

Meeting: COUNCIL

Agenda Item:

Date: 9 December 2009

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GAMBLING ACT 2005 - DRAFT STATEMENT OF PRINCIPLES 2010/13

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1 PURPOSE

To consider the draft of the Council's Gambling Act 2005 (GA05) Statement of Principles - 2010 to 2013 (Appendix 1).

2 RECOMMENDATIONS

That the draft GA05 Statement of Principles is submitted to Council on 9 December 2009 for formal approval and adoption.

3 BACKGROUND

The Gambling Act 2005 marked a significant change in the way that gambling (betting, gaming and lotteries) was regulated throughout the United Kingdom, replacing the Betting, Gaming and Lotteries Act 1963; the Gaming Act 1968; and the Lotteries and Amusements Act 1976.

The Gambling Commission is the main regulator for gambling within the UK, and its functions include the licensing of bingo operators, book makers, casino operators, pools operators, certain types of lotteries, gaming machine manufacturers and the operators of remote gambling. In addition, the Gambling Commission is responsible for all aspects of personal licensing.

Stevenage Borough Council is responsible for the following:

- Licensing of premises where gambling activities are to take place by issuing premises licenses;
- Issuing of provisional statements;
- Regulating members' clubs who wish to undertake certain gaming activities via issuing club gaming permits and/or club machine permits;
- Issuing of club machine permits to commercial clubs;

- Granting of permits for the use of certain lower stake gaming machines at unlicensed family entertainment centres;
- Receiving notifications from alcohol licensed premises (under the Licensing Act 2003) of the use of two or less gaming machines;
- Granting licensed premises gaming machine permits for premises licensed to sell/supply alcohol for consumption on the licensed premises, under the Licensing Act 2003, where more than two machines are required;
- Registering small society lotteries below prescribed thresholds;
- Issuing of prize gaming permits;
- Receiving and endorsing temporary use notices;
- Receiving occasional use notices;
- Providing information to the Gambling Commission regarding details of licenses issued;
- Maintaining registers of the permits and licenses that are issued under these functions;
- Exercising its powers of compliance and enforcement under the Act in partnership with the Gambling Commission and other responsible authorities.

The Council is required to review, prepare and consult upon its Statement of Principles, and if necessary, prepare revisions to this so as to enable it to exercise its functions under the Act every three years, or sooner if required. The statement of principles must be published on the Licensing Authority web-site and at one other location as prescribed in the Gambling Act 2005 (Licensing Authority Policy Statement) (England and Wales) Regulations 2006.

The Gambling Act 2005 (Licensing Authority Policy Statement) (England and Wales) Regulations 2006 determines the form of the statement and details the areas that should be covered within the statement. Furthermore, the following must also be set out in separate sections:

- (a) The principles to be applied by the authority in exercising the powers under s.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;
- (b) The principles to be applied by the authority in exercising the powers under s.158 of the Act to determine whether a person is an interested party in relation to a premises license, or an application for or in respect of a premises license;
- (c) The principles to be applied by the authority in exercising the functions under s.29 and s.30 of the Act with respect to exchange of information between it and the Gambling Commission, and the functions under s.350 of the Act with respect to the exchange of information between it and the other persons listed in Schedule 6 of the Act;
- (d) 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 s.346 of the Act to institute criminal proceedings in respect of the offences in that section.

4 DISCUSSION

The Gambling Act 2005 came into force on the 1 September 2007. It introduced a new system of regulation with the creation of a powerful new regulator, in the form of the Gambling Commission, to replace the former Gaming Board of Great Britain. It also led to many of the licensing functions exercised by Magistrates' Courts being passed to local authorities.

4.1 NOTABLE CHANGES

Officers have reviewed the existing GA05 Statement of Principles in line with the revised Gambling Commission and Local Authorities Coordinators of Regulatory Services (LACORS) guidance. A table detailing all of the changes reflected in the amended draft GA05 Statement of Principles is included at Appendix 2 to this report. The most notable changes reflected in the amended draft GA05 Statement of Principles are as follows:

4.1.1 Enforcement

Paragraph 5 of The Gambling Act 2005 (Licensing Authority Policy Statement) (England and Wales) Regulations 2006 requires that licensing authorities statement of principles must contain the processes that they will apply in exercising their functions under Part 15 of the Act with regard to the inspection of licensed premises, as well as the powers specified under section 346 of the Act to initiate criminal proceedings in respect of offences specified therein.

The risk-based inspection programme has been further defined in the draft GA05 Statement of Principles and is based upon:

- The licensing objectives
- The relevant codes of practice
- Guidance issued by the Gambling Commission, in particular part 36, and
- The principles set out throughout the authority's statement of principles.

The principles to be applied are noted within Part A, section 7 of the draft GA05 Statement of Principles (Appendix 1).

4.1.2 Split Premises

Licensing authorities have to satisfy themselves that any application for a premises license relates to a single premise. S.353 of the Act defines premises as "any place".

