

Appendix 4

LGA (LACoRS) Statement of Principles Guidance Notes to Template (June 2012)

NOTES TO ACCOMPANY STATEMENT OF PRINCIPLES TEMPLATE
Gambling Act 2005
(Published June 2012 – replacing all earlier versions)

This statement has been developed by the LGA and the members of the licensing policy forum. We recommend that the policy is subject to the recommended full 12 week public consultation.

We are keen to encourage a fairly consistent structure for statements of principles although it does recognise that content, policy-wise, will vary. The advantages for the industry in statements being structured in a similar way are obvious. Licensing authorities are therefore encouraged to utilise the structure of the template.

These notes provide background information to the example text provided in the accompanying Statement of Principles template.

We have decided to use the term 'Statement of Principles' rather than 'Policy Statement' or 'Licensing Policy Statement' as it is referred to in Section 349 in this manner and will also help distinguish from the Licensing Act 2003 Policy Statements.

NB: as the Gambling Commission Guidance to Licensing authorities may change during the period that the statement of principles is in force, licensing authorities should be aware of the risk of including reference to or quotations from specific sections of the Guidance to Licensing Authorities, given that the references may quickly become outdated. We will post such changes as come to their attention on the Gambling and Betting Shops Knowledge Hub Discussion Group. Licensing Authorities should register to ensure they receive updates, and are able to share issues with other licensing authorities.

https://knowledgehub.local.gov.uk/c/my_places/view?groupId=5538760&privateLayout=1

This version is based on the Gambling Commission Guidance being consulted on as of June 2012.

Disclaimer: in offering this advice the LGA and policy forum wish to make it clear that:

- ***Legislation may change over time and the advice given is based on the information available at the time the guidance was produced – it is not necessarily comprehensive and is subject to revision in the light of the further information***
- ***Only the courts can interpret statutory legislation with any authority; and***
- ***This advice is not intended to be definitive guidance nor a substitute for the relevant law and independent legal advice should be sought where appropriate***

Contents

Item	Page
Background Information	
1. What is the statement of principles?	3
2. Preparing the statement of principles	3
3. Timeframe	4
4. Advertising	5
5. Consultation	5
6. Publishing the statement	6
7. Revising the statement	6
Content - Part A	
1. The licensing objectives	8
2. Introduction	8
3. Declaration	9
4. Responsible Authorities	9
5. Interested parties	9
6. Exchange of information	11
7. Enforcement	11
8. Licensing authority functions	12
Content - Part B - Premises licences	
1. General Principles	14
2. Adult Gaming Centres	22
3. (Licensed) Family Entertainment Centres	22
4. Casinos	22
5. Bingo	23
6. Primary Gambling Activity (Betting)	24
7. Tracks	25
8. Travelling Fairs	28
9. Provisional Statements	28
10. Reviews	30
Content - Part C - Permits / Temporary and Occasional Use Notices	
1. Unlicensed Family Entertainment Centre gaming machine permits	31
2. (Alcohol) Licensed Premises gaming machine permits	31
3. Prize Gaming Permits	32
4. Club Gaming and Club Machines Permits	33
5. Temporary Use Notices	34
6. Occasional Use Notices	35
7. Small Society Lotteries	35
Content – Part D - Annexes	
	36

Background Information

1. What is the Statement of Principles?

Section 349 of the Gambling Act 2005 requires licensing authorities to publish a “statement of the principles that they propose to apply in exercising their functions” under the Act, applicable to a 3 year period.

A statement of principles under the Gambling Act has a different format to a statement of licensing policy under the Licensing Act 2003.

As a result of discussions with DCMS when the Gambling Act was first implemented, LACORS recommended that statements of principles are focussed upon ‘high level’ policy and do not set out the application processes, decision-making procedures etc. The template still reflects this approach, on the basis that many licensing authorities produced additional information for applicants / interested parties via separate documents / leaflets. Depending on the resources and timescales open to licensing authorities, this information may be incorporated into individual statement of licensing policies, referenced within the statements, or left as separate/stand-alone information.

2. Preparing the Statement of Principles

In preparing the statement of principles licensing authorities are required to:

- Adhere to regulations issued by the Secretary of State under Section 349(4) (available via www.gamblingcommission.gov.uk).
- Consider guidance issued to licensing authorities by the Gambling Commission (Section 25(2)).
- Recognise the need to be reasonably consistent with the licensing objectives where applicable. The licensing objectives are set out at Section 1 of the Act and 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.

It should be noted that Licensing authorities will need to have regard to the licensing objectives for most of their functions under the Act (see Section 153 (1) (c); Section 224 (7); Section 284 (2) (a); Schedule 10 para 18 (4) (b); Schedule 12 para 27; and Schedule 13 Para 4(1)). However, some parts of the Act specifically state that the licensing objectives need not be taken into consideration when decisions are made (See Schedule 10 para 7(3) (a) as regards the Statement of Principles on Permits and separate provisions for refusal of small society lotteries in Schedule 11 Part 5 para 48, as well as Schedule 14 Para 8 (3)).

(i) DCMS Regulations:

The regulations setting out the form, content, the process and publishing of statements are SI 631/2006, SI 636/2006 and SI 637/2006. The regulations and explanatory memorandum are available via

http://www.gamblingcommission.gov.uk/licensing_compliance__enfo/gambling_related_legislation.aspx.

(ii) Gambling Commission Guidance

The Gambling Commission is required to provide licensing authorities with guidance (Section 25) about the manner in which they should exercise their functions under the Act, and the principles which should be applied. The Gambling Commission is required to provide this guidance from "time to time".

The Gambling Commission issued the fourth edition of its Guidance to Licensing authorities 2012 and is available online at http://www.gamblingcommission.gov.uk/licensing_authorities.aspx

The Gambling Commission Guidance lists a number of other items which authorities may choose to include in policy statements or make available in another form such as on its website:

- Registers - "Section 156 of the Act requires licensing authorities to maintain a register of the premises licences that it has issued. The register must be made available, at any reasonable time, to the public who may request copies of the entries. Authorities should ensure that information regarding the location of the registers (i.e. on the website, in the council offices etc), when they can be viewed, and the cost of obtaining copies is made available to the public."
- Fees – Authorities should ensure that information regarding the fees to be charged, including the level of fees, for applications for premises licences and other permissions under the Act is available to the public. Authorities should be transparent about how the fee levels are set.

Separate guidance relating to the calculation of fees and accounting procedures has been produced by the Secretary of State – see www.culture.gov.uk. In Scotland all of the equivalent fees will be set centrally by Scottish Ministers.

- Applications - "Authorities should ensure that information is available on how to make applications for licence and other permission under the Act is available. In particular, it would be helpful if authorities ensure a full list of responsible authorities and their appropriate contact details is readily available. Application forms, where appropriate, should also be made available. Authorities should note that there will be no prescribed application forms for family entertainment centre, prize gaming or licensed premises gaming machine permits. As such, the authority will need to make clear how applications for these permits should be made and in what form. Additionally, authorities will need to ensure that information regarding making representations, and applying for a review of a premises licence, and is also made available." [GLA04 para 6.55]
- Delegation - "Information should be provided as to how functions are delegated under the Act (i.e. whether decisions are to be taken by a licensing officer, licensing sub-committee or full committee etc.) A table setting out the scheme of delegation required by the Act may be the most appropriate method for this and is located in Part 4 of this guidance." (6.56)

3. Timeframe

Licensing authorities should bear in mind the HM Government Code of Practice on consultation; available via www.bis.gov.uk/files/file47158.pdf, which sets out a 12 week period for

consultation. The likely time taken to obtain approval by the council for the policy should also be factored into the time-frame, which means that most authorities will need to ensure that their draft policy is ready for consultation beginning in late summer or earlier.

