from “time to time” and any amended parts re-consulted upon. The statement must be then re-published.

2.5 The Gambling Act requires that the following parties are consulted by licensing authorities:

- The Chief Officer of Police;
- One or more persons who appear to the authority to represent the interests of persons carrying on gambling businesses in the authority's area;
- 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 under the Gambling Act 2005.

2.6 A list of other persons this authority consulted can be found at Appendix A.

2.7 City of York Council consulted widely upon this statement before finalising and publishing.

2.8 Our consultation took place between 13 July to 9 October 2009 and we followed the HM Government Code of Practice on Consultation (published July 2008), which is available at: <http://www.berr.gov.uk/files/file47158.pdf>

2.9 The full list of comments made and the consideration by the Council of those comments is available via the Council's website at: www.york.gov.uk/licensing

2.10 The policy was approved at a meeting of the Full Council on **[X]** date and was published via our website on **[x date]**. Copies were placed in the public libraries of the area as well as being available in the Guildhall.

2.11 Should you have any comments as regards this policy statement please send them via e-mail or letter to the following contact:

Alcohol & Entertainment Licensing
City of York Council
9 St Leonard's Place
York
YO1 7ET

e-mail: licensing.unit@york.gov.uk

2.12 It should be noted that this statement of licensing principles will not override the right of any person to make an application, make representations about an application, or apply for a review of a licence, as each will be considered on its own merits and according to the statutory requirements of the Gambling Act 2005.

3. Declaration

3.1 In producing the final statement, this licensing authority declares that it has had regard to the licensing objectives of the Gambling Act 2005, the Guidance to Licensing Authorities issued by the Gambling Commission, and any responses from

those consulted on the statement.

4. Responsible Authorities

4.1 The licensing authority is required by regulations to state the principles it will apply in exercising its powers under Section 157(h) of the Act to designate, in writing, a body which is competent to advise the authority about the protection of children from harm. The principles are:

- the need for the body to be responsible for an area covering the whole of the licensing authority's area; and
- the need for the body to be answerable to democratically elected persons, rather than any particular vested interest group.

4.2 In accordance with the suggestion in the Gambling Commission's Guidance to Licensing Authorities, this authority designates the Local Safeguarding Children Board for this purpose.

4.3 The contact details of all the Responsible Authorities under the Gambling Act 2005 are available at Appendix B.

5. Interested parties

5.1 Interested parties can make representations about licence applications, or apply for a review of an existing licence. These parties are defined in the Gambling Act 2005 as follows:

"For the purposes of this Part a person is an interested party in relation to an application for or in respect of a premises licence if, in the opinion of the licensing authority which issues the licence or to which the applications is made, the person-

- (a) lives sufficiently close to the premises to be likely to be affected by the authorised activities,
- (b) has business interests that might be affected by the authorised activities, or
- (c) represents persons who satisfy paragraph (a) or (b)"

5.2 The licensing authority is required by regulations to state the principles it will apply in exercising its powers under the Gambling Act 2005 to determine whether a person is an interested party. The principles are:

5.3 Each case will be decided upon its merits. This authority will not apply a rigid rule to its decision making. It will consider the examples of considerations provided in the Gambling Commission's Guidance to Licensing Authorities at 8.11 to 8.19. It will also consider the Gambling Commission's Guidance that "has business interests" should be given the widest possible interpretation and include partnerships, charities, faith groups and medical practices.

5.4 Interested parties can be persons who are democratically elected such as councillors and MP's. No specific evidence of being asked to represent an interested person will

be required as long as the councillor / MP represents the ward likely to be affected. Likewise, parish councils likely to be affected will be considered to be interested parties. Other than these however, this authority will generally require written evidence that a person/body (e.g. an advocate / relative) 'represents' someone who either lives sufficiently close to the premises to be likely to be affected by the authorised activities and/or has business interests that might be affected by the authorised activities. A letter from one of these persons, requesting the representation is sufficient.

- 5.5 If individuals wish to approach councillors to ask them to represent their views then care should be taken that the councillors are not part of the Gambling & Licensing Sub Committee dealing with the licence application. If there are any doubts then please contact the Alcohol and Entertainment Licensing Section.

6. Exchange of Information

- 6.1 Licensing authorities are required to include in their statements the principles to be applied by the authority in exercising the functions under sections 29 and 30 of the Act with respect to the exchange of information between it and the Gambling Commission, and the functions under section 350 of the Act with the respect to the exchange of information between it and the other persons listed in Schedule 6 to the Act.

- 6.2 The principle that this licensing authority applies is that it will act in accordance with the provisions of the Gambling Act 2005 in its exchange of information which includes the provision that the Data Protection Act 1998 will not be contravened. The licensing authority will also have regard to any Guidance issued by the Gambling Commission on this matter, as well as any relevant regulations issued by the Secretary of State under the powers provided in the Gambling Act 2005.

- 6.3 Should any protocols be established as regards information exchange with other bodies then they will be made available.

7. Enforcement

- 7.1 Licensing authorities are required by regulation under the Gambling Act 2005 to state the principles to be applied by the authority in exercising the functions under Part 15 of the Act with respect to the inspection of premises; and the powers under section 346 of the Act to institute criminal proceedings in respect of the offences specified.

- 7.2 This licensing authority's principles are that:

It will be guided by the Gambling Commission's Guidance to Licensing Authorities and will endeavour to be:

- Proportionate: regulators should only intervene when necessary: remedies should be appropriate to the risk posed, and costs identified and minimised;
- Accountable: regulators must be able to justify decisions, and be subject to public scrutiny;

- Consistent: rules and standards must be joined up and implemented fairly;
- Transparent: regulators should be open, and keep regulations simple and user friendly; and
- Targeted: regulation should be focused on the problem, and minimise side effects.

7.3 As per the Gambling Commission's Guidance to Licensing Authorities this licensing authority will endeavour to avoid duplication with other regulatory regimes so far as possible.

7.4 This licensing authority has adopted and implemented a risk-based inspection programme, based on;

- The licensing objectives
- Relevant codes of practice
- Guidance issued by the Gambling Commission, in particular at Part 36
- The principles set out in this statement of licensing policy

7.5 The main enforcement and compliance role for this licensing authority in terms of the Gambling Act 2005 is to ensure compliance with the premises licences and other permissions which it authorises. The Gambling Commission is the enforcement body for the operating and personal licences. It is also worth noting that concerns about manufacture, supply or repair of gaming machines are not dealt with by the licensing authority but should be notified to the Gambling Commission.

7.6 This licensing authority also keeps itself informed of developments as regards the work of the Better Regulation Executive in its consideration of the regulatory functions of local authorities.

7.7 Bearing in mind the principle of transparency, this licensing authority's enforcement/compliance protocols/written agreements are available upon request to the licensing department www.york.gov.uk/licensing. Our risk methodology is also available upon request.

8. Licensing authority functions

8.1 Licensing authorities are required under the Act to:

- Be responsible for the licensing of premises where gambling activities are to take place by issuing *Premises Licences*
- Issue *Provisional Statements*
- Regulate *members' clubs* and *miners' welfare institutes* who wish to undertake certain gaming activities via issuing Club Gaming Permits and/or Club Machine Permits
- Issue *Club Machine Permits to Commercial Clubs*
- Grant permits for the use of certain lower stake gaming machines at *unlicensed Family Entertainment Centres*
- Receive notifications from alcohol licensed premises (under the Licensing Act 2003) for the use of two or fewer gaming machines

- Issue *Licensed Premises Gaming Machine Permits* for premises licensed to sell/supply alcohol for consumption on the licensed premises, under the Licensing Act 2003, where there are more than two machines
- Register *small society lotteries* below prescribed thresholds
- Issue *Prize Gaming Permits*
- Receive and Endorse *Temporary Use Notices*
- Receive *Occasional Use Notices*
- Provide information to the Gambling Commission regarding details of licences issued (see section above on 'information exchange')
- Maintain registers of the permits and licences that are issued under these functions

8.2 It should be noted that licensing authorities are not be involved in licensing remote gambling at all, which is regulated by the Gambling Commission via operating licences.

PART B

PREMISES LICENCES: CONSIDERATION OF APPLICATIONS

9. General Principles

9.1 Premises licences are subject to the requirements set-out in the Gambling Act 2005 and regulations, as well as specific mandatory and default conditions which are detailed in regulations issued by the Secretary of State. Licensing authorities are able to exclude default conditions and also attach others, where it is believed to be appropriate.

9.2 Decision-making

This licensing authority is aware that in making decisions about premises licences it should aim to permit the use of premises for gambling in so far as it thinks it:

- in accordance with any relevant code of practice issued by the Gambling Commission;
- in accordance with any relevant guidance issued by the Gambling Commission;
- reasonably consistent with the licensing objectives; and
- in accordance with the authority's statement of licensing policy.

9.3 It is appreciated that as per the Gambling Commission's Guidance to Licensing Authorities "moral objections to gambling are not a valid reason to reject applications for premises licences" (except as regards any 'no casino resolution' - see section on Casinos – page number 15) and also that unmet demand is not a criterion for a licensing authority.

9.4 This Council has reviewed its constitution and scheme of delegation to officers to ensure effective implementation of the Act. Gambling Act 2005 Committee and Sub-Committees have been set up to deal with licensing issues and the determination of applications in certain cases, ie those where representations have been made or where premises licences require review. Non contentious applications (ie those where no representations have been made), will be delegated to officers.

9.5 Where representations are received the Licensing Authority will consider whether they are relevant, vexatious, frivolous or if they would influence the Authority's determination of the application. The Head of Licensing together with the relevant Assistant Director will determine if any representation meet this criteria.

9.6 **Definition of "premises"** – In the Act, "premises" is defined as including "any place". Section 152 therefore prevents more than one premises licence applying to any place. But a single building could be subject to more than one premises licence, provided they are for different parts of the building and the different parts of the building can be reasonably regarded as being different premises. This approach has been taken to allow large, multiple unit premises such as a pleasure park, pier, track or shopping mall to obtain discrete premises licences, where appropriate safeguards are in place. However, licensing authorities should pay particular attention if there are

issues about sub-divisions of a single building or plot and should ensure that mandatory conditions relating to access between premises are observed.

9.7 The Gambling Commission states in the third edition of its Guidance to Licensing Authorities that: “In most cases the expectation is that a single building / plot will be the subject of an application for a licence, for example, 32 High Street. But, that does not mean 32 High Street cannot be the subject of separate premises licences for the basement and ground floor, if they are configured acceptably. Whether different parts of a building can properly be regarded as being separate premises will depend on the circumstances. The location of the premises will clearly be an important consideration and the suitability of the division is likely to be a matter for discussion between the operator and the licensing officer. However, the Commission does not consider that areas of a building that are artificially or temporarily separated, for example by ropes or moveable partitions, can properly be regarded as different premises.”

9.8 This licensing authority takes particular note of the Gambling Commission’s Guidance to Licensing Authorities which states that: licensing authorities should take particular care in considering applications for multiple licences for a building and those relating to a discrete part of a building used for other (non-gambling) purposes. In particular they should be aware of the following:

- The third licensing objective seeks to protect children from being harmed by gambling. In practice that means not only preventing them from taking part in gambling, but also preventing them from being in close proximity to gambling. Therefore premises should be configured so that children are not invited to participate in, have accidental access to or closely observe gambling where they are prohibited from participating.
- Entrances to and exits from parts of a building covered by one or more premises licences should be separate and identifiable so that the separation of different premises is not compromised and people do not “drift” into a gambling area. In this context it should normally be possible to access the premises without going through another licensed premises or premises with a permit.
- Customers should be able to participate in the activity names on the premises licence.

9.9 The Guidance also gives a list of factors which the licensing authority should be aware of, which may include:

- Do the premises have a separate registration for business rates
- Is the premises’ neighbouring premises owned by the same person or someone else?
- Can each of the premises be accessed from the street or a public passageway?
- Can the premises only be accessed from any other gambling premises?

9.10 This authority will consider these and other relevant factors in making its decision, depending on all the circumstances of the case.

9.11 **The Gambling Commission's relevant access provisions for each premises type are reproduced below:** Section 7.25 of the Gambling Commission's guidance.

9.12 **Casinos**

- The principal access entrance to the premises must be from a street (as defined at 7.23 of the Guidance)
- No entrance to a casino must be from premises that are used wholly or mainly by children and/or young persons
- No customer must be able to enter a casino directly from any other premises which holds a gambling premises licence.

9.13 **Adult Gaming Centre**

- No customer must be able to access the premises directly from any other licensed gambling premises.

9.14 **Betting Shops**

- Access must be from a street (as per para 7.23 Guidance to Licensing Authorities) or from another premises with a betting premises licence
- No direct access from a betting shop to another premises used for the retail sale of merchandise or services. In effect there cannot be an entrance to a betting shop from a shop of any kind and you could not have a betting shop at the back of a café – the whole area would have to be licensed.

