

MAYOR AND CABINET		
Report Title	Draft Gambling Act Licensing Policy	
Key Decision	Yes	Item No. 11
Ward	All	
Contributors	Executive Director For Customer Services/Head of Law	
Class	Part 1	Date: November 8 2006

Draft Licensing Policy Covering Report Full Council

1 Summary

This report deals with the changes to the Gambling regime introduced by the Gambling Act 2005 ["GA"]. It includes the proposed draft Statement of Licensing Policy (appendix 1) and the Equalities Impact Assessment for this area (appendix 3). It also covers the consultation process, which has taken place, and the results received from that (appendix 2). The draft policy takes account of comments received during the consultation process and advice from Counsel upon those comments and on the policy generally. The policy must be approved by the Council by 1st January 2007 in time for the Council to begin to exercise its functions under the GA from 30th April 2007.

2 Purpose

The purpose of this report is to enable the Council to agree its Statement of Licensing Policy and therefore be in a position to fulfil its statutory duties under the Gambling Act 2005 with effect from April next year.

3 Recommendations

That the Mayor agrees to submit the draft 'Statement of Licensing Policy for Gambling' (at Appendix 1) to full Council for the following reasons:

- To consider the responses received during the consultation process summarised in Appendix 2
- To agree, in light of those responses, to adopt the revised draft Policy appearing at Appendix 1
- To approve the necessary changes to the Constitution so as to give lawful effect to the provisions of the Gambling Act 2005

4 Background

The Gambling Act 2005 gives effect to the governments proposals for the reform of the law on gambling. The Act contains a new regulatory system to govern the provision of all gambling in Great Britain, other than the National Lottery and spread betting. It received Royal Assent on 7th April 2005

The Act has introduced a unified regulator for Gambling in Great Britain, the Gambling Commission , and a new licensing regime for commercial gambling (to be conducted by the Commission or by licensing authorities, depending on the matter to be licensed). The Act removes from licensing justices, (namely the Magistrates' Court,) all responsibility for granting gaming and betting permissions, which they exercised previously. Instead, the Gambling Commission and Licensing Authorities will share between them responsibility for all matters previously regulated by the licensing justices.

On 1 October 2005, the sections of the Act that establish the Gambling Commission were brought into force. The Commission has taken over from the Gaming Board for Great Britain.

From 2007, the Commission will be responsible for granting Operating and Personal Licences for commercial gambling operators and personnel working in the industry. It will also regulate certain lottery managers and promoters. The GA sets out different types of Operating Licence that cover a full range of commercial gambling activities conducted in Great Britain. It also makes provision for the Commission to have powers of entry and inspection to regulate gambling, with safeguards for those subject to the powers

Licensing Authorities will have new powers to licence gambling premises within their area, as well as undertaking functions in relation to lower stake gambling machines and clubs and miners' welfare institutes. In England and Wales local authorities are given these responsibilities; in Scotland they are given to licensing boards. The Act also provides for a new system of Temporary Use Notices. These will authorise premises that are not licensed generally for gambling purposes to be used for certain types of gambling, for strictly limited periods.

Licensing Authorities will licence gambling premises and issue a range of permits to authorise other gambling facilities in their area. In exercising their functions generally under the GA, Licensing Authorities must have regard to the Guidance issued by the Commission with respect to their

licensees, including the power to impose conditions and to review licences; however, they will not be able to impose financial penalties.

Licensing Authorities are required to prepare, every three years, a statement of the principles (otherwise known as the Policy) which they propose to apply when exercising their functions, and they must publish this statement.

In formulating the Policy we must have regard to the GA, the Guidance issued by the Gambling Commission and the responses from those consulted on the Policy. The Policy document, once adopted, will be the guiding principle for use by officers and members when applying the new gambling regime, along with the GA, the Guidance and regulations published under it.

The Policy must be particular to the local authority and be formulated to achieve the government's three core aims of:

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

This Council has carried out a public consultation exercise on the draft Policy statement, to establish local issues of concern and to address those concerns as far as appropriate within the Policy.

Any changes made to the draft Policy as a result of representations received during the consultation period, are clearly visible within that document by being printed in bold italics.

The consultation complied with statutory requirements and included consultation with a range of statutory consultees including the Police, representatives of licensees and other businesses, residents groups other additional parties (further details appear in Appendix 2). The consultation was in the form of, newsletters, meetings and a questionnaire/ comments sheet sent to all existing licensees.

Hard copies of all written responses received during the consultation period will be made available to members.

The policy, once approved must be reviewed and a fresh consultation exercise must be conducted every three years.

5 Review of Licensing Structure

Licensing Services within Customer Services currently comprises of seven full-time and one part-time officer carrying out a wide range of licensing and registration functions under other legislation including, for example, safety of sports grounds, tattoo parlours and sex shops and the main function under the Licensing Act 2003. The Council's new functions under the Gambling Act 2005 will have to be carried out in addition to the existing 21 functions already undertaken by the same officers.