See also note 6 below regarding publishing the final version.

4. Advertising

Regulations [The Gambling Act 2005 (Licensing Authority Policy Statement) (England and Wales) Regulations 2006] require that the licensing authority advertise the publication of its statement of principles by publishing a notice either before, or on, the day of the publication of the statement.

This notice should state:

- The date when the policy statement will be published
- The date when the policy statement will come into effect
- The internet address where the policy statement will be published
- The address of a library or other premises where the policy statement can be inspected

This notice must be published on the licensing authority website and in one or more of the following:

- Local newspaper, circular or similar document
- Public notice board in or near the principal office of the authority
- Public notice board in a public library

5. Consultation

The Act requires the licensing authority to consult on its statement of principles with the police; those who represent the interests of gambling businesses in their area; and those which represent interested persons likely to be affected (Section 349 (3)).

Please note that the regulations require that the statement itself includes a list of the persons consulted.

The Gambling Commission's Guidance to Licensing Authorities makes the following comments:

6.5 - In determining its policy, the licensing authority must have regard to this guidance, and give appropriate weight to the views of those it has consulted. In determining what weight to give particular representations, the factors to be taken into account will include:

- who is making the representations (what is their expertise or interest);
- what their motivation may be for their views;
- how many other people have expressed the same or similar views;
- how far the representations relate to matters that the licensing authority should be including in its policy statement.

6.6 - Licensing authorities can only consider matters within the scope of the Guidance, Act and Codes of Practice. Even if there is a large response regarding a certain issue, an authority may be unable to deal with the issue under the Gambling Act. However the issue may be a matter for other legislation, for example planning.

6.7 - It will be up to the licensing authority to ensure that it looks at the views of consultees and considers carefully whether they should be taken into account and to what extent (having regard to the above factors). A licensing authority should always be able to give reasons for the decisions it has made following consultation. Having regard to the guidance will be important for consistency, especially where licensing authority boundaries meet.

6.14 - The list of persons to be consulted when preparing the statement of principles is deliberately wide. This enables licensing authorities to undertake a comprehensive consultation exercise with anyone who may be affected by or otherwise have an interest in the statement of principles.

6.15 - Licensing authorities will develop their own consultation practices but they may like to consider the following:

- consultation with a range of organisations including faith groups, voluntary and community organisations working with children and young people, organisations working with people who are problem gamblers, medical practices or primary care trusts, and advocacy organisations (such as the Citizen's Advice Bureau and trade unions);
- consultation with other tiers of local government (where they exist);
- consultation with businesses who are, or will be, holders of a premises licence;
- consultation with the organisations named as responsible authorities in the Act; and
- using a variety of consultation methods including meeting with gambling businesses in the licensing authority area and open forums for the public.

6. Publishing the Statement of Principles

DCMS regulations require that the statement must be published at least 4 weeks before it comes into effect. The statement must be published on the authority's website, as well as being made available at one or more public libraries and / or other premises, for public inspection at reasonable times.

7. Revising the Statement of Principles

Statements are to cover a three year period, however there is a duty on the licensing authority to review this statement from "time to time" and if they think necessary, revise the statement. Any such review should involve consultation and we recommend that the BIS Code of Practice (above) is followed, as for the initial consultation.

Regulations state that where there has been a revision then there will be a list of the consultees contained within that statement (in the Introduction) and that the advertising and publication requirements are the same as explained above for the initial publication.

Gambling Commission Guidance to Licensing Authorities makes the following comments:

6.45 - Licensing authorities will need to consider, in the event of a change in policy, whether a review of the statement is necessary. For example, a change in planning policy could lead to a review and subsequent revision of a statement (if, for example, a change in planning policy led to family entertainment centres where previously there were none, the statement may then be required to say something about FECs where it was previously silent). Where the statement is

reviewed and changes made, authorities must consult on any revision.

6.46 - Authorities should note that where a statement is revised, it is only the revision that needs to be published and consulted on. So, for example, an authority may consult separately on whether to pass a casino resolution and then subsequently publish the resolution as part of the statement. This can be done without any need to review and reopen consultation on the main body of the statement. Any revisions must be published and advertised in the same way as a new statement.

Content of the Template Statement of Principles

The template is provided as a separate document. These notes explain the background to the example text provided in the template.

PART A

1. The Licensing Objectives

"All licensing authority policy statements should begin by stating the three licensing objectives, which the licensing policy will promote. The statement should also state that the licensing authority shall aim to permit the use of premises for gambling as set out in section 153 of the Act." (Gambling Commission Guidance to Licensing Authorities 6.3)

See template for example text.

2. Introduction

The Gambling Act 2005 (Licensing Authority Policy Statement)(England and Wales) Regulations 2006, paragraph 4 states that:

- (1) The statement shall include an introductory section at or near the beginning, summarising the matters dealt with in the statement.
- (2) The introductory section shall also include-
 - (a) a description of the geographical area in respect of which the authority exercises functions under the Act, and
 - (b) a list of the persons whom the authority has consulted in preparing the statement.
- (3) The authority may satisfy the requirement in paragraph (a) by including a plan of the area to which the statement applies.

These requirements are felt to be self-explanatory but example text is provided in the template.

We suggest that, in addition, a brief description of the requirement for a statement is set out as well as reference to its limits, and to the process whereby the statement was arrived at i.e. how consultation was carried out, which body approved it etc. It may be beneficial to refer to any areas of tension which arose during the consultation. It may also be helpful to include a description of how the authority intends to review the statement from "time to time" and where comments can be directed to outside of the formal consultation period. Authorities may also wish to comment on particular areas where the licensing objectives are of specific concern e.g. residential areas / areas of deprivation etc.

Authorities may also wish to emphasise that as per the Gambling Commission's Guidance: "Whilst statements of policy may set out a general approach to the exercise of functions under the Act, no statement of policy should override the right of any person to make an application under the Act and to have that application considered on its merits. Additionally, a statement of policy must not undermine the right of any person to make representations on an application or to seek a review of a licence where provision has been made for them to do so." (6.9) (except as regards casinos if there is a 'no casino' resolution - see section on casinos below (page 19)

See template for example text.

The Gambling Commission Guidance to Licensing Authorities states that “Revisions to Licensing Authority Statements of Policy must include an introductory section at or near the beginning, summarising the matters dealt with in the statement and listing the persons consulted in preparing the revision.” (6.47)

If revisions concern the below, then they must be presented in separate sections (6.48):

- designating a body which is competent to advise the authority about the protection of children from harm
- the principles determining whether a person is an interested party
- the principles in respect of exchange of information
- the principles applied to inspecting premises or instituting criminal proceedings

3. Declaration

The Gambling Commission’s Guidance to Licensing Authorities states that “Each licensing policy statement should include a declaration which sets out that in producing the final licensing policy statement, the authority has had regard to the licensing objectives of the Gambling Act 2005, the guidance issued by the Gambling Commission, and any responses from those consulted on the policy statement.” (6.40)

We suggest that this declaration is included here.

See the template for example text.

4. Responsible Authorities

The regulations require that the statement must contain (in a separate section) “the principles to be applied by the authority in exercising the 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”.

We suggest that mention is made of the licensing objective “Protection of children and vulnerable persons” and then an explanation is provided as to why the particular body has been chosen. In terms of setting out the *principles*, Our suggestions are that this may include the need for the body to be responsible for an area covering the whole of the relevant authority; to have sufficient resource; and to be accountable to a democratically elected organisation, rather than any particular vested interest group.