9.15 **Tracks**

- No customer should be able to access the premises directly from:
 - a casino
 - an adult gaming centre

9.16 **Bingo Premises**

- No customer must be able to access the premise directly from:
 - a casino
 - an adult gaming centre
 - a betting premises, other than a track

9.17 **Family Entertainment Centre**

- No customer must be able to access the premises directly from:
 - a casino
 - an adult gaming centre
 - a betting premises, other than a track

9.18 Part 7 of the Gambling Commission's Guidance to Licensing Authorities contains further guidance on this issue, which this authority will also take into account in its

decision-making.

9.19 **Premises “ready for gambling”** - The Guidance states that a licence to use premises for gambling should only be issued in relation to premises that the licensing authority can be satisfied are going to be ready to be used for gambling in the reasonably near future, consistent with the scale of building or alterations required before the premises are brought into use.

9.20 If the construction of a premises is not yet complete, or if they need alteration, or if the applicant does not yet have a right to occupy them, then an application for a provisional statement should be made instead.

9.21 In deciding whether a premises licence can be granted where there are outstanding construction or alteration works at a premises, this authority will determine applications on their merits, applying a two stage consideration process:-

- First, whether the premises ought to be permitted to be used for gambling
- Second, whether appropriate conditions can be put in place to cater for the situation that the premises are not yet in the state in which they ought to be before gambling takes place.

9.22 Applicants should note that this authority is entitled to decide that it is appropriate to grant a licence subject to conditions, but it is not obliged to grant such a licence.

9.23 More detailed examples of the circumstances in which such a licence may be granted can be found at paragraphs 7.59-7.66 of the Guidance.

9.24 **Location** - This licensing authority is aware that demand issues cannot be considered with regard to the location of premises but that considerations in terms of the licensing objectives are relevant to its decision-making. As per the Gambling Commission’s Guidance to Licensing Authorities, this authority will pay particular attention to the protection of children and vulnerable persons from being harmed or exploited by gambling, as well as issues of crime and disorder. Should any specific policy be decided upon as regards areas where gambling premises should not be located, this statement will be updated. It should be noted that any such policy does not preclude any application being made and each application will be decided on its merits, with the onus upon the applicant showing how potential concerns can be overcome.

9.25 **Planning** - The Gambling Commission Guidance to Licensing Authorities states:
7.59 – In determining applications the licensing authority has a duty to take into consideration all relevant matters and not to take into consideration any irrelevant matters, i.e. those not related to gambling and the licensing objectives. One example of an irrelevant matter would be the likelihood of the applicant obtaining planning permission or building regulations approval for their proposal.

9.26 This authority will not take into account irrelevant matters as per the above guidance.

In addition this authority notes the following excerpt from the Guidance:

7.66 - When dealing with a premises licence application for finished buildings, the licensing authority should not take into account whether those buildings have or comply with the necessary planning or building consents. Those matters should be dealt with under relevant planning control and building regulation powers, and not form part of the consideration for the premises licence. Section 210 of the 2005 Act prevents licensing authorities taking into account the likelihood of the proposal by the applicant obtaining planning or building consent when considering a premises licence application. Equally the grant of a gambling premises licence does not prejudice or prevent any action that may be appropriate under the law relating to planning or building.

- 9.27 **Duplication with other regulatory regimes** - This licensing authority seeks to avoid any duplication with other statutory / regulatory systems where possible, including planning. This authority will not consider whether a licence application is likely to be awarded planning permission or building regulations approval, in its consideration of it. It will though, listen to, and consider carefully, any concerns about conditions which are not able to be met by licensees due to planning restrictions, should such a situation arise.
- 9.28 When dealing with a premises licence application for finished buildings, this authority will not take into account whether those buildings have to comply with the necessary planning or buildings consents. Fire or health and safety risks will not be taken into account, as these matters are dealt with under relevant planning control, buildings and other regulations and must not form part of the consideration for the premises licence.
- 9.29 **Licensing objectives** - Premises licences granted must be reasonably consistent with the licensing objectives. With regard to these objectives, this licensing authority has considered the Gambling Commission's Guidance to Licensing Authorities and some comments are made below.
- 9.30 **Preventing gambling from being a source of crime or disorder, being associated with crime or disorder or being used to support crime** - This licensing authority is aware that the Gambling Commission takes a leading role in preventing gambling from being a source of crime. The Gambling Commission's Guidance does however envisage that licensing authorities should pay attention to the proposed location of gambling premises in terms of this licensing objective. Thus, where an area has known high levels of organised crime this authority will consider carefully whether gambling premises are suitable to be located there and whether conditions may be suitable such as the provision of door supervisors. This licensing authority is aware of the distinction between disorder and nuisance and will consider factors (for example whether police assistance was required and how threatening the behaviour was to those who could see it) so as to make that distinction.
- 9.31 **Ensuring that gambling is conducted in a fair and open way** - This licensing authority has noted that the Gambling Commission states that it generally does not expect licensing authorities to be concerned with ensuring that gambling is conducted in a fair and open way as this will be addressed via operating and personal licences.

For Local Authorities with tracks: There is however, more of a role with regard to tracks which is explained in more detail in the 'tracks' section– see page number 16).

- 9.32 **Protecting children and other vulnerable persons from being harmed or exploited by gambling** - This licensing authority has noted the Gambling Commission's Guidance that this objective means preventing children from taking part in gambling (as well as restriction of advertising so that gambling products are not aimed at or are, particularly attractive to children). The licensing authority will therefore consider, as suggested in the Gambling Commission's Guidance, whether specific measures are required at particular premises, with regard to this licensing objective. Appropriate measures may include supervision of entrances / machines, segregation of areas etc.
- 9.33 This licensing authority is also aware of the Gambling Commission Codes of Practice as regards this licensing objective, in relation to specific premises.
- 9.34 As regards the term “vulnerable persons” it is noted that the Gambling Commission does not seek to offer a definition but states that “it will for regulatory purposes assume that this group includes people who gamble more than they want to; people who gambling beyond their means; and people who may not be able to make informed or balanced decisions about gambling due to a mental impairment, alcohol or drugs.” This licensing authority will consider this licensing objective on a case by case basis.
- 9.35 **Conditions** - Any conditions attached to licences will be proportionate and will be:
- | |
|--|
| <ul style="list-style-type: none">• relevant to the need to make the proposed building 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; and• reasonable in all other respects. |
|--|
- 9.36 Decisions upon individual conditions will be made on a case by case basis, although there will be a number of measures this licensing authority will consider utilising should there be a perceived need, such as the use of supervisors, appropriate signage for adult only areas etc. There are specific comments made in this regard under some of the licence types below. This licensing authority will also expect the licence applicant to offer his/her own suggestions as to way in which the licensing objectives can be met effectively.
- 9.37 This licensing authority will also consider specific measures which may be required for buildings which are subject to multiple premises licences. Such measures may include the supervision of entrances; segregation of gambling from non-gambling areas frequented by children; and the supervision of gaming machines in non-adult gambling specific premises in order to pursue the licensing objectives. These matters are in accordance with the Gambling Commission's Guidance.
- 9.38 This authority will also ensure that where category C or above machines are on offer in premises to which children are admitted:

- all such machines are located in an area of the premises which is separated from the remainder of the premises by a physical barrier which is effective to prevent access other than through a designated entrance;
- only adults are admitted to the area where these machines are located;
- access to the area where the machines are located is supervised;
- the area where these machines are located is arranged so that it can be observed by the staff or the licence holder; and
- at the entrance to and inside any such areas there are prominently displayed notices indicating that access to the area is prohibited to persons under 18.

9.39 These considerations will apply to premises including buildings where multiple premises licences are applicable.

9.40 This licensing authority is aware that tracks may be subject to one or more than one premises licence, provided each licence relates to a specified area of the track. As per the Gambling Commission's Guidance, this licensing authority will consider the impact upon the third licensing objective and the need to ensure that entrances to each type of premises are distinct and that children are excluded from gambling areas where they are not permitted to enter.

9.41 It is noted that there are conditions which the licensing authority cannot attach to premises licences which are:

- any condition on the premises licence which makes it impossible to comply with an operating licence condition;
- conditions relating to gaming machine categories, numbers, or method of operation;
- conditions which provide that membership of a club or body be required (the Gambling Act 2005 specifically removes the membership requirement for casino and bingo clubs and this provision prevents it being reinstated; and
- conditions in relation to stakes, fees, winning or prizes.

9.42 **Door Supervisors** - The Gambling Commission advises in its Guidance to Licensing Authorities that if a licensing authority is concerned that a premises may attract disorder or be subject to attempts at unauthorised access (for example by children and young persons) then it may require that the entrances to the premises are controlled by a door supervisor, and is entitled to impose a premises licence to this effect.

9.43 Where it is decided that supervision of entrances/machines is appropriate for particular cases, a consideration of whether these need to be SIA licensed or not will be necessary. It will not be automatically assumed that they need to be licensed, as the statutory requirements for different types of premises vary (as per the Guidance, Part 33).

10. Adult Gaming Centres

10.1 This licensing authority will specifically have regard to the need to protect children and vulnerable persons from harm or being exploited by gambling and will expect the applicant to satisfy the authority that there will be sufficient measures to, for example, ensure that under 18 year olds do not have access to the premises.

10.2 This licensing authority may consider measures to meet the licensing objectives such as:

- Proof of age schemes
- CCTV
- Supervision of entrances / machine areas
- Physical separation of areas
- Location of entry
- Notices / signage
- Specific opening hours
- Self-exclusion schemes
- Provision of information leaflets / helpline numbers for organisations such as GamCare.

10.3 This list is not mandatory, nor exhaustive, and is merely indicative of example measures.

11. (Licensed) Family Entertainment Centres:

11.1 This licensing authority will specifically have regard to the need to protect children and vulnerable persons from harm or being exploited by gambling and will expect the applicant to satisfy the authority, for example, that there will be sufficient measures to ensure that under 18 year olds do not have access to the adult only gaming machine areas.

11.2 This licensing authority may consider measures to meet the licensing objectives such as:

- CCTV
- Supervision of entrances / machine areas
- Physical separation of areas
- Location of entry
- Notices / signage
- Specific opening hours
- Self-exclusion schemes
- Provision of information leaflets / helpline numbers for organisations such as GamCare
- Measures / training for staff on how to deal with suspected truant school children on the premises.

- 11.3 This list is not mandatory, nor exhaustive, and is merely indicative of example measures.
- 11.4 This licensing authority will, as per the Gambling Commission's guidance, refer to the Commission's website to see any conditions that apply to operating licences covering the way in which the area containing the category C machines should be delineated. This licensing authority will also make itself aware of any mandatory or default conditions on these premises licences, when they have been published.

12. Casinos

- 12.1 *No Casinos resolution* - This licensing authority has not passed a 'no casino' resolution under Section 166 of the Gambling Act 2005, but is aware that it has the power to do so. Should this licensing authority decide in the future to pass such a resolution, it will update this policy statement with details of that resolution. Any such decision will be made by the Full Council.
- 12.2 *Betting machines* - This licensing authority will, as per the Gambling Commission's Guidance, take into account the size of the premises, the number of counter positions available for person-to-person transactions, and the ability of staff to monitor the use of the machines by children and young persons (it is an offence for those under 18 to bet) or by vulnerable people, when considering the number/nature/circumstances of betting machines an operator wants to offer.

13. Bingo premises

- 13.1 This licensing authority notes that the Gambling Commission's Guidance states:
18.4 Licensing authorities will need to satisfy themselves that bingo can be played in any bingo premises for which they issue a premises licence. This will be a relevant consideration where the operator of an existing bingo premises applies to vary their licence to exclude an area of the existing premises from its ambit and then applies for a new premises licence, or multiple licences, for that or those excluded areas.
- 13.2 This authority also notes the Guidance at paragraph 18.5 regarding the unusual circumstances in which the splitting of a pre-existing premises into two adjacent premises might be permitted, and in particular that it is not permissible to locate sixteen category B3 gaming machines in one of the resulting premises, as the gaming machine entitlement for that premises would be exceeded.
- 13.3 This licensing authority notes that the Gambling Commission Guidance states:
18.6 Children and young people are allowed into bingo premises; however they are not permitted to participate in the bingo and if category B or C machines are made available for use these must be separated from areas where children and young people are allowed.

14. Betting premises

- 14.1 *Betting machines* - This licensing authority will, as per the Gambling Commission's

Guidance, take into account the size of the premises, the number of counter positions available for person-to-person transactions, and the ability of staff to monitor the use of the machines by children and young persons (it is an offence for those under 18 to bet) or by vulnerable people, when considering the number/nature/circumstances of betting machines an operator wants to offer.

15. Tracks

15.1 This licensing authority is aware that tracks may be subject to one or more than one premises licence, provided each licence relates to a specified area of the track. As per the Gambling Commission's Guidance, this licensing authority will especially consider the impact upon the third licensing objective (i.e. the protection of children and vulnerable persons from being harmed or exploited by gambling) and the need to ensure that entrances to each type of premises are distinct and that children are excluded from gambling areas where they are not permitted to enter.