From 30th April 2007 applications will be received under the GA. It is envisaged, that there will be a need for an increase in licensing officers to deal with applications, enforcement and policy development. All existing premises (80+) currently licensed by the Magistrates Court will need to obtain licenses under the GA during the 3 month period 30th April 2007 to 31st July 2007 to enjoy the benefit of existing rights. Those newly issued and converted licences will then take effect from 1st September 2007. This will inevitably lead to resource implications for officers in Licensing, and a small increase for committee sections and legal services due to additional applications and hearings.

6. Financial Implications

In considering budgets, provisional estimates should be made for: (1) staffing and accommodation. (2) training of both members and officers in preparation for transfer of responsibility for the licensing of all premises currently holding gaming licenses and permits; (3) policy development. (4) ongoing enforcement.

The current fees for Gaming permits we issue total approximately £2127.00. Under the GA, the fees are set by central Government and may be banded according to the non-domestic rateable value. The regulations are currently in draft form and the DCMS is consulting on a fees structure. An increase of approximately 80 premises dealt with by the licensing authority will inevitably increase the volume of work for administration and enforcement / inspection purposes.

At present, we are unable to estimate the consequent income as proposed fee structures have yet to be published, however it is expected to increase.

The new Act replaces only two of the licensing functions already undertaken by the section, leaving a further 19 types of licences /registrations to administer and enforce. To maintain a satisfactory service in the delivery of the GA with the existing licensing functions, it is currently envisaged that Licensing Services would need one extra permanent full time officer. The cost of this post will be contained within existing resources.

7. Legal and Human Rights Implications

Pursuant to section 2 of the GA, London Borough Councils, are deemed to be Licensing Authorities for the purposes of gambling in England and Wales, and are public authorities for the purposes of the Human Rights Act 1998.

By section 349 of the GA, and regulations made there under, the Council is required to adopt a 3 year statement of licensing policy by not later than 3rd January 2007 with the 31st January 2007 being the first initial day of the 3 year period. The function of approval by full Council for the purposes of this provision cannot be delegated, (section 154.). The consultation process to be followed and matters to be taken into account in developing such policy, as required by the Act and the regulations, are outlined in the report.

Public Authorities are under a duty to act compatibly with Convention rights in the exercise of their functions. From the 30th April 2007 onwards, Licensing Authorities will be receiving applications pursuant to the GA. The right to apply for a 'Premises Licence' or 'Permit' falls within civil rights and obligations in Article 6(1) of the Convention because it relates to the applicants' right to make a living and pursue a commercial activity.

An applicant for such a licence or permit has the right to have the application determined in accordance with the guarantees contained within Article 6(1). A 'Premises Licence' or 'Permit' is considered to be a possession for the purposes of the Human Rights Act 1988. The right to hold such a Licence or Permit is not absolute. It is a qualified right. So, where the grant of a Licence or Permit may affect the interests of local residents or others, in a significant way, then Article 6(1) will be engaged.

8 Need for Changes to the Lewisham Constitution

There are obvious similarities between the new functions under the GA and those we currently undertake pursuant to the 2003 Licensing Act.

Our current Licensing Committee established under section 6 of the Licensing Act 2003, will pursuant to the provisions of section 154 of the GA, require to have its current terms of reference expanded. It will need to have delegated to it all decisions relating to 'Premises Licences'. In accordance with the provisions of the published Guidance, (para.4) though subject to a number of exceptions, some decisions that are delegated to the current Licensing Committee may be further delegated to a sub-committee of the Licensing Committee, which may arrange for them to be taken by an officer of the Licensing Authority.

By virtue of the Local Government Act 2000, changes to the Council's constitution are matters which are reserved to full Council. It is envisaged that the few necessary changes required to the Constitution, by virtue of the provisions of the GA, will be considered by full Council at the same time as when it considers the gambling Policy Statement.

A scheme of proposed delegation of functions is set out for members at page 31 of the draft Statement of Licensing Policy for Gambling.

9. Equalities Implications

The Race Relations (Amendment) Act 2000 imposes on the Council a general duty to promote good relations between persons of different ethnic groups. This duty extends to consultation and the requirement to carry out impact assessments in respect of policies likely to impact upon persons from black and ethnic minority groups. An equalities impact assessment has been undertaken and appears at Appendix 3. Members will wish to have regard to the assessment when reaching their decision.

10. Environmental Implications

The policy makes it clear that each application will be considered on its individual merits taking into account all relevant factors. One of the factors would be the environmental impact of granting the licence in terms of its effects relating to the core objectives only

11. Crime and Disorder

The Crime and Disorder Act 1998 imposes a duty on every authority to do all it reasonably can to prevent crime and disorder in its area when exercising its functions. Also, one of the three licensing objectives under the GA is 'Preventing gambling from being a source of crime and disorder, being associated with crime and disorder, or being used to support crime'. Thus, the processing and consideration of all licensing applications pursuant to the GA will clearly have crime and disorder implications for the Council.

Background Papers: Gambling Act 2005 Guidance
(Available from Petra Der Man, Legal Services 0208 314 7785)

Appendix 1: Draft statement of Licensing Policy

Appendix 2: Summary of responses received to formal consultation

Appendix 3: Equalities Impact Assessment