The Gambling Commission’s Guidance to Licensing Authorities states that “Such a body may, but will not necessarily, be the Local Safeguarding Children Board” (6.22)

We also suggest that this section includes the contact details for all the other responsible authorities (or provides a link/reference to where a list can be found; making it easier to update).

See the template for example text.

5. Interested parties

The Gambling Act 2005 (Licensing Authority Policy Statement)(England and Wales) Regulations 2006 at paragraph 5 require that the statement must contain (in a separate section) "the principles to be applied by the authority in exercising the powers under section 158 of the Act to determine whether a person is an interested party in relation to a premises licence, or an application for or in respect of a premises licence;"

Section 158 states that:

"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)"

We advise that licensing authorities need to be careful that they avoid adopting a rigid policy regarding who is / is not an interested party. To do so would leave them vulnerable to judicial review proceedings. It may therefore be wise to state that the authority will treat each case on its merits and will consider factors including those provided in the Gambling Commission's Guidance at 8.11-8.18.

Authorities may wish to note that examples of those persons falling under 'c' may be advocates, neighbours, MPs, ward councillors etc. but that generally evidence will be required that the person is acting as a 'representative' of an interested person, in the form of a written request. Our view is that councillors for the wards(s) likely to be affected by the authorised activities do not need to provide any evidence of being asked to represent interested persons, as they represent them by virtue of being elected and therefore fall under the definition at 158(c). This is in line with Gambling Commission Guidance, and in contrast to the position under the Licensing Act 2003 as the wording of the Act is different.

At para 8.17 the Gambling Commission Guidance states that "Licensing authorities should include guidance in their three-year licensing policies on who they consider comes within this category. For example, it should include democratically elected representatives such as councillors and Members of Parliament, and bodies such as trade associations and trade unions and residents' and tenants' associations." [Note: We do not agree that trade associations and trade unions automatically fall under the definition of interested persons and in order to do so they would need to show they have a member who does.]

At 6.25 the Gambling Commission also states "it is expected that 'have business interests' will be given the widest possible interpretation including partnerships, charities, faith groups and medical practices."

See the template for example text.

Local Authorities may also wish to consider the notes below and add to the template wording to incorporate these principles, which deal with the issue of proximity to the premises and also gambling business representations.

At 8.15 The Commission states: "The factors that licensing authorities should take into account when determining what "sufficiently close to the premises" means (in each case) might include:

- the size of the premises
- the nature of the premises
- the distance of the premises from the location of the person making the representation
- the potential impact of the premises (number of customers, routes likely to be taken by those visiting the establishment); and
- the nature of the complainant. This is not the personal characteristics of the complainant but the interests of the complainant which may be relevant to the distance from the premises. For example, it could be reasonable for an authority to conclude that "sufficiently close to be likely to be affected" could have a different meaning for (a) a private resident (b) a residential school for children with truanting problems and (c) residential hostel for vulnerable adults.

At 8.16 the Commission states: "It could be argued that any gambling business could be affected by another gambling business expanding into any part of Great Britain. But that is unlikely to be enough to satisfy the test of being "a person with business interests that might be affected by the premises" under consideration. For example, an operator in a particular sector (be it casino, bingo, betting etc) should not be able to lodge representations on every application put in by a rival operator anywhere in the country, simply because they are in competition within the same gambling sector. The licensing authority should be satisfied that the relevant business is likely to be affected. In this respect, licensing authorities should bear in mind that the "demand test" in the 1963 and 1968 Acts has not been preserved in the 2005 Act. Factors that are likely to be relevant include:

- the size of the premises;
- the 'catchment' area of the premises (i.e. how far people travel to visit); and
- whether the person making the representation has business interests in the catchment area, that might be affected."

6. Exchange of Information:

The Gambling Act 2005 (Licensing Authority Policy Statement)(England and Wales) Regulations 2006 at paragraph 5 require that the statement must contain (in a separate section):

(c) 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;

The Gambling Commission's Guidance interprets the regulations as requiring the licensing authority to have to set out whether it intends to establish any protocols regarding information exchange. The Gambling Commission has agreed that the text suggested in the template is sufficient and no further detail is required.

See the template for example text.

7. Enforcement

Paragraph 5 of The Gambling Act 2005 (Licensing Authority Policy Statement)(England and Wales) Regulations 2006 requires that the statement must contain (in a separate section):

(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 section 346 of the Act to institute criminal proceedings in respect of the offences specified in that section.

Our view is that enforcement policies need to be flexible, responsive documents and not rigidly fixed into the statements. DCMS' advice has been that reference can be made to 'high level' principles e.g. outlining a risk based approach and link/reference can be provided to further documentation such as enforcement protocols etc.

See the template for example text.

The Gambling Commission Guidance states that:

6.14 Many licensing authorities already pursue a risk-based approach towards other areas of licensable activity, such as alcohol and taxi licensing.

6.15 As a starting point for developing their local risk-based approach, licensing authorities should undertake a review of existing records and risk assessments. These may include police reports relating to gambling premises, records that the authority may have in relation to alcohol licences, and information held by trading standards and/or environmental health colleagues. This exercise should inform a proposed pattern of visits to premises, planned in connection with the authority's other functions or when reacting to complaints.

Licensing authorities should note the updated Gambling Commission guidance on test-purchasing, including having regard to the Commission's own scheme as well as any work of the chain operator or premise owner. Full details are outlined in 36.44 of the guidance.

Licensing authorities will find it useful to refer to the detailed Compliance and Enforcement Policy Statement referred to in 36.14 to understand how the Gambling Commission is pursuing its own risk-based approach.

See the template for example text.

8. Licensing Authority functions

Authorities may wish to include a summary of the responsibilities of licensing authorities as an introduction to subsequent sections on specific types of licences / permissions.

The Gambling Commission informed the LGA that it is sufficient for authorities to provide a list of the licences, permits etc. they issue. The Commission has now published its own list of statutory application forms and notices in Annex E of the Gambling Commission Guidance for Local Authorities.

See the template for example text.

PART B - Premises Licences

1. General Principles

We suggest that a section could set out the general principles that the licensing authority will apply to all premises licences, commenting on matters such as the definition of 'premises', location and potential duplication with other regimes, as well as with regard to the licensing objectives and potential conditions. It may also be worth mentioning door supervisors specifically.

This will also meet the request in the Gambling Commission's Guidance to licensing authorities which states the following: *"The authority should set out in its statement what factors it may take into account when considering applications for premises licences, permits and other permissions and matters that it will consider when determining whether to review a licence. This is where considerations such as the proximity of gambling premises to schools and vulnerable adult centres, or to residential areas where there may be a high concentration of families with children, should be detailed (where they are relevant). Any such policy must, however, come with the qualification that each case will be decided on its merits, so if an applicant can show how they might overcome licensing objective concerns, that will have to be taken into account "* (6.37)

It may be helpful to note that the Gambling Commission's Guidance to Licensing Authorities that "moral objections to gambling are not a valid reason to reject applications for premises licences" (except as regards any 'no casino resolution').

See the template for example text

(i) Decision making

Premises Licences are subject to the permissions/restrictions 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 other conditions, where it is believed to be appropriate.

Section 153 states that decisions about premises licences and temporary use notices should aim to permit the use of premises for gambling in so far as the licensing authority 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 principles

The Commission includes in its Guidance that "In seeking to encourage consistency across licensing areas, the Commission does not seek to fetter the discretion that authorities have under the Act. This guidance is not intended to replace the judgement of a licensing authority in an individual case. Moreover, this guidance cannot anticipate every set of circumstances that may arise and, except in relation to part 8 of the Act, as long as it has been understood and taken into account, licensing authorities may depart from it where they consider it would be right to do so. As set out above, there should however be strong and defensible reasons for departing from the guidance; and these will need to be clearly expressed and explained if a licensing authority is to

avoid judicial review for failing to take into account the Guidance" (1.21)

The Commission also emphasises in its Guidance that "unmet demand is not a criterion for a licensing authority" (6.10).