15.2 This authority will therefore expect the premises licence applicant to demonstrate suitable measures to ensure that children do not have access to adult only gaming facilities. It is noted that children and young persons will be permitted to enter track areas where facilities for betting are provided on days when dog-racing and/or horse racing takes place, but that they are still prevented from entering areas where gaming machines (other than category D machines) are provided.

15.3 This licensing authority may consider measures to meet the licensing objectives such as:

- Proof of age schemes
- CCTV
- Supervision of entrances / machine areas
- Physical separation of areas
- Location of entry
- Notices / signage
- Specific opening hours
- Self-exclusion schemes
- Provision of information leaflets / helpline numbers for organisations such as GamCare

15.4 This list is not mandatory, nor exhaustive, and is merely indicative of example measures.

15.5 *Gaming machines* -Where the applicant holds a pool betting operating licence and is going to use the entitlement to four gaming machines, machines (other than category D machines) should be located in areas from which children are excluded.

15.6 *Betting machines* - This licensing authority will, as per Part 6 of the Gambling Commission's Guidance, take into account the size of the premises and the ability of staff to monitor the use of the machines by children and young persons (it is an offence for those under 18 to bet) or by vulnerable people, when considering the

number/nature/circumstances of betting machines an operator proposes to offer.

- 15.7 **Applications and plans** - The Gambling Act (s51) requires applicants to submit plans of the premises with their application, in order to ensure that the licensing authority has the necessary information to make an informed judgement about whether the premises are fit for gambling. The plan will also be used for the licensing authority to plan future premises inspection activity. (See Guidance to Licensing Authorities, para 20.28).
- 15.8 Plans for tracks do not need to be in a particular scale, but should be drawn to scale and should be sufficiently detailed to include the information required by regulations. (See Guidance to Licensing Authorities, para 20.29).
- 15.9 Some tracks may be situated on agricultural land where the perimeter is not defined by virtue of an outer wall or fence, such as point-to-point racetracks. In such instances, where an entry fee is levied, track premises licence holders may erect temporary structures to restrict access to premises (See Guidance to Licensing Authorities, para 20.31).
- 15.10 In the rare cases where the outer perimeter cannot be defined, it is likely that the track in question will not be specifically designed for the frequent holding of sporting events or races. In such cases betting facilities may be better provided through occasional use notices where the boundary premises do not need to be defined. (See Guidance to Licensing Authorities, para 20.32).
- 15.11 This authority appreciates that it is sometimes difficult to define the precise location of betting areas on tracks. The precise location of where betting facilities are provided is not required to be shown on track plans, both by virtue of the fact that betting is permitted anywhere on the premises and because of the difficulties associated with pinpointing exact locations for some types of track. Applicants should provide sufficient information that this authority can satisfy itself that the plan indicates the main areas where betting might take place. For racecourses in particular, any betting areas subject to the “five times rule” (commonly known as betting rings) must be indicated on the plan. (See Guidance to Licensing Authorities, para 20.33).

16. Travelling Fairs

- 16.1 This licensing authority is responsible for deciding whether, where category D machines and / or equal chance prize gaming without a permit is to be made available for use at travelling fairs, the statutory requirement that the facilities for gambling amount to no more than an ancillary amusement at the fair is met.
- 16.2 The licensing authority will also consider whether the applicant falls within the statutory definition of a travelling fair.
- 16.3 It is noted that the 27-day statutory maximum for the land being used as a fair applies on a per calendar year basis, and that it applies to the piece of land on which the fairs are held, regardless of whether it is the same or different travelling fairs occupying the land. This licensing authority will work with its neighbouring authorities

to ensure that land which crosses our boundaries is monitored so that the statutory limits are not exceeded.

17. Provisional Statements

17.1 Developers may wish to apply to this authority for provisional statements before entering into a contract to buy or lease property or land to judge whether a development is worth taking forward in light of the need to obtain a premises licence. There is no need for the applicant to hold an operating licence in order to apply for a provisional statement.

17.2 S204 of the Gambling Act provides for a person to make an application to the licensing authority for a provisional statement in respect of premises that he or she:

- expects to be constructed;
- expects to be altered; or
- expects to acquire a right to occupy.

17.3 The process for considering an application for a provisional statement is the same as that for a premises licence application. The applicant is obliged to give notice of the application in the same way as applying for a premises licence. Responsible authorities and interested parties may make representations and there are rights of appeal.

17.4 In contrast to the premises licence application, the applicant does not have to hold or have applied for an operating licence from the Gambling Commission and they do not have to have a right to occupy the premises in respect of which their provisional application is made.

17.5 The holder of a provisional statement may then apply for a premises licence once the premises are constructed, altered or acquired. The licensing authority will be constrained in the matters it can consider when determining the premises licence application, and in terms of representations about premises licence applications that follow the grant of a provisional statement, no further representations from relevant authorities or interested parties can be taken into account unless:

- they concern matters which could not have been addressed at the provisional statement stage, or
- they reflect a change in the applicant's circumstances.

17.6 In addition, the authority may refuse the premises licence (or grant it on terms different to those attached to the provisional statement) only by reference to matters:

- which could not have been raised by objectors at the provisional statement stage;
- which in the authority's opinion reflect a change in the operator's circumstances; or
- where the premises has not been constructed in accordance with the plan submitted with the application. This must be a substantial change to the plan and

this licensing authority notes that it can discuss any concerns it has with the applicant before making a decision.

18. Reviews

18.1 Requests for a review of a premises licence can be made by interested parties or responsible authorities; however, it is for the licensing authority to decide whether the review is to be carried-out. This will be on the basis of whether the request for the review is relevant to the matters listed below;

- in accordance with any relevant Code of Practice issued by the Gambling Commission;
- in accordance with any relevant guidance issued by the Gambling Commission;
- reasonably consistent with the licensing objectives; and
- in accordance with the authority's statement of principles.

18.2 The request for the review will also be subject to the consideration by the authority as to whether the request is frivolous, vexatious, or whether it will certainly not cause this authority to wish to alter/revoke/suspend the licence, or whether it is substantially the same as previous representations or requests for review.

18.3 The licensing authority can also initiate a review of a particular premises licence, or a particular class of premises licence on the basis of any reason which it thinks is appropriate.

18.4 Once a valid application for a review has been received by the licensing authority, representations can be made by responsible authorities and interested parties during a 28 day period. This period begins 7 days after the application was received by the licensing authority, who will publish notice of the application within 7 days of receipt.

18.5 The licensing authority must carry out the review as soon as possible after the 28 day period for making representations has passed.

18.6 The purpose of the review will be to determine whether the licensing authority should take any action in relation to the licence. If action is justified, the options open to the licensing authority are:-

- (a) add, remove or amend a licence condition imposed by the licensing authority;
- (b) exclude a default condition imposed by the Secretary of State or Scottish Ministers (e.g. opening hours) or remove or amend such an exclusion;
- (c) suspend the premises licence for a period not exceeding three months; and
- (d) revoke the premises licence.

18.7 In determining what action, if any, should be taken following a review, the licensing authority must have regard to the principles set out in section 153 of the Act, as well as any relevant representations.

18.8 In particular, the licensing authority may also initiate a review of a premises licence on

the grounds that a premises licence holder has not provided facilities for gambling at the premises. This is to prevent people from applying for licences in a speculative manner without intending to use them.

18.9 Once the review has been completed, the licensing authority must, as soon as possible, notify its decision to:

- the licence holder
- the applicant for review (if any)
- the Commission
- any person who made representations
- the chief officer of police or chief constable; and
- Her Majesty's Commissioners for Revenue and Customs

PART C

Permits / Temporary & Occasional Use Notice

19. **Unlicensed Family Entertainment Centre gaming machine permits (Statement of Principles on Permits - Schedule 10 paragraph 7)**

19.1 Where a premises does not hold a premises licence but wishes to provide gaming machines, it may apply to the licensing authority for this permit. It should be noted that the applicant must show that the premises will be wholly or mainly used for making gaming machines available for use (Section 238).

19.2 The Gambling Act 2005 states that a licensing authority may prepare a *statement of principles* that they propose to consider in determining the suitability of an applicant for a permit and in preparing this statement, and/or considering applications, it need not (but may) have regard to the licensing objectives and shall have regard to any relevant guidance issued by the Commission under section 25. The Gambling Commission's Guidance to Licensing Authorities also states: "In their three year licensing policy statement, licensing authorities may include a statement of principles that they propose to apply when exercising their functions in considering applications for permits...., licensing authorities will want to give weight to child protection issues." (24.6)

19.3 Guidance also states: "...An application for a permit may be granted only if the licensing authority is satisfied that the premises will be used as an unlicensed FEC, and if the chief officer of police has been consulted on the application....Licensing authorities might wish to consider asking applications to demonstrate:

- a full understanding of the maximum stakes and prizes of the gambling that is permissible in unlicensed FECs;
- that the applicant has no relevant convictions (those that are set out in Schedule 7 of the Act; and

- that staff are trained to have a full understanding of the maximum stakes and prizes. (24.7)

19.4 It should be noted that a licensing authority cannot attach conditions to this type of permit.

19.5 Statement of Principles This licensing authority will expect the applicant to show that there are policies and procedures in place to protect children from harm. Harm in this context is not limited to harm from gambling but includes wider child protection considerations. The efficiency of such policies and procedures will each be considered on their merits, however, they may include appropriate measures / training for staff as regards suspected truant school children on the premises, measures / training covering how staff would deal with unsupervised very young children being on the premises, or children causing perceived problems on / around the premises. This licensing authority will also expect, as per Gambling Commission Guidance, that applicants demonstrate a full understanding of the maximum stakes and prizes of the gambling that is permissible in unlicensed FECs; that the applicant has no relevant convictions (those that are set out in Schedule 7 of the Act); and that staff are trained to have a full understanding of the maximum stakes and prizes.

20. (Alcohol) Licensed premises gaming machine permits - (Schedule 13 paragraph 4(1))

20.1 **Automatic entitlement: 2 machines:** There is provision in the Act for premises licensed to sell alcohol for consumption on the premises to automatically have 2 gaming machines, of categories C and/or D. The premises merely need to notify the licensing authority.

20.2 The licensing authority can remove the automatic authorisation in respect of any particular premises if:

- provision of the machines is not reasonably consistent with the pursuit of the licensing objectives;
- gaming has taken place on the premises that breaches a condition of section 282 of the Gambling Act (i.e. that written notice has been provided to the licensing authority, that a fee has been provided and that any relevant code of practice issued by the Gambling Commission about the location and operation of the machine has been complied with);
- the premises are mainly used for gaming; or
- an offence under the Gambling Act has been committed on the premises.

20.3 **Permit: 3 or more machines:** If a premises wishes to have more than 2 machines, then it needs to apply for a permit and the licensing authority must consider that application based upon the licensing objectives, any guidance issued by the Gambling Commission issued under Section 25 of the Gambling Act 2005, and “*such matters as they think relevant.*” Any determination will be made by the Head of Licensing in conjunction with the relevant Assistant Director.

- 20.4 This licensing authority considers that “such matters” will be decided on a case by case basis but generally there will be regard to the need to protect children and vulnerable persons from harmed or being exploited by gambling and will expect the applicant to satisfy the authority that there will be sufficient measures to ensure that under 18 year olds do not have access to the adult only gaming machines. Measures which will satisfy the authority that there will be no access may include the adult machines being in sight of the bar, or in the sight of staff who will monitor that the machines are not being used by those under 18. Notices and signage may also be help. As regards the protection of vulnerable persons, applicants may wish to consider the provision of information leaflets / helpline numbers for organisations such as GamCare. Compliance with the Gambling Commissions Code of Practice for Gaming Machines Permits will be a condition of any permit issued.
- 20.5 It is recognised that some alcohol licensed premises may apply for a premises licence for their non-alcohol licensed areas. Any such application would most likely need to be applied for, and dealt with as an Adult Gaming Centre premises licence.
- 20.6 It should be noted that the licensing authority can decide to grant the application with a smaller number of machines and/or a different category of machines than that applied for. Conditions (other than these) cannot be attached.
- 20.7 It should also be noted that the holder of a permit must comply with any Code of Practice issued by the Gambling Commission about the location and operation of the machine.