The draft GA05 Statement of Principles provides much clearer advice on whether a premises is 'split' or not and is firmly based on the Gambling Commissions guidance for Local Authorities (3rd Editions, May 2009) as follows;

- Permutations in which more than one premises license can exist for a single premise.
- The make-up for such premises to allow for this to be considered as "separate premises", with particular consideration being given to the following:
 - The third licensing objective, to protect children and vulnerable people from being harmed by gambling;

- Premises entrances should be separate and identifiable;
- Premises should be separate in that you should not be able to drift from one licensed area to another; and
- That patrons should be able to participate in the activity named on the licence.

In order that we as a licensing authority are able to determine if two or more proposed premises are truly separate, we will be mindful of the following:

- Is a separate registration for business rates in place for the premises?
- Are the 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?

The principles to be applied are noted within Part B, section 3 of the draft GA05 Statement of Principles (Appendix 1).

4.1.3 Premises Ready for Gambling

Guidance has been issued by the Gambling Commission that a licence to use a premises for gambling should only be issued to a premises where the licensing authority is satisfied that the premises is going to be ready to be used for gambling in the foreseeable future. There is no guidance on this subject in the current GA05 Statement of Principles.

- If the premises are yet to be constructed, require any alterations, or the applicant does not have the right to occupy the premises, they would then be required to make an application for a provisional statement.
- In circumstances where there is outstanding construction or alterations to be made, this authority will determine each application on its merits.

The principles to be applied are noted within Part B, section 4 of the draft GA05 Statement of Principles (Appendix 1).

4.1.4 Temporary Use Notices

The Secretary of State has the power to determine what forms of gambling can be authorised by way of Temporary Use Notices (TUNs). This power had not been exercised at the time of drafting the current GA05 Statement of Principles. The Gambling Act 2005 (Temporary Use Notices) Regulations 2007 subsequently came into force and state that TUNs can only be used to permit the provision of facilities or equal chance gaming, where the gaming is intended to produce a single winner, which in practice means poker tournaments.

This section of the draft GA05 Statement of Principles now clarifies what TUNs can be used for and the principles to be applied are noted within Part C, section 5 of the draft GA05 Statement of Principles (Appendix 1).

4.2 SCHEME OF DELEGATIONS

The scheme of delegations previously approved by Stevenage Borough Council is included in the attached draft GA05 Statement of Principles as appendix 5 therein. There are no changes proposed to the scheme of delegations.

4.3 CONSULTATION

The Gambling Act requires that the following parties are consulted by Licensing Authorities:

- One or more persons who appear to the authority 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.

The full list of consultees is contained within the draft GA05 Statement of Principles attached as appendix 1 to this report as appendix 2 therein.

Following approval to do so from General Purposes Committee on 30 July 2009, all of the consultees were notified in writing of the draft GA05 Statement Of Principles 2010/13. Copies were made available to each of the consultees upon request and the document was placed on the Stevenage Borough Council website. The consultation period was for 12 weeks between 7 August 2009 and 30 October 2009, in line with recommendations from the Cabinet Office.

No comments were received during the consultation period, so no further changes have been made to the draft Statement of Principles. The licensing Authority must publish the revised Statement of Principles by 3rd January 2010 following approval by Council.

5 IMPLICATIONS

5.1 Financial Implications

There are no significant changes to the Statement of Principles that require additional resources.

5.2 Legal Implications

The Licensing Authority has a statutory duty to produce a GA05 Statement of Principles under the Gambling Act 2005 and review this at least every 3 years under section 349 of the Gambling Act 2005. The current Statement of Principles must be reviewed, approved and published by 3rd January 2010.

The initial GA05 Statement of Principles was approved in 2006 and commenced in 2007. At that time, the constitution was such that the document was approved by Council following recommendations from Licensing Committee, as the GA05 Statement of Principles could not be responsibility of the Executive. The amendments to the constitution, following The Local Authorities (Functions and Responsibilities) (Amendment) (England) Regulations 2006, changed this process and the Executive is now responsible for formulating or preparing the GA05 Statement of Principles and then submitting the document to Council for adoption or

approval.

5.3 Community Safety

The Act has community safety responsibilities arising from the licensing objectives. There are currently no known local concerns about the impact of gambling on community safety and no comments were received during the consultation period.

5.4 Equalities and Diversity Implications

An equalities impact assessment was carried out on the current GA05 Statement of Principles as part of the Environmental Health and Licensing Service assessment originally carried out in November 2007. No adverse comments were received during the 12 week consultation period on the revised draft GA05 Statement of Principles despite extensive targeted consultation. The aim of the GA05 Statement of Principles is to promote the Gambling Act licensing objectives, one of which is to protect children and vulnerable persons being harmed or exploited by gambling. Therefore, the Statement of Principles should have a positive effect on equalities. The application forms and processes under the Act are prescribed, however the Licensing Team is available to explain the requirements to individuals and guide them through the process where necessary. This approach will continue to ensure that there is no adverse effect on the grounds of race, due to English being a second language, or learning disability.

BACKGROUND PAPERS

- Gambling Act 2005
- Gambling Act 2005 (Licensing Authorities Policy Statement) (England and Wales) Regulations 2006
- Guidance for Local Authorities, 3rd Edition (Gambling Commission - May 2009)
- LACORS template Statement of Principles (May 2009)

APPENDICES

- Appendix 1 - Stevenage Borough Council Draft Revised Statement of Principles
- Appendix 2 - Table of changes