The Gambling Commission's interpretation of the framework of the Gambling Act 2005 (the Act) is that holders of general betting standard non-remote operating licences must provide betting as the primary gambling activity on licensed betting premises. We reinforced this understanding of the Act in May 2009 with the introduction of licence condition 16 to the Commission's Licence Conditions and Codes of Practice (LCCP) to all holders of this particular operating licence.

The six indicators in the template are used by the Commission when assessing compliance with Licensing Conditions and Codes of Practice (LCCP) at premises where betting is the primary gambling activity offered. The indicators are based on the requirements of LCCP and what is accepted as typical of commercial betting shop provision in the British market.

Your policy should highlight this information as a change to previous statements.

See the template for example text

(ii) "premises": including "split premises"

Licensing authorities will need to be satisfied that the premises licence application relates to a single premises. "Premises is defined in the Act as "any place" (Section 353).

The Gambling Commission's Guidance states:

7.13 - 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 subdivisions of a single building or plot and should ensure that mandatory conditions relating to access between premises are observed.

7.14 - 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.

The Commission makes some other key comments relating to the premises which are:

7.19 Licensing authorities should take particular care in considering applications for multiple premises 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 named on the premises licence.

7.19 In determining whether two or more proposed premises are truly separate, the licensing authority should be aware of factors which could assist them in making their decision. Depending on all the circumstances of the case, these may include:

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

See paragraph 7.16 also regarding the machine entitlements, which have changed since previous versions of the Guidance, and 7.20 regarding aggregation of entitlements.

See also the further commentary on the sub-division of premises at paragraphs 7.22 to 7.23

The Gambling Commission's relevant access provisions for each premises type are reproduced below:

7.26:

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

Adult Gaming Centre

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

Betting Shops

- Access must be from a street (as per para 7.23 Guidance to Local 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.

Tracks

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

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

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

7.41 sets out one exception to the rule against the co-location of premises, i.e. at a track (i.e. a horse-race course, dog track or other premises where races or sporting events take place); "In principle there is no reason why all types of gambling should not co-exist upon a track, but authorities will want to think about how the third licensing objective is delivered by the co-location of premises...licensing authorities will need to ensure that entrances to each type of premises are distinct and that under-18s are excluded from gambling areas where they are not permitted to enter."

(iii) 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.

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.

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.

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.

More detailed examples of the circumstances in which such a licence may be granted can be found at paragraphs 7.60-7.67 of the Guidance.

(iv) Location:

Gambling Commission Guidance to licensing authorities states that: "Licensing authorities will need to consider the location of premises in the context of this licensing objective. If an application for a licence or permit is received in relation to premises that are in an area noted for particular problems with organised crime, for example, licensing authorities should think about what (if any) controls might be appropriate to prevent those premises becoming a source of crime. These might include conditions being put on the licence, such as a requirement for door supervisors" (5.11)

The Commission also states in its Guidance:

6.10 - ...unmet demand is not a criterion for a licensing authority in considering an application for a premises licence under the Gambling Act. Each application must be considered on its merits without regard to demand.

6.11 - The statement of principles should reflect this situation and not comment on the need for gambling premises, or where they should be located.

6.12 - However, the licensing authority may comment on the location of premises in so far as the location relates to the licensing objectives. So, for example, a statement of principles could, and should, set out the general principles that the licensing authority will apply when determining whether the location of proposed gambling premises is acceptable (with or without conditions) in light of the licensing objectives. For example, a statement of principles might set out that the authority will consider very carefully whether applications for premises licence in respect of certain gambling premises located very close to a school, or a centre for gambling addicts should be

granted in light of the third licensing objective. Any such policy must, however, come with the qualification that each case will be decided on its merits, and will depend to a large extent on the type of gambling that it is proposed will be offered on the premises. If an applicant for a premises licence can show how licensing objective concerns can be overcome, that will have to be taken into account.

See the template for example text

(v) Planning:

The Gambling Commission Guidance to Licensing Authorities states:

7.60 – 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, in effect 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.

This is in line with DCMS apparent policy that planning and licensing should be considered completely separately. Section 210 states: “(1) In making a decision in respect of an application under this Part a licensing authority shall not have regard to whether or not a proposal by the applicant is likely to be permitted in accordance with the law relating to planning or building. (2) A decision by a licensing authority under this Part shall not constrain any later decision by the authority under the law relating to planning or building.”

The Commission’s Guidance also states:

7.67 - 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.

Some licensing experts have adopted a softer interpretation of the Section 210, arguing that it only applies *future* permissions. This interpretation allows for existing planning and/or building regulations to be taken into consideration. It is also in line with the thrust of the Penfold Review. However, the current Guidance suggests this was not the intention of the Act and the issue has not yet been tested in the courts.

See the template for example text

(vi) Duplication

Gambling Commission Guidance states that: “Statements of policy should include a firm commitment to avoid duplication with other regulatory regimes so far as possible. For example, a range of general duties are imposed on the self-employed, employers and operators of gambling

premises, both in respect of employees and of the general public, by legislation governing health and safety at work and fire safety. Therefore such requirements need not be included in the licensing policy statement." (6.4)

See the template for example text

(vii) Licensing objectives

The Gambling Commission's Guidance at 5.9 - 5.23 makes specific comments with regard to the licensing objectives. Extracts containing some of the key points which informed the template text have been listed below.

Preventing gambling from being a source of crime or disorder, being associated with crime or disorder or being used to support crime:

5.9 - The Commission will play a leading role in preventing gambling from being a source of crime

5.11 - Licensing authorities will need to consider the location of premises in the context of this licensing objective. If an application is received in relation to premises that are in an area noted for particular problems with organised crime, for example, licensing authorities should think about what (if any) controls might be appropriate to prevent those premises becoming a source of crime. These might include conditions being put in a licence, such as a requirement for door supervisors.

5.12 - A licensing authority will need to consider questions raised by the location of gambling premises when formulating its statement of principles; when receiving relevant representations to an application, when dealing with applications as a responsible authority in its own right; and when considering applications before it.

5.13 - Regulatory issues arising from the prevention of disorder are likely to focus almost exclusively on premises licensing, rather than on operating licences.

5.16 - Licensing authorities should note that in the case of gambling premises licences, disorder is intended to mean activity that is more serious and disruptive than mere nuisance. Factors to consider in determining whether a disturbance was serious enough to constitute disorder would include whether police assistance was required and how threatening the behaviour was to those who could see or hear it. There is not a clear line between nuisance and disorder and the licensing authority should take the views of its lawyers before determining what action to take in circumstances in which disorder may be a factor.

It should also be noted that, unlike the Licensing Act, the Gambling Act does not include as a specific licensing objective the prevention of public nuisance. Any nuisance associated with gambling premises should be tackled under other relevant laws.

Ensuring that gambling is conducted in a fair and open way:

5.18 - Generally the Commission would not expect licensing authorities to become concerned with ensuring that gambling is conducted in a fair and open way as this will be a matter for either the management of the gambling business, and therefore subject to the operating licence, or will be in

relation to the suitability and actions of an individual and therefore subject to the personal licence.

5.19 - However, in relating to the licensing of tracks the licensing authorities' role is different from other premises in that track operators do not necessarily need to have an operating licence. In those circumstances the premises licence may need to contain conditions to ensure that the environment in which betting takes place is suitable.