21. Prize Gaming Permits

- 21.1 The Gambling Act 2005 states that a licensing authority may “prepare a statement of principles that they propose to apply in exercising their functions under this Schedule” which “may, in particular, specify matters that the licensing authority proposes to consider in determining the suitability of the applicant for a permit”.
- 21.2 **Statement of Principles:** This Licensing Authority will expect the applicant to show that there are policies and procedures in place to protect children from harm. The efficiency of such policies and procedures will each be considered on their merits, however, they may include appropriate measures / training for staff as regards suspected truant school children on the premises, measures / training covering how staff would deal with unsupervised very young children being on the premises, or children causing perceived problems on / around the premises. This Authority will also expect applicants to demonstrate a full understanding of the maximum stakes and prizes as set out in regulations; that the applicant has no relevant convictions (as set out in Schedule 7 of the Act); and that staff are trained to have a full understanding of the maximum stakes and prizes.
- 21.3 In making its decision on an application for this permit the licensing authority does not need to (but may) have regard to the licensing objectives but must have regard to any Gambling Commission guidance. (Gambling Act 2005, Schedule 14 paragraph 8(3)).
- 21.4 It should be noted that there are conditions in the Gambling Act 2005 by which the

permit holder must comply, but that the licensing authority cannot attach conditions. The conditions in the Act are:

- the limits on participation fees, as set out in regulations, must be complied with;
- all chances to participate in the gaming must be allocated on the premises on which the gaming is taking place and on one day; the game must be played and completed on the day the chances are allocated; and the result of the game must be made public in the premises on the day that it is played;
- the prize for which the game is played must not exceed the amount set out in regulations (if a money prize), or the prescribed value (if non-monetary prize); and
- participation in the gaming must not entitle the player to take part in any other gambling.

22. Club Gaming and Club Machines Permits

22.1 Members Clubs and Miners' welfare institutes (but not Commercial Clubs) may apply for a Club Gaming Permit or a Clubs Gaming machines permit. The Club Gaming Permit will enable the premises to provide gaming machines (3 machines of categories B, C or D), equal chance gaming and games of chance as set-out in forthcoming regulations. A Club Gaming machine permit will enable the premises to provide gaming machines (3 machines of categories B, C or D).

22.2 Gambling Commission Guidance states: "Members clubs must have at least 25 members and be established and conducted "wholly or mainly" for purposes other than gaming, unless the gaming is permitted by separate regulations. The Secretary of State has made regulation and these cover bridge and whist clubs, which replicates the position under the Gambling Act 1968. A members' club must be permanent in nature, not established to make commercial profit, and controlled by its members equally. Examples include working men's clubs, branches of Royal British Legion and clubs with political affiliations."

22.3 The Commission Guidance also notes that "licensing authorities may only refuse an application on the grounds that:

- (a) the applicant does not fulfil the requirements for a members' or commercial club or miners' welfare institute and therefore is not entitled to receive the type of permit for which it has applied;
- (b) the applicant's premises are used wholly or mainly by children and/or young persons;
- (c) an offence under the Act or a breach of a permit has been committed by the applicant while providing gaming facilities;
- (d) a permit held by the applicant has been cancelled in the previous ten years; or
- (e) an objection has been lodged by the Commission or the police.

22.4 There is also a 'fast-track' procedure available under the Act for premises which hold a Club Premises Certificate under the Licensing Act 2003 (Schedule 12 paragraph 10). As the Gambling Commission's Guidance to Licensing Authorities states: "Under

the fast-track procedure there is no opportunity for objections to be made by the Commission or the police, and the ground upon which an authority can refuse a permit are reduced." and "The grounds on which an application under the process may be refused are:

- (a) that the club is established primarily for gaming, other than gaming prescribed under schedule 12;
- (b) that in addition to the prescribed gaming, the applicant provides facilities for other gaming; or
- (c) that a club gaming permit or club machine permit issued to the applicant in the last ten years has been cancelled."

22.5 There are statutory conditions on club gaming permits that no child uses a category B or C machine on the premises and that the holder complies with any relevant provision of a code of practice about the location and operation of gaming machines.

23. Temporary Use Notices

23.1 Temporary Use Notices allow the use of premises for gambling where there is no premises licence but where a gambling operator wishes to use the premises temporarily for providing facilities for gambling. Premises that might be suitable for a Temporary Use Notice, according to the Gambling Commission, would include hotels, conference centres and sporting venues.

23.2 The licensing authority can only grant a Temporary Use Notice to a person or company holding a relevant operating licence, i.e. a non-remote casino operating licence.

23.3 The Secretary of State has the power to determine what form of gambling can be authorised by Temporary Use Notices, and at the time of writing this Statement the relevant regulations (SI no 3157: The Gambling Act 2005 (Temporary Use Notices) Regulations 2007) state that Temporary Use Notices can only be used to permit the provision of facilities for equal chance gaming, where the gaming is intended to produce a single winner, which in practice means poker tournaments.

23.4 There are a number of statutory limits as regards Temporary Use Notices. The meaning of "premises" in Part 8 of the Act is discussed in Part 7 of the Gambling Commission Guidance to Licensing Authorities. As with "premises", the definition of "a set of premises" will be a question of fact in the particular circumstances of each notice that is given. In the Act "premises" is defined as including "any place".

23.5 In considering whether a place falls within the definition of "a set of premises", the licensing authority needs to look at, amongst other things, the ownership/occupation and control of the premises.

23.6 This licensing authority expects to object to notices where it appears that their effect would be to permit regular gambling in a place that could be described as one set of premises, as recommended in the Gambling Commission's Guidance to Licensing Authorities.

24. Occasional Use Notices

- 24.1 The licensing authority has very little discretion as regards these notices aside from ensuring that the statutory limit of 8 days in a calendar year is not exceeded. This licensing authority will though consider the definition of a 'track' and whether the applicant is permitted to avail him/herself of the notice.

GAMBLING POLICY CONSULTEES

- North Yorkshire Police
- Selby and York Primary Health Care Trust
- City of York Council Adult Services (Community Services)
- City of York Safeguarding Children Board
- Children and Young People's Champion
- Safer York Crime and Disorder Reduction Partnership
- Officers within the City of York Council responsible for regeneration, tourism, cultural strategy and planning
- Representations of Parish Councils
- Tenants and Residents Association
- Ward Committees
- Organisations representing disabled persons
- Elderly Persons Forum
- Citizens Advice Bureau
- Council for Voluntary Services
- GamCare
- Casino Operators Association
- British Casinos Association
- Association of British Bookmakers
- William Hill Bookmakers
- Ladbrokes Bookmakers
- Coral Bookmakers
- BACTA (gaming machines)
- Racecourse Association
- Business in Sport and Leisure
- British Pub and Beer Association
- Bingo Association
- Mecca Bingo
- Clifton Bingo Hall
- Club and Institutes Union
- Trade Associations and Trade Council
- Clifton Moor Business Association
- CAMRA (Campaign for Real Ale)

RESPONSIBLE AUTHORITIES

City of York Council
Alcohol & Entertainment Licensing
9 St Leonard's Place
York
YO1 7ET

Gambling Commission
Fourth Floor
Victoria Square House
Victoria Square
Birmingham
B2 4BP

Chief Officer of Police
North Yorkshire Police Headquarters
The Licensing Section
Fulford Road
York
YO10 4BY

North Yorkshire Fire and Rescue Service
The Area Fire Safety Office
York Fire Station
Clifford Street
York
YO1 1RD

City of York Council
Environmental Protection Unit
9 St Leonard's Place
York
YO1 7ET

City of York Council
Development Control (Planning)
9 St Leonard's Place
York
YO1 7ET

City of York Council Corporate Support
(Licences – Children's Services)
10 – 12 George Hudson Street
York
YO1 6LP

HM Revenue & Customs
Greenock Accounting Centre
Custom House
Custom House Quay
Greenock
PA15 1EQ

Gambling Policy Consultees

- North Yorkshire Police
- Selby and York Primary Health Care Trust
 - Head of Child & Adolescent Mental Health, Older People & Drings & Alcohol Services
 - Head of Adult Mental Health & Forensic Services
- City of York Council Adult Services (Community Services)
- City of York Safeguarding Children Board
- Children and Young People's Champion
- Safer York Crime and Disorder Reduction Partnership
- York Youth Offending Team
- Officers within the City of York Council responsible for regeneration, tourism, cultural strategy and planning
- Representations of Parish Councils
- Tenants and Residents Association
- Ward Committees
- Organisations representing disabled persons
- Elderly Persons Forum
- Citizens Advice Bureau
- Council for Voluntary Services
- GamCare
- British Casino Association
- Casino Operators Association of the UK
- Association of British Bookmakers
- William Hill Bookmakers
- Ladbrokes Bookmakers
- Coral Bookmakers
- Tote Bookmakers

- Ebor Racing
- Tote Bookmakers Ltd
- Corbett Bookmakers Ltd
- Done Brothers (Cash Betting) Ltd – Betfred
- Betwise
- Ebor Racing
- Embassy Racing
- Ted Plant Bookmakers
- Racecourse Services Executive - Racecourse Association
- Horserace Betting Levy Board
- York Racecourse
- BACTA (gaming machines)
- Talarius Ltd – Quicksilver
- Nobles Amusements
- Wharton Amuesments – Gilly’s Amusements
- Bingo Association
- Mecca Bingo
- Clifton Bingo Hall
- Business in Sport and Leisure
- Club and Institutes Union
- Trade Associations and Trade Council
 - York & North Yorkshire Chamber of Commerce
 - Clifton Moor Business Association
 - Coppergate Centre Manager
 - Stonegate Traders Association
 - Yorshire & Humberside TUC
- British Beer & Pub Association
- HM Revenue & Customs

Gambling Act 2005**Schedule of responses to consultation on Statement of Licensing Policy 2009-12**

Ref No:	Respondent	Comments	Appraisal
1.	The Racecourse Association Ltd, Winkfield Road, Ascot, Berkshire, SL5 7HX	Location (Paragraph 9.22) - The proposed location of gambling premises may be taken into account when assessing the application. The Council is asked to consider that the location of racecourses will not have altered since its foundation, and cannot be transferred to another location.	This comment is noted but it is not considered necessary to amend the wording of the policy.
		Conditions (Paragraph 9.33) – In certain circumstances the Council may impose additional conditions on racecourses to ensure the licensing objectives are met. The Council is asked to ensure that these conditions do not exceed those premises licence conditions outlined in the Premises Licence Mandatory and Default Conditions.	As above
		Door Supervisors (Paragraph 9.40) – The Council is asked to be aware that under the Licensing Act 2003 and the Private Security Industry Act 2001, racecourses are already required to provide licensed door supervisors in some roles. In line with the Government’s Better Regulation Agenda, and the stipulation by the Council in Paragraph 9.25 that they will seek to avoid duplication with other regulatory regimes, the Council should not impose any further provisions relating to door supervisors.	In respect of York Racecourse extensive stewarding is provided across the site. It is unlikely that any additional stewarding would be required but should a specific site where gambling is occurring proves to be a problem then additional stewarding may be requested.
		Betting Machines (Paragraph 15.6) – As racecourses will not hold Operating Licences, they will also not be responsible for the provision of Betting Machines on these premises. These will be provided by third party operators, who will be required to act in accordance with the conditions of their Operating	This section in the draft policy has been amended to reflect this comment in the current guidance.

		Licence, as issued by the Gambling Commission. In line with this, and with Paragraph 20.55 of the Third Edition of the Gambling Commission's Guidance to Licensing Authorities, no restrictions should be placed on the number of Betting Machines at Tracks.	
		Provisional Statements (Paragraph 17.4) – The wording of this paragraph should be amended, as it currently implies that it will be necessary for tracks to hold an operating licence from the Gambling Commission in order to apply for a provisional statement, rather than confirming that tracks do not require an operating licence.	Wording in the consultation draft was ambiguous and has been amended.
2.	Cllr Alf Deuchars, Dunnington Parish Council, The Coppice, 9 Pear Tree Lane, Dunnington, York, YO19 5QG	No comments and no objections response from Dunnington Parish Council.	N/a
3.	Mr Lee Le Clercq, British Beer & Pub Association, Rowan House, Fairways Court, Darrington, West Yorkshire, WF8 3DH	<p>The protection of children and vulnerable persons We would like to take this opportunity to emphasise that pubs have had amusement with prize machines on their premises for many years. The BBPA has been pressing for legislation prohibiting under 18s from playing all cash machines (ACMs) since before the introduction of our Code of Practice on Minimum Age of Players, and we therefore very much welcome the restriction now contained in the new Gambling Act.</p> <p>The Association first introduced its Code of Practice in 1998, and has kept it under regular review since then. As a result of the Code, which is supported by other trade bodies including the ALMR, BII, FLVA</p>	Noted

		<p>and BACTA, ACMs coming on to the market include the “No Under 18s to Play” prohibition notice in the front of the machine. The inclusion of this notice has been achieved at the instigation of the Association in co-operation with machine suppliers.</p> <p>BBPA member company training schemes also reinforce the management of the machines to ensure the minimum age requirement is complied with, for example by requesting recognised ID such as a PASS accredited proof of age card, driving licence or passport where there is doubt that the player is 18 years of age or over.</p>	
		<p>Grant of additional permits While there is no actual requirement under the Gambling Act 2005 for machines to be sited in the bar, we believe that supervision of machines is very important and this is again reinforced by our Code of Practice and staff training. Under the new regime, when operators apply for additional machine permits and they are complying with the Gambling Commission Code of Practice (which will of course replace the BBPA Code), there is no reason why these should not be granted. It would be helpful if the Statement of Principles could reflect this.</p>	<p>Noted, compliance with the Code of Practice is a condition of any permit issued.</p>
		<p>Application procedure for more than two machines The Association would welcome the inclusion in the policy of an outline of the application procedures for permits for more than two machines. We understand that some councils are taking the view that they will grant up to four machine permits without the need for a hearing. We support such an approach in the interests of reduced administration</p>	<p>This was included in the former policy and has now been updated in the draft. HOS & AD to make determination in respect to this issue.</p>

		and bureaucracy for both Councils and applicants and would encourage you to consider this possibility.	
		Last time around, both the BBPA and LACORS were concerned about the lack of a generic application form for permits but we are pleased that a standard form is now available.	Noted
4.	Mrs M Moran, Clerk to Haxby Town Council, Council Office, The Memorial Hall, The Village, Haxby, York, YO32 3HT	The Town Council does not feel it has the expertise to comment on the licensing policy but would be interested in anything in particular that might affect Haxby. If there is anything which we should be looking at, would you please direct us to it and we will give it consideration.	N/A



Gambling and Licensing Acts Committee

20 November 2009

Report of the Director of Neighbourhood Services

Licensing Act 2003 – Problem Premises

Summary

1. This report advises members of recent advice from the Department of Culture, Media and Sport (DCMS) in respect of the adoption of a 'Yellow and Red' card approach to Licensing reviews.

Background

2. Under section 51 of the Licensing Act 2003 (section 87 for clubs) where problems exist at a licensed premise a responsible authority or interested party may call for the licensing authority to hold a hearing and review the licence. The DCMS has suggested that in some areas there was a reluctance among responsible authorities to review licences without very strong evidence.
3. The DCMS have therefore been encouraging, through a series of regional seminars, that police, trading standards and environmental health officers be more pro-active in seeking early reviews of premises causing problems in communities.
4. Where reviews are sought the DCMS suggest that licensing committees consider adopting a yellow card / red card approach where premises are found to be failing to promote one or more of the licensing objectives.
5. A yellow card involves the imposition of tough new conditions that are appropriate to the problems at issue ie sale of alcohol to children together with a warning that if a further review is necessary and matters have not improved, there would be a presumption that the licence would be revoked (red card). It is recognised that for serious issues revocation would be the only appropriate action.
6. The government also advise that any yellow card should be highly visible in the community and send a clear message to alcohol retailers and the public that action will be taken against those who act contrary to the licensing objectives and the law. This will make an important contribution to the community's confidence in the licensing authority. This approach does not necessarily mean the physical issue of cards but the imposition of a condition requiring the

premises to display a visible notice at the premises detailing the outcome of the review and the warning that has been given maybe appropriate.

Consultation

7. All responsible authorities have been made aware of this advice from the DCMS.

Options

8. Members may consider adopting this approach or not when considering any reviews brought before them.

Analysis

9. Whilst the DCMS have launched this approach as a new initiative this type of graduated enforcement has been practiced in York for many years by regulatory departments. It also mirrors the way that licensing committees have dealt with licence applications and in the two reviews that have been determined by members. The adoption of a yellow/red card approach will therefore not see any major change to our policies. Members may however wish to consider the imposition of a condition requiring the visible display of a notice in premises detailing the outcome of any review.

Corporate Strategy

10. Effective regulation of problematic licensed premises will make York a Safer City

Implications

11. **Financial:** None

Human Resources (HR): None

Equalities: None

Legal : None

Crime and Disorder: None

Information Technology (IT): None

Property: None

Other: None

Risk Management

12. There is no risk to the council in adopting this approach to reviews.

Recommendations

13. Members are asked to adopt the yellow/red card approach when conducting reviews and where appropriate attach a condition requiring premises to display a notice on their premises detailing the outcome of the review.

Reason : To assist with the effective implementation of the Licensing Act 2003 in the city.

Author:
Richard Haswell
Head of Licensing and Safety

Chief Officer Responsible for the report:
Andy Hudson
**Assistant Director of Neighbourhoods and
Community Safety**

**Neighbourhoods and
Community Safety**

Report Approved Date 9/10/09

Tel No.01904 551515

Specialist Implications Officer
Legal - Martin Blythe
Tel No. 01904 551044

Wards Affected: All



For further information please contact the author of the report.

Background Papers:

Criminal Justice and Police Act 2001

Annexes:

Annex 1 Letter to local authorities from Gerry Sutcliffe MP, Minister for Sport

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Department for Culture, Media and Sport
Gerry Sutcliffe MP
Minister for Sport

2-4 Cockspur Street
London SW1Y 5DH
www.culture.gov.uk

Tel 020 7211 6200
Fax 020 7211 6249

CMS 124212

Chief Executive

«Account»

«Address_Name»

«Line_1»

«Line_2»

«Line_3»

«City»

«Postcode»

2 September 2009

Dear Chief Executive

I wrote in September last year to ask Authorities to consider adopting a 'Yellow and Red' card approach to licensing reviews. I am writing again to see what use has been made of this approach and to encourage those who have not done so, to think about how the licensing review powers under the Licensing Act 2003 (the 2003 Act) can best be used to tackle problem premises.

I explained then that the evaluation of the impact of the 2003 Act found that the extensive powers under the Act were not always being used. In particular, in some areas, there was a reluctance among responsible authorities to review licences and seek revocations without very strong evidence.

Since then, we have worked hard at regional seminars to encourage the police and trading standards officers to be more pro-active in seeking early reviews of premises causing problems in communities. Where reviews have been sought, the yellow and red card approach represents a tough response by licensing committees where it is found that the premises are failing to promote one or more of the four statutory licensing objectives. At the same time, it provides an opportunity to reform. A yellow card involves the imposition of tough new conditions that are appropriate to the problems at issue (for example, sales of alcohol to children) together with the warning that if a further review is necessary and matters have not improved, the premises licence would be revoked.

It is important that any "yellow card" should be highly visible in the community and send a clear message to alcohol retailers, and the public, that action will be taken against those who act contrary to the licensing objectives and the law. It can make an important contribution to the community's confidence in their licensing committees.



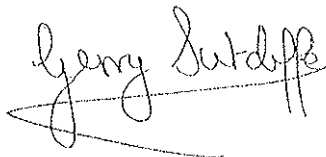
While the approach does not necessarily mean the physical issue of 'cards', I believe it is worth considering on first review, the imposition of a licence condition requiring the premises to display a visible notice at the premises detailing the outcome of that review and the warning it has been given. This visibility not only puts local people on alert to look out for breaches of conditions, but would help discourage under 18s from attempting to purchase alcohol at premises being closely monitored for improvement.

I am writing to you not only because of your authority's responsibilities for licensing, but also for the responsible authority functions of your environmental health, public safety, planning and child protection teams which all have a role to play in upholding the licensing objectives and may find the yellow and red card approach helpful. I am including for ease of reference the guidance which I enclosed last year and would be grateful if you could disseminate this information to relevant officers in your authority. It would be very helpful if you could also feed back your experience of using this, or indeed similar approach and how useful they have been.

This approach aims to help licensing authorities to use their powers in a robust but proportionate manner. We recently heard from a police force who said that they found this approach useful in reviews - "to ensure that all partners and the licensing panel understand the gravity of underage selling and why we are taking such a robust stance at a first offence stage."

My Department is also writing to the Association of Chief Police Officers (ACPO) and to the Chief Executive of the Trading Standards Institute to encourage the use of the red and yellow card approach by those responsible authorities.

Yours

A handwritten signature in cursive script that reads "Gerry Sutcliffe". The signature is written in black ink and includes a long horizontal flourish at the bottom.

GERRY SUTCLIFFE



“PROBLEM PREMISES ON PROBATION” – RED AND YELLOW CARDS : HOW IT WOULD WORK

The problem

1. In many cases, revocation of a premises licences effectively kills any business which is focused on retailing alcohol. This means that the not only the business owner suffers, but most people working there will lose their livelihoods. Many of these workers will be entirely innocent of any wrong-doing. There is also an impact on those who rely indirectly on income from the premises - such as local food suppliers or cleaning contractors, and the closure of a premises can deprive some communities of their local shop or restrict local consumer choice. Enforcement agencies that apply for reviews and local councillors sitting on licensing committees are well aware of this potential impact and it can lead to a reluctance to use the powers in the Act to revoke the licence instantly for any failure to promote the licensing objectives. This risks patchy enforcement and uneven solutions to alcohol-related problems around the country.

2. In addition, in many cases, enforcement agencies will prefer to negotiate additional voluntary conditions with problem premises against the threat of review as an immediate, pragmatic and less bureaucratic solution. While this may be a reasonable approach in many cases, there is a risk that some premises are not being dealt with as firmly as necessary, particularly given the level of test purchase failures. Nor are voluntary agreements particularly visible, lessening the deterrent effect on other premises.

3. Government wishes to support the enforcement agencies and licensing authorities by providing clear guidance on a “yellow card / red card” system, which would ensure a firm response to problems, but which give premises an opportunity to reform. The intention is that such a system would be highly visible and send a clear message to alcohol retailers, and the public, that action will be taken against those who act contrary to the licensing objectives and the law.

4. The proposed interventions below would not prevent the giving of an instant red card in an appropriately serious case. It should be realised that a “test purchase”

failure often masks multiple offences that have gone undetected.

Supporting enforcement agencies

5. The Government will encourage enforcement agencies – mainly the police, trading standards officers and environmental health officers – to seek more reviews in the knowledge of the yellow card/red card system described below. This will mean not giving informal warnings. It will mean that on identifying problem premises, the licensing authority will be engaged faster than it might have been in the past.

6. Enforcement agencies would be encouraged to seek reviews when local intelligence suggests that individual premises are selling to children or causing other crime problems or causing noise nuisance.

7. Under the law, the licensing authority must then hold a hearing so long as the application relates to one of the four licensing objectives and is made by a responsible authority or by an interested party like a local resident or another local business.

First intervention

8. Responsible authorities will be encouraged to propose a package of tough new conditions to be added to the existing conditions which are designed to combat the identified problem. The kinds of conditions that we have in mind are set out in Annex A. These would not be appropriate for every premises and need to be tailored to the nature of the problem and the type of premises. Such action should be supplemented where appropriate by:

- Removal of the designated premises supervisor and his/her replacement (the manager is removed);
- Suspension of the licence for between 1 day and 3 months according to the circumstances.
- Restriction on trading hours – cutting hours of trading in alcohol.
- Clear warning that a further appearance will give rise to a presumption of revocation.

9. If appropriate following review, the licensing authority should consider these packages of conditions and actions to challenge problem premises more aggressively.

10. For example, requiring a major supermarket to make all alcohol sales through a single till manned by a person aged 25 years or older in order to tackle sales to underage. Over a year, this would potentially cost such a supermarket £millions. It would also make them reflect on their levels of supervision at other stores.

11. In addition, enforcement agencies should make the premises in question a priority for test purchases and more regular inspections.

12. The aim would be to put the premises on probation. Effectively, they are given a yellow card. They are put on notice that the next offence or breach would mean an automatic second intervention – a red card.

Second intervention

13. In the absence of improvement, enforcement agencies should seek another review. The licensing authority again must grant a hearing.

14. If satisfied on the issue of the lack of improvement, the licensing authority should look to **revoke the licence**. The action should be publicised in the area as an example to other retailers.

Implementation

15. Requires:

- Development with the Home Office of a toolkit and guidance for police, trading standards and ethos;
- Initial letters to Leaders of local authorities and Chief Executives;
- Ultimately, stronger statutory Guidance to be laid in Parliament for licensing authorities themselves.

16. Central Government cannot tell licensing authorities what to do. The review powers are devolved to them. Similarly, central Government cannot direct enforcement agencies how to enforce the law. It would remain their judgement when and how to act.

ANNEX A

POSSIBLE TOUGH CONDITIONS TO BE ASSEMBLED INTO PACKAGES

n.b. These would not be appropriate for every premises and need to be tailored to the nature of the problem and the type of premises.

GREATER CONTROL OVER SALE

1. Designated checkout(s) for alcohol sales (supermarket). Impact on protection of children from harm, but also impact on sales and goodwill (probable loss of trade to competitors).
2. Personal licence holder/DPS to be on site at all times during sales of alcohol. Impact on protection of children from harm and new costs if additional staff have to qualify as personal licence holder.
3. Personal licence holder/DPS to supervise and authorise every individual sale of alcohol. Impact on protection of children from harm and new costs if additional staff have to qualify as personal licence holder.
4. SIA registered security staff to be present at points of sales to support staff refusing sales to u-18s and drunks.
5. Alcohol sales only to be made only by person aged not less than 25 years. Impact on protection of children from harm, but also impact on sales and goodwill (probable loss of trade to competitors).
6. CCTV installed at all points of sale and recorded. Recordings can be examined by a constable or trading standards officer to determine sales to minors or drunks

TRAINING

7. All staff to read and sign a declaration that they understand the law every time they start a shift.
8. Train all staff engaged in selling alcohol in alcohol awareness (not just personal licence holders). All new staff to be trained within two weeks of commencing employment. Evidence of training to be retained in writing and to be available for inspection by any authorised person and training standards officers. Impact on all licensing objectives.