Protecting children and other vulnerable persons from being harmed or exploited by gambling:

5.20 - With limited exceptions, the intention of the Gambling Act is that children and young persons should not be permitted to gamble and should be prevented from entering those gambling premises which are adult-only environments. The objective talks of protecting children from being "harmed or exploited by gambling". That means preventing them from taking part in gambling and for there to be restrictions on advertising so that gambling products are not aimed at children or advertised in such a way that makes them particularly attractive to children.

5.21 - In relation to casinos, section 176 of the Act provides for a Code of Practice on access to casino premises by children and young persons to be issued by the Commission. In accordance with that section, adherence to the Code will be a condition of the premises licence.

5.22 - The Act does not seek to prohibit particular groups of adults from gambling in the same way that it prohibits children. The Commission will not seek to define "vulnerable persons", but it will for regulatory purposes assume that this group includes people who gamble more than they want to; people who gamble beyond their means; and people who may not be able to make informed or balanced decisions about gambling due to a mental impairment, alcohol or drugs.

5.23 - Licensing authorities will need to consider, in relation to particular premises, whether any special considerations apply in relation to the protection of vulnerable persons. Any such considerations will need to be balanced against the authority's objective to aim to permit the use of premises for gambling.

See the template for example text

(viii) Conditions

The Gambling Commission Guidance to Licensing Authorities states that "Conditions imposed by the licensing authority must be proportionate to the circumstances which they are seeking to address. In particular, licensing authorities should ensure that the premises licence conditions:

- Are relevant to the need to make the proposed building suitable as a gambling facility;
- Are directly related to the premises and the type of licence applied for;
- Are fairly and reasonably related to the scale and type of premises; and
- Are reasonable in all other respects. (9.29)

The Commission also adds that "The licensing authority should take decisions on individual conditions on a case by case basis, although this will be against the background of any general policy set out in this guidance or their own licensing policy statement." (9.31)

It is also important to note that the Act sets out certain matters that **may not** be the subject of conditions. The relevant sections are:

- section 169(4), which prohibits the authority from imposing a condition on the premises licence which makes it impossible to comply with an operating licence condition (further guidance will be provided on this in the next version of the guidance and in the light of the Commission's consultation on the conditions it proposes for operating licences);
- section 172(10), which provides that conditions may not relate to gaming machine categories, numbers, or method of operation;
- section 170, which provides that membership of a club or body cannot be required by attaching a condition to the premises licence. The Act specifically removes the membership requirement for casino and bingo clubs and this provision prevents it being reinstated and
- section 171, which prevents an authority imposing conditions in relation to stakes, fees, winning or prizes.

(9.32 Gambling Commission Guidance to Licensing Authorities)

See the template for example text

Door Supervisors

Gambling Commission Guidance states:

9.14 - "Section 178 relates to door supervision at premises licensed for gambling. It defines a condition for door supervision as one requiring someone to be responsible for "guarding the premises against unauthorised access or occupation, against outbreaks of disorder or against damage". Where a licensing authority chooses to attach such a condition, section 178 also provides that if the person carrying out such duties is required to be licensed under the Private Security Industries Act 2001 (PSIA), then that requirement must be treated as though it were a condition of the premises licence. There is, however, an exemption from the PSIA licensing requirement for in-house employees working as door supervisors at casino and bingo premises, details of which can be found in part 33 of this Guidance."

Door supervisors at casino and bingo premises will need to be licensed by the SIA if they carry out functions falling under Schedule 2 Part 1 of the Private Security Industry Act 2001, if they are contract staff, but will not need to be licensed if they are in-house staff.

*The legal explanation is that the Private Security Industry Act 2001 requires that **all contract staff** carrying-out functions set out in Schedule 2 Part 1 (see especially paragraph 2 - 'manned guarding'), require licensing by the SIA, however **certain premises also need to have their in-house staff, which carry-out these functions, licensed**. The premises which need to have their in-house staff licensed, as well as contract staff, include those which hold a premises licence for the supply of alcohol or regulated entertainment under the Licensing Act 2003 (Schedule 2, Part 2, paragraph 8 (1)&(2)). However, casino and bingo premises have an exemption from this requirement (Schedule 2, Part 2, paragraph 8(3)) regarding their in-house staff. **Casino and bingo premises will still need to ensure any contract staff are licensed by the SIA.***

NB: further commentary re Door Supervision can be found at part 33 of the Guidance to Licensing authorities.

Door/ entrance / machine supervision is clearly one factor which licensing authorities could consider in terms of "protection of children and vulnerable persons". Operators and licensing authorities will also need to consider whether these persons need to be SIA registered.

See the Template for example text

2. Adult Gaming Centres (AGCs):

Licensing authorities may have considerations that they anticipate will be of particular importance as regards these types of premises. The Gambling Commission's Guidance states: "No-one under the age of 18 is permitted to enter an AGC. Licensing authorities will wish to have particular regard to the location of an entry to AGCs to minimise the opportunities for children to gain access. This may be of particular importance in areas where young people may be unsupervised and an AGC is in a complex, such as a shopping centre or airport." (21.4)

See the template for example text

3. (Licensed) Family Entertainment Centres (FECs):

Licensing authorities may have considerations which they think will be of particular importance as regards these types of premises. The Gambling Commission's Guidance states: "In operating licences, the Commission has set out conditions that require operators to ensure that employees prevent access to the area containing category C machines by under-18s and challenge children or young people who do attempt to play the machines. Licensing authorities will find it helpful to refer to the Commission's website to see the conditions that apply. Regulations relevant to the way in which the area containing the category C machines should be delineated are set out in the mandatory conditions that apply to premises licences.

The mandatory conditions that apply to licensed FECs are set out in the Commission's Guidance at paras 22.6 to 22.12

See the template for example text

4. Casinos

No Casinos resolution - Under Section 166 licensing authorities are able to pass a resolution stating that they will not be issuing any new casino licences. There is no requirement to consider such a resolution.

If the licensing authority has passed a 'no casino' resolution then it needs to include this in its statement with detail of the date that it came into effect or is due to come into effect (Section 166(5)). It would also be appropriate to describe why the decision was reached. The procedure for making a "no casino" resolution is set out in the Guidance at paras 17.23-17.26.

The Gambling Commission's Guidance to Licensing Authorities extends the above statutory requirement by stating: "Under section 166 (5) of the Gambling Act, any resolution not to issue casino licences must be published in the licensing policy statement. In addition, the licensing policy statement should include details about how the authority has taken or will take a decision to pass (or not to pass) a casino resolution." (6.38) We interpret this to mean that the statement

should state that the decision has been or would be made by the Full Council.

Where the licensing authority has in place a 'no casino' resolution it is worth emphasising that, as confirmed in the Gambling Commission's Guidance to Licensing Authorities "...if a 'no-casinos' resolution has been passed by an authority it does not have to consider applications for new casino premises licenses in its area." (6.9)

Casinos and competitive bidding - Where a licensing authority area is enabled to grant a premises licence for a new style casino (i.e. in accordance with the regulations under Section 175) there are likely to be a number of operators who wish to run the casino. DCMS has issued a Code of Practice setting out the procedure which licensing authorities should follow for dealing with casino premises licence applications. It is worth making reference to this in statements, if the licensing authority is one of the 16 selected to grant new casino licences.

Conditions –

Mandatory conditions attaching to all casino premises licences are listed in the Guidance at paras 17.30 to 53, and the default condition is listed at para 17.53.

Information about the particular issues that licensing authorities should take into account in relation to the access provisions for casino premises is provided in the Guidance at para 7.30.

Policy Statements could also include a reference to the Commission's Code of Practice relating to access to casinos by children and young people, which can be found in the Commission's *Licence Conditions and codes of practices*, available at www.gamblingcommission.gov.uk

Betting machines in betting premises and casinos - There appears to be a specific discretionary power for licensing authorities as regards betting machines in betting premises or casinos:

19.18 - Section 181 contains an express power for licensing authorities to restrict the number of betting machines, their nature and the circumstances in which they are made available by attaching a licence condition to a betting premises licence or to a casino premises licence (where betting is permitted in the casino). When considering whether to impose a condition to restrict the number of betting machines in particular premises, the licensing authority, amongst other things, should 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.

A description of what constitute a 'betting machine' is provided at 19.16 to 19.18 of the Gambling Commission's Guidance to Licensing Authorities.

Licensing authorities may decide to quote the Commission in their statements in this regard or they may wish to provide some indication as to their policy considerations.

See the template for example text

5. Bingo

Licensing authorities may have considerations which they think will be of particular importance as

regards these types of premises. The Gambling Commission's Guidance comments specifically on the protection of children:

18.5 – Under the Act, children and young persons (anyone up to the age of 18) cannot be employed in providing any facilities for gambling on bingo premises, and children (under 16) cannot be employed, in any capacity, at a time when facilities for playing bingo are being offered. However, young persons, aged 16 and 17, may be employed in bingo premises (while bingo is being played), provided the activities on which they are employed are not connected with the gaming or gaming machines. Licensing authorities will be able to find information about the restrictions that apply in *Licence conditions and codes of practice*, which is published on the Gambling Commission's website.

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.

The splitting of bingo premises is dealt with in the Guidance at paragraph 18.8 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.

The issue of split premises is dealt with in more detail at para 7.22-7.26 of the Guidance.

See the template for example text

6. Primary Gambling Activity in betting premises:

This is set out in full at paras 19.19-19.23 of the Gambling Commission's Guidance to Licensing Authorities, the most salient points being:

19.21: "...An operating licence condition provides that gaming machines may be made available for use in licensed betting premises only at times when there are also sufficient facilities for betting available.

19.22: In this respect, such facilities must include information that enables customers to access details of events on which bets can be made, make such bets, learn the outcome and collect any winnings. Where betting facilities are provided only by betting machines the number of betting machines must exceed the number of gaming machines made available for use.

19.23 The Licence Conditions and Codes of Practice (LCCP) published in January 2009 sets out the full requirements on operators. To assist operators of betting premises the Commission has published a document setting out the indicators that are used to assess as to whether the requirements for betting being the primary gambling activity in any particular premises are being met³⁹.

19.24 Should a licensing authority receive an application to vary a premises licence for bingo or betting in order to extend the opening hours, the authority should satisfy itself that the reason for

the application is in line with the requirements on primary gambling activity. (i.e. the need for operating licence holders to ensure that the gambling activity appropriate to the licence type ('the primary activity' or 'the principal activity') is actually offered at those premises and not replaced by the making available of gaming machines). Therefore, the applicant should be able to demonstrate that the extension of the opening hours is not designed solely to benefit from the machine entitlement and activity which is ancillary to the primary activity of the premises, namely betting or bingo.

7. Tracks:

The Gambling Commission provides detailed Guidance to licensing authorities as regards betting tracks at part 20 of its Guidance to Licensing Authorities. It is specifically noted that:

9.17 - Section 182 applies only to betting premises in relation to tracks. It requires the licensee to ensure that children and young persons are excluded from any area in which facilities for betting are provided and from any area where a gaming machine (other than a category D gaming machine) is situated. The exception to this, for betting areas only, is on race-days (that is, on those days when racing occurs or is expected to take place) at a dog racing track or horse racing track. On race-days, on those tracks only, under-18s may have access to betting areas, but licensing authorities should note that this exception does not affect the prohibition on betting by children and young persons.

Ensuring that premises are fit for the provision of gambling facilities

20.36 –Licensing authorities are required to ensure that premises are fit for a specific type of gambling. Premises which meet the conditions required to operate a casino may not meet the requirements for offering track betting facilities.

20.37 – Track premises that safeguard the achievement of the three licensing objectives may generally be considered fit for gambling, and some general principles hereby licensing authorities can establish whether a track is fit for the provision of gambling facilities are as follows:

Licensing objective	Issues to consider	Reason to consider a track premises unfit for gambling purposes?	Part of this guidance containing specific information
The protection of children and other vulnerable persons from being harmed or exploited by gambling	Tracks permit access to children	No - Children are allowed access to tracks on race days.	Part 4
	Bet receipt terminals in areas where there is no supervision which would allow children or young persons to use machines undetected	No - It is a mandatory condition of the operating licence that operators ensure that bet receipt terminals are supervised. This is not an issue for the premises licence.	Part 6

	Children are allowed access to areas holding category B and C gaming machines	It is a mandatory condition of the operating licence that operators ensure that children are not allowed access to areas where category B and C gaming machines are provided. However, section 182 of the Act also creates a premises licence condition that children and young persons must be excluded from areas where any gaming machines other than category D are located.	Part 7
	Betting areas adjacent to areas where children/young people are present such as play areas	<p>No - Children are allowed access to tracks on race days and so will be exposed to gambling areas.</p> <p>It is a mandatory condition of the operating licence that operators do not accept bets from children or young persons.</p> <p>The Commission considers that the location of betting does not generally pose a risk to this licensing objective. Licensing authorities may impose their own local conditions where they perceive problems.</p>	Part 9
Ensure gambling is conducted in a fair and open way	The rules of betting are not displayed on the premises	No (not an issue at application stage) - it is a mandatory condition of the premises licence that the rules of betting are displayed.	Part 8
	Unlicensed betting operators are allowed to operate on tracks	No (not an issue at application stage) - it is a mandatory condition of the premises licence that licence holders make arrangements to ensure that they only allow licensed operators on track.	Part 8
	Betting takes place out of approved hours	No (not an issue at application stage) - it is a mandatory condition of the premises licence that betting only takes place within the specified hours.	Part 5
Prevent gambling from being a source of crime and disorder	Betting is allowed in all parts of a track resulting in greater difficulties for track premises licence holders to identify instances of illegal betting	No - the Commission's view is that this does not generally pose a risk to this objective. Licensing authorities may impose their own conditions should they perceive a problem.	Part 9
	No formal exit/entry points allowing easy access for unapproved operators and customers	No - the Commission's view is that this does not generally pose a risk to this objective. Licensing authorities may impose their own conditions should they perceive a problem.	Part 9

Gaming machines & Tracks:

20.59 –A track premises licence does not of itself entitle the holder to provide gaming machines, as this type of premises licence can be held without any corresponding operating licence. However, by virtue of section 172(9) of the Act, track owners holding both a track premises licence *and* a pool betting operating licence issued by the Commission (i.e. greyhound tracks only), may site up to four gaming machines within categories B2 to D on the track.

20.60 – Some tracks also qualify for an alcohol licence and as such they are automatically entitled under section 282 of the Act to two gaming machines of category C or D, activated by notifying the licensing authority and paying them the required fee. If a track premises licence holder has both an alcohol licence and a pool betting operating licence, then they will be entitled to a total of six gaming machines (two via the alcohol licence and four via the operating licence). In such scenarios the operating licence entitlement does not take precedence, and each licence has its own requirements that must be complied with.

20.62 – children and young persons can play category D gaming machines on a track but are not allowed to play other categories of machine.

20.63 – It is a condition of section 282 of the Act that alcohol-licensed premises licence holders (not necessarily the owners) must comply with any relevant provision of a Code of Practice under section 24 about the location and operation of a gaming machine. The gaming machine permits Code of Practice can be found on the Commission's website. Where track premises licence holders possess a pool betting operating licence, the Commission places a mandatory licence condition on such operators that they must:

- have and put into effect documented policies and procedures to prevent underage gambling; and
- monitor the effectiveness of these.