ALCOHOL SALE BANNED AT CERTAIN HOURS

9. No alcohol sales Mon – Fri between 4pm and 8.30pm. Impact on protection of

children from harm or targeted hours reflecting times when local intelligence indicates under 18s may be purchasing alcohol.

10. No alcohol sales --- Friday to Sunday. Impact on all four licensing objectives.

ALCOHOL DISPLAYS

11. No displays of alcohol or advertising of alcohol promotions that can be seen from outside the premises.

12. No alcohol stocks promoted alongside goods likely to appeal to children (eg. confectionary, toys).

CUTTING DOWN ON SHOPLIFTING

13. SIA registered security staff to be present at alcohol aisles during opening times to prevent attempted under age sales or theft.

14. Location of alcohol stocks/displays not to be sited near the entrance/exit to deter shoplifting.

15. No direct public access to alcohol products – like tobacco, alcohol to be kept behind a dedicated kiosk.

NAMING AND SHAMING

16. Display an external sign/yellow card to state which of the licensing act objectives they have breached and what action has been taken against them.

OTHERS

17. Maintain a log of all under attempted purchases from those who appear to be under 18 or drunk.

18. Children aged under [18 years] not to be present or (not more than one child at any one time) on premises (other than children living on the premises or of the people working on the premises); or only children under 18 accompanied by an adult to be permitted on the premises during retailing hours. Impact on protection of children from harm.

19. Products to be labelled (a label stuck to the bottle or can) to show the details of the shop from which it was bought. Purpose would be to provide evidence of unlawful sales if product found commonly in possession of persons under 18.

20 Designated single items --- beer, alcopops and cider ---- not to be sold to any person. Impact on protection of children from harm. Purpose would be to reduce sales to children and drunks. Alternative would be to prescribe sales of beer, alcopops and cider in quantities of less than four.

21. CCTV installed, monitored and 24 hour recordings kept for a week and made available to constables and persons authorised under the 2003 Act to help identify attempted proxy purchasing.



Licensing and Gambling Acts Committee20th November 2009

Report of the Director of Neighbourhood Services

REGULATION OF LAP DANCING CLUBS**Summary**

1. This report advises members of the introduction of the Policing and Crime Bill which is currently being scrutinised by Parliament. It introduces a new category of sex establishment called 'sex encounter venue' that will allow local authorities to regulate lap dancing clubs and similar venues. It also seeks members views on the transitional procedure and time scales on the proposals set out in the consultation document.

Background

2. The increase in the number of lap dancing clubs in recent years has become an issue of concern for many local communities across England and Wales. York was no exception, a fact which was highlighted in a report to the Licensing Act 2003 Committee in October 2006 (Operational Implications of the Licensing Act 2003) with the establishment of two such clubs in Micklegate and a number of enquiries.
3. In June 2008 the Department for the Culture, Media and Sport, wrote to the chief executives of local authorities to clarify how they viewed the powers available to them under the 2003 Act and to seek their views on whether these, and other controls, were sufficient to address the concerns of local people and businesses. The majority of those who responded, including this authority, felt that additional legislation should be introduced to provide controls that are specific to lap dancing clubs and similar premises. This approach was also supported by a wide range of stakeholders including the Local Government Association, the National Organisation of Residents' Associations and the campaign groups Object and the Fawcett Society.
4. As a result of the consultation and support the Government announced on the 2nd December 2008 that they would introduce legislation to reclassify lap dancing clubs and other similar venues as 'sex establishments' under Schedule 3 of the Local Government (Miscellaneous Provisions) Act 1982. These provisions were included in the Policing and Crime Bill, which was introduced in Parliament on 19th December 2008.
5. Clause 26 of the Policing and Crime Bill introduces a new category of sex

establishment under Schedule 3 to the 1982 Act called a 'sex encounter venue'. This new category covers venues that provide 'relevant entertainment'. Relevant entertainment is defined as any live performance or display of nudity which is of such a nature that, ignoring financial gain, it must be reasonably assumed to be provided solely or principally for the purpose of sexually stimulating any member of the audience. Such venues will require a sex establishment licence, however, there is an exemption for premises which provide such entertainment infrequently and, even if premises do qualify as a sex encounter venue, the local authority still has the discretion to waive the requirement for a licence.

6. In summary Schedule 3 to the 1982 Act will, in particular:
 - Allow local authorities to adopt the legislation.
 - Allow local people to oppose an application for a sex establishment licence if they have legitimate concerns that a lap dancing club would be inappropriate given the character of an area because, for example, the area was primarily a residential area.
 - Require licences to be renewed at least yearly, at which point local people will have the opportunity to raise objections with the local authority.
 - Allow a local authority to reject a licence application if they believe that to grant a licence for a lap dancing club would be inappropriate given the character of a particular area.
 - Allow a local authority to set a limit on the number of sex encounter venues that they think appropriate for a particular area.
 - Allow a local authority to impose a wider range of conditions on the licences of lap dancing clubs than they are currently able to under the 2003 Act.

Proposals for Regulations

7. To implement the measures introduced by Clause 26 of the Policing and Crime Bill there will need to be a transitional period to allow existing lap dancing clubs and other venues falling within the definition of a sex encounter venue time to comply with the new legislation. The transitional period is the time that existing operators will be given to apply with the new legislation. A copy of the transitional period can be found at Annex 1 in the Home Office consultation document.

Existing Lap Dancing Clubs

8. Existing clubs would be required to apply for a new sex establishment licence in the manner set out in Schedule 3 to the 1982 Act, subject to the transitional arrangements.

Timescales – adopt legislation

9. The consultation on the transitional period closes on the 14th December 2009, then, subject to the Policing and Crime Bill receiving Royal Assent, the provisions on lap dancing are expected to be commenced in April 2010. However, the provisions will only take effect in any given area once the relevant local authority has passed a resolution to adopt them and appoints a day for the provisions to come in force in that area. Officers response to the consultation are set out at Annex 2.

Consultation

10. On 30th September 2009 the Head of Licensing wrote to the owners of the city's two lap dancing venues seeking their views on the consultation and the proposed transitional arrangements. (A copy of that letter can be found at Annex 3). To date no responses have been received.

Options

11. Option 1: To approve the officers response to the Home Office consultation.
Option 2: To amend the officers response the Home Office consultation.

Analysis

12. From a licensing authority perspective it is vital to have legislation specifically designed to effectively regulate sex encounter establishments, such as lap dancing clubs, that is not effectively addressed through either the Local Government (Miscellaneous Provisions) Act 1982 or the Licensing Act 2003. The statutory amendments would provide wider powers to control the proliferation of lap dancing establishments. These reforms will give local authorities the power to respond more effectively to the views of local people, who have become increasingly concerned about the number of lap dancing established in their communities. Furthermore, local authorities will have the power to set a cap on the number of lap dancing clubs that they think is appropriate for a particular area and impose a wider range of conditions on the licences.

Corporate Strategy

13. The effective exercise of the licensing legislation and guidance notes ensures the licensing function will impact on the council's priority to reduce the actual and perceived impact of violent, aggressive and nuisance behaviour on people in York.

Implications

14. **Financial:** None.

Human Resources (HR): None.

Equalities: None.

Legal: In carrying out its licensing functions, the Licensing Authority must have regard to all legislation.

Crime and Disorder: The Committee is reminded of their duty under the Crime and Disorder Act 1998 to consider the crime and disorder implications of their decisions and the authorities responsibility to co-operate in the reduction of crime and disorder in the city.

Information Technology (IT): None.

Property: None.

Other: None.

Risk Management

15. In compliance with the Council's risk management strategy any decisions made which are unreasonable or unlawful could be open to legal challenge resulting in loss of image, reputation and potential financial penalty.

Recommendation

16. Members are recommended to instruct officers to respond to the Home Office consultation as set out at option 1.

Reason: To reflect the view of City of York in respect to the consultation paper.

Contact Details

Author:
John Lacy
Licensing Manager
Neighbourhood Services
Tel: 01904 551593

Chief Officer Responsible for the report:
Andy Hudson
Assistant Director
(Neighbourhood Services)

Report Approved Date

Specialist Implication Officer: Martin Blythe
Tel 01904 551044

Wards Affected:

All

For further information please contact the author of the report

Background Papers

The Licensing Act 2003.

The Licensing Act 2003 Committee report dated 9th October 2006 – Operational implications of the Licensing Act 2003

Annexes

Annex 1: Home Office publication – Regulation of Lap Dancing Clubs – Consultation on Transitional Arrangements.

Annex 2: Officers response to Home Office consultation – Lap Dancing Clubs.

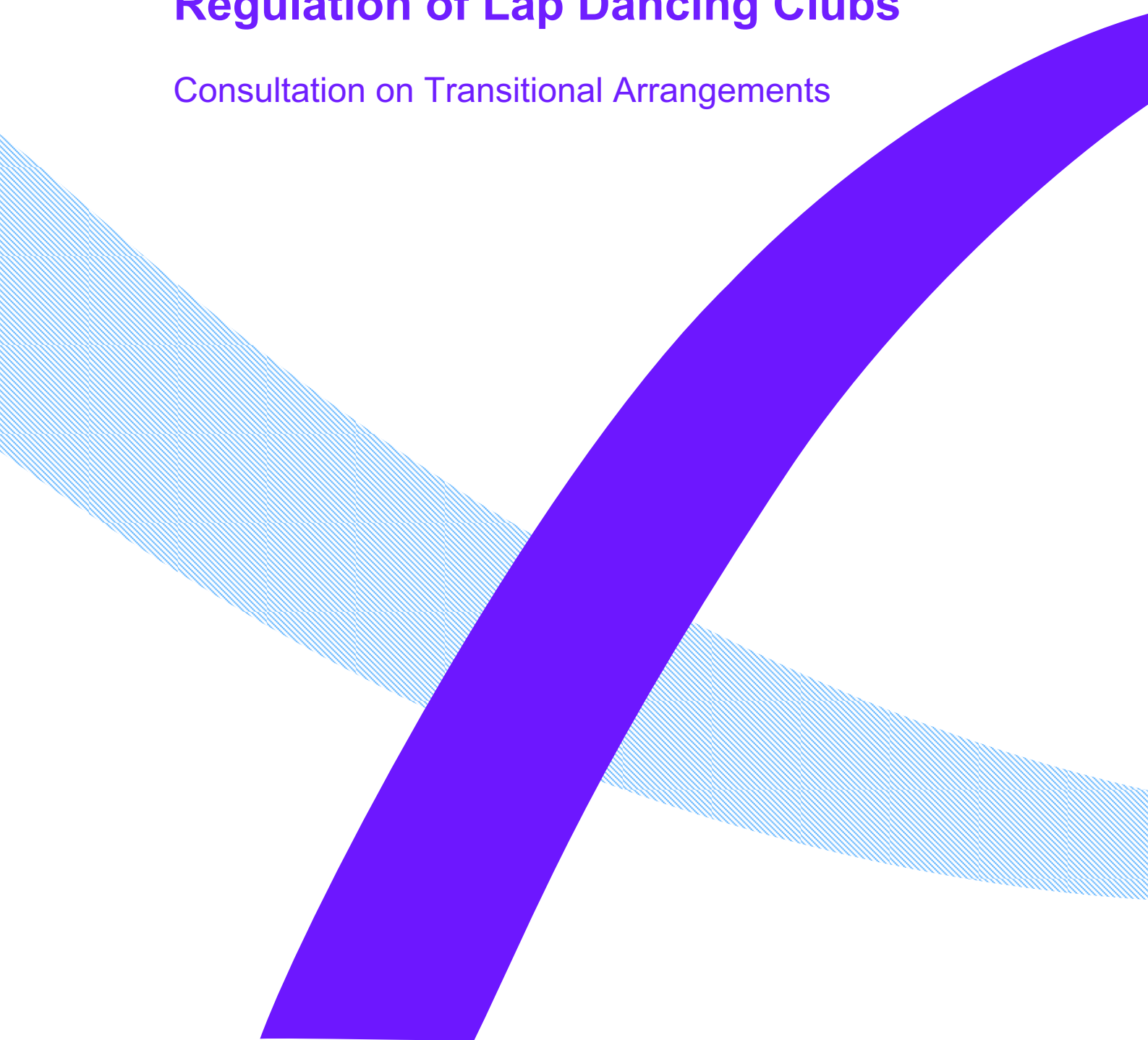
Annex 3: Letter From Head of Licensing to Lap Dancing Club owners.

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Regulation of Lap Dancing Clubs

Consultation on Transitional Arrangements



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Ministerial Forward



In September 2008, the previous Home Secretary announced her intention to bring forward important reforms to empower communities in England and Wales by giving them a greater say about the location and number of lap dancing clubs and similar establishments in their local areas.