Bet Receipt Terminals (Betting Machines) & Tracks:

A description of what constitutes a 'betting machine' is provided in the Gambling Commission's Guidance to Licensing Authorities:

20.54 – Section 235(2c) of the Act provides that a machine is not a gaming machine if it is designed or adapted for use to bet on future real events. Betting operators may make available machines that accept bets on live events, such as horseracing, as a substitute for placing a bet over the counter. These "betting machines" are commonly known as bet receipt terminals and are not gaming machines; they merely automate the process that can be conducted in person and therefore are not regulated as gaming machines; The other difference is that a bet receipt terminal only accepts a bet; it does not pay out winnings (although this situation may develop in the future). Therefore any person under the age of 18 seeking to obtain their winnings will have to speak to a member of the betting operator's employees. The betting operator's operating licence requires that any winning bets placed by an underage person are considered void and the stake returned, but not any winnings.

20.55 – Licensed operators may install bet receipt terminals on tracks. There is no restriction on the number of bet receipt terminals that may be in use but operators must, by virtue of their operating licence conditions, supervise such terminals to prevent them being used by those under 18 years of age.

Self-contained betting offices on tracks:

20.45 –Where betting facilities are provided through a self-contained betting office on a track which has a separate betting premises licence, the betting operator of the self-contained premises is expected to exclude under-18s from their premises.

8. Travelling Fairs

30.1 - The Act defines a travelling fair as “wholly or principally” providing amusements and they must be on a site that has been used for fairs for no more than 27 days per calendar year. The Act does not change the principles on which travelling fairs have been regulated under previous legislation.

30.2 – Travelling fairs do not require a permit to provide gaming machines, but must comply with legal requirements about the way the machine operates. They may provide an unlimited number of Category D gaming machines provided that facilities or gambling amount to no more than an ancillary amusement at the fair.

Prize gaming: “Section 292 provides that travelling fairs are also able to offer equal chance prize gaming without a permit. Provided that, taken together, the facilities for gambling are an ancillary amusement at the fair.” (27.6 Gambling Commission Guidance to Licensing Authorities)

The Gambling Commission also notes:

30.4 - Licensing authorities should note that the 27-day maximum is during the calendar year and not in any 12-month period, and applies to the piece of land on which fairs are held, regardless of whether it is the same or different travelling fairs occupying the land. Authorities should therefore monitor the use of land and maintain a record of the dates on which it is used. If the land straddles licensing authority areas, the authorities concerned will need to work together to maintain a central log.

It is also stated in the Gambling Commission Guidance that travelling fairs can be controlled via bye-laws (30.5 Gambling Commission Guidance to Licensing Authorities).

See template for example text

10. Provisional Statements

Authorities may wish to consider including commentary as regards provisional statement application, in order to clarify the position for applicants, members and officers. Authorities may wish to paraphrase or repeat the entire section of the Gambling Commission Guidance, or relevant parts of it within their statements.

Gambling Commission Guidance states:

11.1: Section 204 of the Act provides for a person to make an application to the licensing authority for a provisional statement in respect of premises that her or she:

- Expects to be constructed
- Expects to be altered
- Expects to acquire a right to occupy

11.2: Developers may wish to apply for provisional statements before they enter 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. It is also possible for an application for a provisional statement to be made for premises that already have a premises licence (either for a different type of gambling or the same type).

11.3: Applicants for premises licences must fulfil certain criteria. They must hold or have applied for an operating licence from the Commission (except in the case of a track), and they must have the right to occupy the premises in respect of which their premises licence application is made. **However, these restrictions do not apply in relation to an application for a provisional statement.** In circumstances in which an applicant has also applied to the Commission for an operating licence, the Commission will not be able to comment on whether the application is likely to be granted; and the licensing authority should not speculate on or otherwise take into account the likelihood of an operating licence being granted in its consideration of the application for a provisional statement.

11.4: An application for a provisional statement must be accompanied by plans and the prescribed fee. Licensing authorities in England and Wales set their own provisional statement fees up to a pre-determined maximum, whereas licensing authorities in Scotland must use the provisional statement fees set by Scottish Ministers.

11.5 Subject to any necessary modifications (and the differences already set out in paragraph 11.3), 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. Please note that the provisions in the Act relating to provisional statements are not the same as those in the Licensing Act 2003 or the references to provisional licences in the Licensing (Scotland) Act 2005.

11.6: Once the premises are constructed, altered or acquired the holder of a provisional statement can put in an application for the necessary premises licence. A premises licence application for a premises where the applicant already holds a provisional statement for that premises attracts a lower application fee. Section 205 of the Act sets out rules on how the authority must treat this application. Licensing authorities should note that, in the absence of a requirement that an applicant for a provisional licence must have the right to occupy the premises, there may be more than one valid provisional statement in respect of the same premises.

11.7: If a provisional statement has been granted, the licensing authority is constrained in the matters it can consider when an application for a premises licence is made subsequently in relation to the same premises.

11.8: 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.

11.9: 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 way of representations at the provisional licence stage
- which, in the authority's opinion, reflect a change in the operator's circumstances
- where the premises has not been constructed in accordance with the plan and

information submitted with the provisional statement application This must be a substantial change to the plan and licensing authorities should discuss any concerns they have with the applicant before making a decision.

11.10: Section 210 of the Act (which applies to premises licences and provisional statements) makes it clear that a licensing authority must not have regard to whether or not a proposal by the applicant is likely to be permitted in accordance with planning or building law.

See the template for example text

11. Reviews:

Authorities may wish to provide some comment as to circumstances when they may initiate a review of the premises licence. Or, until more experience has built up, they may wish just to quote extracts from the Gambling Commission Guidance Part 10.

It should also be noted that it is up to the licensing authority whether requests for reviews of licences are actually carried out. See Section 198. The licensing authority can also initiate its own review, as set out at sections 200-203 of the Act.

See the template for example text

PART C - Permits / Temporary and Occasional Use Notices

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

Sections 238 and 247 of the Act provide for Family Entertainment Gaming Machines Permits and Schedule 10 sets-out the process involved during application. These are utilised by premises only offering category D gaming machines (children can use these) and therefore do not need a Family Entertainment Centre premises licence.

Schedule 10 paragraph 7 of the Act enables a licensing authority to "prepare a statement of the principles that they propose to apply in exercising their functions under this Schedule". It should be borne in mind that a licensing authority **may not attach conditions to this type of permit** and that the licensing authority **does not have to have regard to the licensing objectives** but does **need to have regard to any Gambling Commission guidance** (paragraph 7(3)).

The Gambling Commission's Guidance to Licensing Authorities suggests that "Licensing authorities may include a statement of principles that they propose to apply when exercising their functions in considering applications for permits. In particular they may want to set out the matters that they will take into account in determining the suitability of the applicant. Given that the premises will particularly appeal to children and young persons, in considering what to take into account in the application process and what information to request from the applicant, licensing authorities will want to give weight to child protection issues." (24.6)

The 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)

With regard to renewals of permits, the Gambling Commission's Guidance at 24.17 provides a summary of the grounds upon which licensing authorities may refuse a renewal. These are also set out at Schedule 10 paragraph 18 and include having regard to the licensing objectives.

See the template for example text.