To achieve this we have introduced measures in the Policing and Crime Bill to allow local authorities to regulate lap dancing clubs as sex establishments under Schedule 3 to the Local Government (Miscellaneous Provisions) Act 1982.

These important reforms will give local authorities the powers they have called for to allow them to respond more effectively to the views of local people, who have become increasingly concerned about the number of lap dancing clubs being established in their communities.

The measures are still being scrutinised by Parliament, but as we prepare for the Bill passing into law, we need to consider what form the transitional arrangements will take to ensure we move smoothly from the current regime to the new one. These arrangements will be important as they will help ensure that local authorities, businesses, and, of course, the communities who will be affected by the new reforms will have time to prepare and adjust. We recognise the impact on business but have always been clear that this needs to be balanced against ensuring local people have sufficient voice in their communities. We hope that the proposals set out in this consultation document strike this balance and will help those that need to take appropriate steps to adapt to the new licensing regime.

This, therefore, is an important consultation. It gives interested parties an opportunity to tell us how they will be affected by our proposals and, if necessary, allow us to take into account their concerns before bringing forward the transitional arrangements in secondary legislation.

We hope you will take the opportunity to give us your views.

ALAN CAMPBELL

A handwritten signature in cursive script that reads "Alan Campbell".

MINISTER FOR CRIME REDUCTION

Consultation Summary

Scope of the consultation

Topic of this consultation:	Proposals for transitional arrangements for the provisions in the Policing and Crime Bill relating to the regulation of lap dancing clubs and similar venues.
Scope of this consultation:	This consultation seeks views on proposals relating to transitional arrangements. This is not a consultation on the decision to reclassify lap dancing clubs as sex establishments.
Geographical scope:	England and Wales
Impact assessment (IA):	An updated impact assessment is included with this consultation.

Basic Information

To:	<ul style="list-style-type: none"> • Local Authorities • Existing operators • New operators • Licensing practitioners • Local residents • Campaign Groups • Local Businesses • Police
Duration:	21 th September to 14 th December
Enquiries and Responses	<p>Thomas Cottam 4th Floor, Peel Building 2 Marsham Street London SW1P 4DF</p> <p>SEVconsultation@homeoffice.gsi.gov.uk</p>
Additional ways to become involved:	As this consultation concerns a relatively small number of venues and deals with issues that are technical in nature, it will primarily be a written exercise.
After the consultation:	A summary of responses will be placed on the Home Office website.

Background

<p>Getting to this stage:</p>	<p>In Summer 2008 the Department of Culture, Media and Sport (DCMS) held a consultation with local authorities regarding the regulation of lap dancing clubs. A majority of respondents felt that additional powers specific to lap dancing clubs were necessary.</p> <p>As part of the Policing and Crime Bill introduced in Parliament on the 19 December 2008, the Government included provisions to reclassify lap dancing clubs and similar establishment as sex establishments under Schedule 3 to the Local Government (Miscellaneous Provisions) Act 1982.</p>
<p>Previous engagement:</p>	<p>In addition to the DCMS consultation with local authorities, the Home Office sent a letter in September 2008 to selected stakeholders seeking views on the proposal to bring lap dancing clubs under the regulation of the 1982 Act. Over the last year Home Office officials also met with a number of interested groups and presented at events for licensing practitioners.</p>

Introduction

1. This paper sets out the Government's proposals for the implementation of the amendments to Schedule 3 to the Local Government (Miscellaneous Provisions) Act 1982 ('the 1982 Act') made by the Policing and Crime Bill¹.
2. It explains the background to the policy and the proposed transitional arrangements that will be set out in secondary legislation, once the Bill has received Royal Assent.
3. The proposals set out in Section Two relate to the implementation of clause 26 of the Policing and Crime Bill which extends to England and Wales only.
4. In summary the Government is proposing that:
 - Any operator – new or existing - who wishes to provide 'relevant entertainment' at the end of the transitional period will be required to apply for a sex establishment licence in the manner set out in Schedule 3 to the 1982 Act.
 - Existing operators will be allowed to continue to provide 'relevant entertainment' under their existing permission without interruption for the duration of the transitional period or until their application for a sex establishment licence has been determined, whichever is the later.
 - The transitional period will start on the date Schedule 3 to the 1982 Act comes into force in that area (the 1st appointed date). It will last for 12 months.
 - For 6 months following the 1st appointed date, applicants will be able to submit applications all of which will be considered together by the local authority.
 - Applications received after the first 6 months (the 2nd appointed date) will be considered after applications received before the 2nd appointed date have been determined
 - Licences granted for sex encounter venues will not take effect until the conclusion of the transitional period (the 3rd appointed date)
 - Where a London local authority has previously adopted the sex encounter establishment category introduced by the London Local Authorities (General Powers) Act 1986, this category will be replaced by the new sex encounter venue category upon the adoption of the provisions introduced by the Policing and Crime Bill by the local authority.

¹ <http://services.parliament.uk/bills/2008-09/policingandcrime.html>

5. We welcome your views on all the proposals and are particularly interested to hear your views on the specific questions asked throughout this consultation document. This is not a consultation on the Government's decision to reclassify lap dancing clubs and similar venues as sex establishments.
6. Please send your comments to:

Thomas Cottam
4th Floor, Peel Building
2 Marsham Street
London
SW1P 4DF

or

SEVconsultation@homeoffice.gsi.gov.uk
7. You should also contact the consultation team should you require a copy of this consultation paper in any other format, e.g. Braille, Large Font, or Audio.
8. This document is available on the Home Office website.

Section One – Background

9. This section outlines the background to the measures introduced by the Policing and Crime Bill and explains what the policy seeks to achieve.

Policy Background

10. The increase in the number of lap dancing clubs in recent years has become an issue of concern for many local communities. Estimates suggest that the number of venues has doubled since 2004 and there are now close to 300 throughout the United Kingdom.² Other estimates put the figure closer to 150.³ Most lap dancing clubs are regulated under the Licensing Act 2003 ('the 2003 Act'), under which they hold a premises licence/club premises certificate to provide 'regulated entertainment'. Under the 2003 Act, the objections of local people and businesses must be based on the four licensing objectives, namely: the prevention of crime and disorder; public safety; prevention of public nuisance and the protection of children from harm. As a result, licensing authorities cannot consider the objections of local people and businesses that are based on matters outside the scope of these four objectives, such as whether a lap dancing clubs is appropriate given the character of an area.
11. In June 2008 Gerry Sutcliffe, the Parliamentary Under Secretary of State at the Department of the Culture, Media and Sport, wrote to the chief executives of local authorities to clarify how they viewed the powers available to them under the 2003 Act and to seek their views on whether these, and other controls, were sufficient to address the concerns of local people and businesses. The majority of those who responded felt that additional legislation should be introduced to provide controls that are specific to lap dancing clubs and similar premises and suggested that Schedule 3 to the 1982 Act should be used for this purpose⁴. This approach was also supported by a wide range of stakeholders including the Local Government Association, the National Organisation of Residents Associations and the campaign groups Object and the Fawcett Society.
12. Alternative approaches that sought to make changes to the 2003 Act and utilise existing planning legislation were proposed by industry representatives who opposed the use of the 1982 Act. However, it was felt that such changes, especially those making use of planning legislation, would be overly complex and would not provide sufficient additional powers called for by many local authorities to regulate lap dancing clubs.

² *A Growing Tide*, Object, April 2008:

<http://www.object.org.uk/files/A%20Growing%20Tide%20Report%202008.pdf>

³ Figure provided by the Lap Dancing Association

⁴ http://www.culture.gov.uk/reference_library/foi_requests/5500.aspx

13. Therefore the Government announced on the 2 December 2008 that they would introduce legislation to reclassify lap dancing clubs and other similar venues as 'sex establishments' under the 1982 Act⁵. These provisions were included in the Policing and Crime Bill, which was introduced in Parliament on 19th December 2008.

The Policing and Crime Bill and the Local Government (Miscellaneous Provisions) Act 1982

14. Clause 26 of the Policing and Crime Bill introduces a new category of sex establishment under Schedule 3 to the 1982 Act called a 'sex encounter venue'. This new category covers venues that provide 'relevant entertainment'. Relevant entertainment is defined as any live performance or display of nudity "*which is of such a nature that, ignoring financial gain, it must be reasonably assumed to be provided solely or principally for the purpose of sexually stimulating any member of the audience (whether by verbal or other means)*". Such venues will require a sex establishment licence. However, there is an exemption for premises which provide such entertainment infrequently (see new paragraph 2A(3)(b) to be inserted into Schedule 3 to the 1982 Act) and, even if premises do qualify as a sex encounter venue, the local authority still has the discretion to waive the requirement for a licence.

15. In summary Schedule 3 to the 1982 Act will, in particular:

- allow local people to oppose an application for a sex establishment licence if they have legitimate concerns that a lap dancing club would be inappropriate given the character of an area because for example, if the area was primarily a residential area.
- require licences to be renewed at least yearly, at which point local people will have the opportunity to raise objections with their local authority.
- allow a local authority to reject a licence application if they believe that to grant a licence for a lap dancing club would be inappropriate given the character of a particular area.
- allow a local authority to set a limit on the number of sex encounter venues that they think is appropriate for a particular area.
- allow a local authority to impose a wider range of conditions on the licences of lap dancing clubs than they are currently able to under the 2003 Act.

⁵ Announcement made in *Fair Rules for Strong Communities*, December 2008:
<http://www.number10.gov.uk/wp-content/uploads/fair-rules-for-strong-communities.pdf>

Section Two – Proposals for Regulations

16. To implement the measures introduced by Clause 26 of the Policing and Crime Bill there will need to be a transitional period to allow existing lap dancing clubs and other venues falling within the definition of a sex encounter venue time to comply with the new legislation. The transitional arrangements and the duration of the transitional period will be specified in secondary legislation made by the Secretary of State in England and Welsh Ministers in Wales.
17. This section sets out the proposals for these transitional arrangements and forms the main part of this consultation. We would welcome comments on this section and in particular your comments on those areas where specific questions have been raised.

How will the 1982 Act apply to existing operators?

18. Representations have been made to the Government by industry representatives to exclude existing operators, who have explicit permission in their existing licences to provide 'relevant entertainment', from the new regime or at least to give them preferential treatment when their sex establishment licences fall to be determined for the first time. Such provisions, often referred to as 'grandfather rights', were made when the 2003 Act and the Gambling Act 2005 were introduced.
19. After careful consideration, it is proposed that similar provisions should not be made for the purposes of the Policing and Crime Bill and that existing lap dancing clubs who wish to continue to provide 'relevant entertainment' should be required to apply for a new sex establishment licence in the manner set out in Schedule 3 to the 1982 Act, subject to the transitional arrangements set out below.
20. Although the local authority will need to consider any rights an existing licence holder may have under Article 1, Protocol 1 of the European Convention on Human Rights when deciding an application, the Government is not proposing to give existing licence holders preferential treatment or indeed, exclude them from the provisions on the face of the Bill.
21. It is acknowledged that as a result of this approach, some existing businesses may have to stop providing 'relevant entertainment' or, in a small number of cases, close. While we understand the concerns that have been expressed by the industry, we believe that to automatically grant existing lap dancing clubs a sex establishment licence would be contrary to the intent behind these reforms, which is to give local people greater say over the number and location of lap dancing clubs in their area.

22. We are aware that in recent years there have been instances where lap dancing clubs have been granted licences despite significant local opposition. In many of these cases licensing authorities were unable to consider local opposition that fell outside the scope of the four licensing objectives.⁶ In some cases, the result has been that lap dancing clubs have opened, and continue to operate, against the wishes of local people. For this reason, the Government believes that local communities should be given the opportunity to have their say over how or whether existing venues operate in the future.
23. We are mindful of the UK's obligations under EU law. Paragraphs 28 and 29 to Schedule 3 of the 1982 Act set out the provisions for dealing with existing sex shops and sex cinemas when these provisions were first commenced. Paragraph 29(4) provided that when considering several applications for sex establishment licences, local authorities would have to give preference to existing operators. A similar approach was considered with regards to sex encounter venues. However, it was concluded that such provisions would now be unlikely to survive a legal challenge in respect of Article 43 EC or the Services Directive.
- 24. What are your views on the proposal that the new regime should apply to existing operators and that the transitional provisions should not provide for them to be given preferential treatment when their application for a sex establishment licence comes to be determined?**

Transitional Period

25. The transitional period is the time that existing operators will be given to comply with the new legislation.
26. The transitional period will commence on the date the provisions in the Policing and Crime Bill come into force in the particular local authority area ('the 1st appointed date'). The Secretary of State then intends to specify a date 6 months after the 1st appointed date which will be known as the '2nd appointed date'. The Government is proposing that between the 1st and 2nd appointed dates applicants, who can be either existing operators or new applicants, will be able to submit applications to be considered by the local authority. At the end of this period, local authorities will consider all applications received during this period and will not grant any application until they have done so.
27. This approach would ensure that where local authorities have decided to set a limit on the number of premises that they consider appropriate for a particular locality, all applications submitted during this period will be considered before the local authority decides which applicants should be granted a licence. Applications received after the 2nd appointed date will be considered individually by local authorities.