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

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 (Section 282). The premises merely need to notify the licensing authority. As the Gambling Commission states in the Guidance to Licensing Authorities:

"This is not an authorisation procedure - licensing authorities have no discretion to consider the notification or turn it down. They can, however, remove the automatic authorisation in respect of any particular premises by making an order under section 284. That section provides for the licensing authority to make such an order 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 - for example, the gaming machines have been made available in a way that does not comply with the requirements on the location and operation of the gaming machines;
- the premises are mainly used for gaming; or
- an offence under the Gambling Act has been committed on the premises." (26.4)

For more than 2 machines, Section 283 provides for Licensed Premises Gaming Machines Permits and refers to Schedule 13 which sets out the process for application. Schedule 13 also states at paragraph 4(1) that the licensing authority shall consider the application based upon the licensing objectives, any guidance issued by the Gambling Commission issued under Section 25 and "*such matters as they think relevant.*"

Licensing authorities may wish to give some thought to what other "such matters may be" and perhaps provide some indication / examples in their statements. Alternatively, they may conclude that the discretion needs to be left open for individual cases and that examples in the statement, would not be helpful.

It should be noted that under paragraph 4 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.**

It should also be noted that Section 283 requires the holder of the permit to comply with any Code of Practice issued under Section 24 (i.e. issued by the Gambling Commission), about the location and operation of the machine.

Note: Alcohol licensed premises and Adult Entertainment Centre premises licences

Specific conditions are commonly applied in cases of applications from licensed premises applying for Adult Entertainment Centre premises licences for the non-alcohol licensed areas of their premises, especially regarding the protection of children and vulnerable persons.

See the template for example text.

3. Prize Gaming Permits - (Statement of Principles on Permits - Schedule 14 Para 8 (3))

Section 289 provides for Prize Gaming Permits and refers to Schedule 14 as regards the process for application. Schedule 14, paragraph 8 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 propose to consider in determining the suitability of the applicant for a permit".

In making its decision the licensing authority does not need to have regard to the licensing objectives but must have regard to any Gambling Commission guidance. The grounds for decision making as regards renewals are the same as for initial applications (Schedule 14 paragraph 18(3)).

It should also be noted that there are conditions in Section 293 with which the permit holder must comply. **The licensing authority cannot attach conditions.**

Gambling Commission Guidance to Licensing Authorities states: "Section 293 sets out four conditions that permit holders, AGCs, FECs and travelling fairs must comply with to lawfully offer prize gaming. These 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. (27.8)

The Gambling Commission Guidance also states: "In their Licensing Authority Statement of Policy, licensing authorities should include a statement of principles that they propose to apply when exercising their functions in considering applications for permits. In particular, they may want to set out the matters that they will take into account in determining the suitability of the applicant. Given that the premises will particularly appeal to children and young persons, in considering what to take into account in the application process and what information to request for the applicant, licensing authorities will want to give weight to child protection issues. Licensing authorities should ask the applicant to set out the types of gaming that he or she is intending to offer and the applicant should be able to demonstrate: that they understand the limits to stakes and prizes that are set out in Regulations; and that the gaming offered is within the law." (27.12)

See the template for example text

4. Club Gaming and Club Machines Permits

Members Clubs are defined at Section 266; Commercial Clubs are defined at Section 267 and Miners' welfare institutes are defined at 268.

N.B The definition of a miners' welfare institute has changed since they were first set up. They are associations established for recreational or social purposes. They are managed by representatives of miners or use premises regulated by a charitable trust which has received funds from one of a number of mining organisations. Miners' welfare institutes may also apply for club gaming permits and club machine permits.

These types of premises can provide equal chance gaming as set out at Section 269. Members Clubs and Miners' welfare institutes (but not Commercial Clubs) may also apply for a Club Gaming Permit or a Clubs Gaming machines permit (Section 271 & 27.3. The Club Gaming Permit enables

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 the Gambling Act 2005 (Club Gaming and Club Machine Permits) Regulations 2005. A Club Gaming machine permit enables the premises to provide gaming machines 3 machines of categories B, C or D.

Gambling Commission Guidance to Licensing Authorities Part 25 provides a summary. Sections 25.47 to 25.50 outline key considerations to be assessed when granting a club gaming permit.

25.40 - 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.

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:

25.43 - ...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... Commercial clubs cannot hold club premises certificates under the Licensing Act 2003 and so cannot use the fast-track procedure.

25.44 - Those clubs applying for permits by way of conversion of their pre-existing 1968 Act Part II or Part III club registrations do not have the fast track procedure available to them, even if they hold club premises certificates. In these instances, the club must still send a copy of the application to the Gambling Commission and chief officer of police. However, the Gambling Commission (and the police) may not object to the application and the licensing authority is, in fact, obliged to grant the application.

25.45 - 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.

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.

See the template for example text

5. Temporary Use Notices:

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 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 or equal chance gaming, where the gaming is intended to produce a single winner, which in practice means poker tournaments.

Licensing authorities may have considerations which they think will be of particular importance as regards temporary gambling events. One of the decisions which authorities will need to make is what constitutes a 'set of premises' where Temporary Use Notices are received relating to the same building / site (Section 218 and 14.4 and 14.5 Gambling Commission Guidance).

Gambling Commission Guidance to Licensing Authorities states:

14.4 - Section 218 of the Act refers to a "set of premises" and provides that a set of premises is the subject of a temporary use notice if "any part" of the premises is the subject of the notice. This is not the same as the references to "premises" in part 8 of the Act. The reference to "a set of premises" prevents one large premises from having a temporary use notice in effect for more than 21 days in a year by giving notification in relation to different parts of the premises and re-setting the clock.

14.5 - The meaning of "premises" in part 8 of the Act is discussed in Part 7 of this guidance. 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". In considering whether a place falls within the definition of "a set of premises", licensing authorities will need to look at, amongst other things, the ownership/occupation and control of the premises. A large exhibition centre, for example, would be likely to come within the definition as it is properly one premises, and should not be granted a temporary use notice for 21 days in respect of each of its exhibition halls. But in relation to other covered areas, such as shopping centres, the licensing authority will need to consider whether different units are in fact different "sets of premises", given that they may be occupied and controlled by different people. This is a new permission and licensing authorities should be ready to object to notice where it appears that their effect would be to permit regular gambling in a place that could be described as one set of premises.

See the template for example text

6. Occasional Use Notices:

It appears to us that the only decision making function of the licensing authority with regard to these Occasional Use Notices is regarding the definition of a 'track' and whether therefore the applicant is permitted to avail him/herself of the notice, and that the statutory limit of 8 days in a calendar year is not exceeded.

See the template for example text.

7. Small Society Lotteries

Small Society Lotteries are unlikely to form a large part of any authorities work. They are included

as a new addition to the template following concerns expressed by the voluntary sector, as part of the red tape review, about the lack of clarity and consistency in regulating charitable fundraising events. We suggest that this is considered an optional section for licensing authorities.

The Gambling Commission Guidance to Licensing Authorities states:

34.7 "Licensing authorities should define 'society' as the society, or any separate branch of such a society, on whose behalf a lottery is to be promoted, and need to understand the purposes for which a society has been established in ensuring that it is a non-commercial organisation. Section 19 of the Act defines a society as such if it is established and conducted:

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

34.32 The Commission recommends that licensing authorities consider producing their own guidance for organisations and individuals seeking to operate small society lotteries, to be made available through mediums such as websites and hard copies. The Commission's *Lotteries and the Law* document *Promoting society and local authority lotteries* may provide a useful starting point for licensing authorities that wish to develop such local guidance."

PART D **Annexes**

The information above will outline your policy approach to issues. However, councils may wish to provide additional information to help applicants understand procedures and to better develop their applications. Your consultation should be used to help identify what information might be useful for applicants and licence holders.

Each area will be different, but the following annexes have all been used by one or more councils:

- Levels of decisions making
- Responsible Authority contact details
- Policy Statement consultees
- Exempt gaming and other exclusions