⁶*A Growing Tide*, Object, December 2008:
<http://www.object.org.uk/files/A%20Growing%20Tide%20Update%20Dec%202008.pdf>

28. On the 3rd appointed date, which it is proposed will be 6 months after the 2nd appointed date all venues in that local authority area, unless awaiting the determination of an outstanding application, will have to be compliant with the new legislation.
29. The transitional period is the period between the 1st and 3rd appointed dates and is therefore currently intended to last for 12 months.
30. Under these proposals existing venues would be able to continue to provide 'relevant entertainment' under their existing premises licence or club certificate until the end of the transitional period, or until any application for a sex establishment licence submitted during the transitional period has been determined, whichever is the later. This will apply to all existing operators, irrespective of whether or not an application for sex establishment licence is submitted or whether or not such an application, if submitted, is granted.
- 31. What are your views on the proposed time periods between the 1st, 2nd and 3rd appointed dates and do you believe that a transitional period of 12 months in total is appropriate?**
32. For the purposes of these transitional arrangements, it is proposed that an 'existing operator' is defined as a person operating any premises that on the 1st appointed day is authorised under an existing premises licence or club premises certificate, either explicitly or implicitly to provide entertainment that would be defined as 'relevant entertainment' under Clause 26 of the Policing and Crime Bill. Where licence holders are uncertain as to whether or not they are able to provide 'relevant entertainment' under their existing premises licence or club certificate they should contact the relevant local authority for guidance.
- 33. Do you agree with the proposed approach for identifying existing operators?**
34. Annex 1 shows how the transitional arrangements for existing operators would work under these proposals.

New Operators

35. Where a premises without authorisation under an existing premises licence or club premises certificate, wishes to provide 'relevant entertainment' after the 1st appointed date, it is proposed that they will be required to apply for a sex establishment licence following the process set out in Schedule 3 to the 1982 Act, as amended by the Policing and Crime Bill. Under these proposals new operators will not be able to provide 'relevant entertainment' unless and until a sex establishment licence has been granted. Under these proposals new applications received before the 2nd appointed day would be considered at the same time as those applications from existing operators that are received by this date.

Outstanding Applications

36. It is proposed that premises which have made an application before the 1st appointed date under the 2003 Act for a premises licence or club premises certificate authorising the provision of relevant entertainment is treated as a new operator for the purpose of these arrangements where the application remains outstanding after the 1st appointed date. They will therefore have to submit an application for a sex establishment licence under Schedule 3 to the 1982 Act.

Existing Conditions

37. Where existing operators have sought explicit permission, when applying for a premises licence or club premises certificate under the 2003 Act to provide 'relevant entertainment' as defined in clause 26 of the Policing and Crime Bill, it is likely that they will be subject to licence conditions that apply directly to the provision of that entertainment. For example, where a lap dancing club has explicit permission to provide nude entertainment, they may have licence conditions that prohibit physical contact between performers and customers.
38. It is proposed that where such licence conditions are present on either an existing premises licence or clubs premises certificate, these conditions will be read as though they have been deleted from the premises licence or club premises certificate from the 3rd appointed day onwards. Where existing lap dancing clubs and similar venues are granted sex establishment licences for the provision of relevant entertainment, any conditions relating to the provision of that entertainment will be regulated by that licence alone.
- 39. What are your views on the proposal for dealing with conditions on existing premises licences/clubs premises certificates that relate specifically to the provision 'relevant entertainment'?**

What does this mean for local people?

40. When an application is made to the local authority for a sex establishment licence, whether during the transitional period or after it, local people will have the opportunity to make representations to the local authority. It is important to note that these representations will be expected to address the provision of relevant entertainment and not activities that will continue to be authorised under the 2003 Act, such as the provision of alcohol and other forms of regulated entertainment.

Sex Encounter Establishments

41. The 1982 Act contains a category of sex establishment called a 'sex encounter establishment', which was introduced by the Greater London Council (General Powers) Act 1986. This category only applies in London where the relevant local authority has adopted the provisions. It only covers those venues that offer sexually explicit entertainment (such as peep shows) but are not licensed under the 2003 Act.
42. The Government is proposing that the new category of sex encounter venue will replace the existing sex encounter establishment category upon a London Borough's adoption of the new provisions. If a London Borough, that has previously adopted Schedule 3 to the 1982 Act as amended by the Greater London Council (General Powers) Act 1986, decides not to adopt Schedule 3 to the 1982 Act as amended by the Policing and Crime Bill, the existing sex encounter establishment regime will remain in force.
43. Where a London Borough decides to adopt Schedule 3 of the 1982 Act as amended by the Policing and Crime Bill, secondary legislation will set out that where a sex encounter establishment licence has been previously granted it will be treated as though it were granted under the new sex encounter venue regime, retaining any conditions previously granted.
- 44. What are your views on the proposals relating to the existing sex encounter establishment category? Also are you aware of any type of venue that currently requires a licence for a sex encounter establishment that would not require a licence for a sex encounter venue as defined in Clause 26 of the Policing and Crime Bill?**

Hostess Bars

45. Schedule 3 of the 1982 Act also includes a category of sex establishment called 'hostess bar', which was introduced by the London Local Authorities Act 2007 and therefore does not apply outside of London. We do not intend to make any changes to the hostess bar provisions.

Section 2 of the London Local Authorities Act 2004

46. Section 22 of the London Local Authorities Act 2004 (as amended by section 72 of the London Local Authorities Act 2007), applies only in London and appears to be of uncertain extent. On one interpretation it could be seen as prohibiting anyone from soliciting people to attend a sex establishment if the impression is given that the activities are, in fact, licensed under the 2003 Act. Another interpretation is that it creates that offence and an offence of soliciting people to attend a sex establishment.

47. Do you believe that section 22 of the London Local Authorities Act 2004 should be amended in light of the amendments being made in the Policing and Crime Bill?

Timescales – Next Steps

48. The consultation closes on the 14th December 2009. Once responses have been reviewed a summary of the responses will be placed on the Home Office website. Subject to the Policing and Crime Bill receiving Royal Assent, the provisions on lap dancing are expected to be commenced in April 2010. However, the provisions will only take effect in any given area once the relevant local authority has passed a resolution to adopt them and appoints a day for the provisions to come in force in that area.

49. Prior to the commencement of the provisions, the Home Office will write to every local authority in England and Wales to ensure that they are aware of when the provisions come into force and what it will mean for them. The Home Office will also issue a press release and information will be made available in advance on the Home Office website (www.homeoffice.gov.uk) about the commencement date.

50. What are your views on the proposal to commence these provisions in April 2010?

Impact Assessment

51. As part of this consultation we have revised the Impact Assessment (IA) that was published when the Policing and Crime Bill was introduced in Parliament on the 18 December 2008.

52. The revised IA attempts to estimate the potential cost to industry of these proposals. Due to the lack of information relating specifically to the sector this legislation will impact upon, the estimates in the IA should only be seen as indicative.

53. Do you agree that the suggested costs and benefits set out in the Impact Assessment are a reasonable estimate of the potential costs and benefits? If not, can you provide evidence of what any likely costs and benefits should be?

Consultation

Confidentiality & Disclaimer

54. The information you send us may be passed to colleagues within the Home Office, the Government or related agencies.
55. Information provided in response to this consultation, including personal information, may be subject to publication or disclosure in accordance with the access to information regimes (these are primarily the Freedom of Information Act 2000 [FOIA], the Data Protection Act 1998 [DPA] and the Environmental Information Regulations 2004).
56. If you want other information that you provide to be treated as confidential, please be aware that, under the FOIA, there is a statutory Code of Practice with which public authorities must comply and which deals, amongst other things, with obligations of confidence.
57. In view of this it would be helpful if you could explain to us why you regard the information you have provided as confidential. If we receive a request for disclosure of the information we will take full account of your explanation, but we cannot give an assurance that confidentiality can be maintained in all circumstances. An automatic confidentiality disclaimer generated by your IT system will not, of itself, be regarded as binding on the Department.
58. The Department will process your personal data in accordance with the DPA and in the majority of circumstances this will mean that your personal data will not be disclosed to third parties.

Complaints

59. If you have a complaint or comment about the Home Office's approach to consultation, you should contact the Home Office Consultation Co-ordinator, Nigel Lawrence. Please DO NOT send your response to this consultation to Nigel Lawrence. The Co-ordinator works to promote best practice standards set by the Government's Code of Practice, advises policy teams on how to conduct consultations and investigates complaints made against the Home Office. He does not process your response to this consultation.
60. The Co-ordinator can be emailed at:

Nigel.Lawrence@homeoffice.gsi.gov.uk or alternatively write to him at:

Nigel Lawrence, Consultation Co-ordinator
Home Office
Performance and Delivery Unit
3rd Floor Seacole
2 Marsham Street
London
SW1P 4DF

Government's Code of Practice on Consultation

The Consultation follows the Government's Code of Practice on Consultation – the criteria for which are set out below:

Criterion 1 – When to consult – Formal consultation should take place at a stage when there is scope to influence the policy outcome.

Criterion 2 – Duration of consultation exercises – Consultations should normally last for at least 12 weeks with consideration given to longer timescales where feasible and sensible.

Criterion 3 – Clarity of scope and impact – Consultation documents should be clear about the consultation process, what is being proposed, the scope to influence and the expected costs and benefits of the proposals.

Criterion 4 – Accessibility of consultation exercises – Consultation exercises should be designed to be accessible to, and clearly targeted at, those people the exercise is intended to reach.

Criterion 5 – The burden of consultation – Keeping the burden of consultation to a minimum is essential if consultations are to be effective and if consultees' buy-in to the process is to be obtained.

Criterion 6 – Responsiveness of consultation exercises – Consultation responses should be analysed carefully and clear feedback should be provided to participants following the consultation.

Criterion 7 – Capacity to consult – Officials running consultations should seek guidance in how to run an effective consultation exercise and share what they have learned from the experience.

The full Code of Practice on Consultation is available at:

<http://www.berr.gov.uk/whatwedo/bre/consultation-guidance/page44420.html>

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Responses to Home Office Consultation.
Transitional Arrangements for Regulation of Lap Dancing Clubs

<p>24. What are your views on the proposal that the new regime should apply to existing operators and that the transitional provisions should not provide for them to be given preferential treatment when their application for a sex establishment licence comes to be determined?</p>	<p>This authority agrees with the proposals that all operators be treated equally. To create a two tier arrangement would be und fair on business, unclear to the public and operationally burdensome for regulators.</p>
<p>31. What are your views on the proposed time periods between the 1st, 2nd, and 3rd appointed dates and do you believe that a transitional period of 12 months in total is appropriate?</p>	<p>This authority agrees that the proposed timescale is reasonable for all parties.</p>
<p>33. Do you agree with the proposed approach for identifying existing operators?</p>	<p>This would be a practical approach in this Authority.</p>
<p>39. What are your views on the proposal for dealing with conditions on existing premise licences/clubs premise certificates that relate specifically to the provisions ‘relevant entertainment’?</p>	<p>Duplicating conditions under two Licensing regimes would be unsatisfactory. Attaching conditions to the primary legislation regulating this form of entertainment would be most appropriate</p>
<p>44. What are your views on the proposals relating to the existing sex encounter establishment category? Also are you aware of any type of venue that currently requires a licence for a sex encounter establishment that would not require a licence for a sex encounter venue as defined in Clause 26 of the Policing and Crime Bill</p>	<p>There are no such premises within the City of York.</p>
<p>50. What are your views on the proposal to commence these provisions in April 2010?</p>	<p>There is no obvious reason why these proposals should not commence in April 2010 as local authorities may determine the start date in their areas through the adoption of Schedule 3 of the Act.</p>
<p>53. Do you agree that the suggested costs and benefits set out in the Impact assessment are a reasonable estimate of the potential costs and benefits? If not, can you provide evidence of what any likely costs and benefits should be?</p>	<p>We have no evidence to suggest otherwise.</p>

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Ext: 1515
Ask for: Richard Haswell
Our Ref: 300909/RHH/SC
E-mail: dick.haswell@york.gov.uk

30 September 2009

Mr Hong Son Poc
Bohemia
127 Micklegate
York
YO1 6LB

Dear Mr Poc

Home Office Consultation - Lap Dancing Clubs

The Home office has recently issued a consultation document on the proposed transitional arrangements for the licensing of lap dancing clubs as sex encounter venues under The Local Government (Miscellaneous Provisions) Act 1982.

The council is to consider its response to this consultation at a meeting of the Gambling and Licensing Acts Committee on 20 November 2009. In order to feed the views of local operators into my report I invite you to forward your views on this document to me by 1 November.

You may of course wish to respond to the Home Office on your own behalf. The consultation can be found on the Home office website at www.homeoffice.gov.uk/documents/cons-sev/

Yours faithfully

R Haswell
Head of Licensing and Bereavement Services

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