



North Devon Council

Report Date: 1 November 2021

Topic: Gambling Statement of Licensing Principles

Report by: Katy Nicholls, Public Protection Manager

1. INTRODUCTION

- 1.1. North Devon Council is under a legal obligation to review its Gambling Statement of Licensing Principles on a three yearly basis.
- 1.2. A consultation exercise was undertaken in respect of a draft proposed revision to the Council's Gambling Statement of Licensing Principles, which contains minor variations to the existing statement.
- 1.3. This consultation has now closed and feedback has now been gained and considered by Licensing and Community Safety Committee for recommended approval.

2. RECOMMENDATIONS

- 2.1. It is **RECOMMENDED** that Strategy and Resources:
 - 2.1.1. Consider the recommendation made by Licensing and Community Safety Committee on the 19 October 2021, for Strategy and Resources to in turn recommend the approval of the proposed revised Gambling Statement of Licensing Principles to Full Council (a tracked changes document highlighting the amendments made to the current policy is contained in **Appendix B**).

3. REASONS FOR RECOMMENDATIONS

- 3.1. In order to discharge its statutory duties under the Gambling Act 2005, North Devon Council is required to produce a Gambling Statement of Principles and review it at least every three years.
- 3.2. The current Gambling Statement of Principles was published in December 2018 and became effective on 3 January 2019. In order to keep within the statutory time-scale and adhere to the Council's Constitution, Full Council will need to make any approval on the 24 November 2021.

4. REPORT

- 4.1 The Gambling Act 2005 ("the Act") received royal assent in April 2005 and consolidated regulation of casinos, bingo, gaming machines, lotteries, betting and

remote gambling in one Act. The Act established a non-departmental public body, The Gambling Commission, which has responsibility for advising both central and local government on issues relating to gambling.

- 4.2 North Devon Council has responsibilities under the Act to issue premises licences, permits and notices in respect of premises where it is proposed that gambling should take place. Additionally the Council is responsible for the registration of Small Society Lotteries.
- 4.3 Section 349 of the Act requires all licensing authorities to prepare and publish a statement of the principles that they intend to apply in exercising their functions under the Act. This licensing Statement of Principles will last for a maximum of three years, but it can be reviewed and revised by the authority at any time during that three year period. The route proposed through the Council's Committee process will enable the Council to satisfy the legislation requiring the Statement of Principles to be published prior to the 3 January 2022.
- 4.4 The revised draft Gambling Statement of Licensing Principles was written pursuant to the provisions of the Gambling Act 2005 and the Guidance issued under Section 25 of the Act by the Gambling Commission.
- 4.5 Based upon the fact that the proposed amendments are minor and relate largely non legislative changes, in line with the risk assessment methodology outlined in 'Consultation Principles' (November 2013) published by the Cabinet Office, the proposed consultation on the draft revision was carried out for a period of 5 weeks. It ran between 12 August 2021 and 19 September 2021. This appeared on the Council's website, and letters were also sent to Responsible Authorities and licence holders etc.
- 4.6 The revised Statement of Principles focuses on the on-going responsibilities of licensed premises to proactively uphold the licensing objectives. The suggested changes to the current Statement of Principles largely attempt to improve the document, clarify any issues and to respond to changes in the wording of guidance issued to local authorities.
- 4.7 The main proposed amendments to the Statement of Principles are as follows:
 - Add a disclaimer to indicate that the document is based upon the Gambling Commission's 1 April 2021 guidance, which is subject to change, as is legislation etc.
 - Update numbers of currently licensed establishments and other statistics in the 'Geographical Area' section.
 - Update the section entitled 'Over-Riding Principle' to reflect amended Gambling Commission guidance.
 - Update the section entitled 'General Points Regarding Gaming Machines' to identify that local risk assessments must be provided on a variation application.

- Re-wording information pertaining to access to premises. This is to predominantly provide information on buildings divided into more than one premises with diagrammatic demonstration of acceptable options being provided.
- Provide clarity surrounding the external appearance of premises providing bingo facilities.
- Update to Part C Unlicensed Family Entertainment Centres (UFECs) to amend a formatting error; to highlight that the expectations apply to both applicants and existing premises; encourage premises to sign up to the British Amusement Catering Trade Association (BACTA) Voluntary Code, and to add Expectations on Compliance Inspections (for which premises will already be well aware of following recent correspondence and inspection).
- For the automatic entitlement of two machines, and provision of three or more machines in alcohol licensed premises by way of a permit, text is added to highlight that the Council expects compliance with the Gambling Commission's Code of Practice for Machines in Pubs. Moreover, the expectation surrounding compliance with the Gambling Commission's Code of Practice on Equal Chance Gaming in Clubs and Premises is echoed. Consultation with the Police and Gambling Commission is a new addition for three or more machines and the information expected to be provided on a plan is now clarified, to avoid basic plans being furnished.

4.8 In reply to the consultation exercise two consultation responses were received, both of which are contained in **Appendix A**. It is worth highlighting that a limited response is not unusual in terms of feedback on this licensing regime, both from a historical perspective at North Devon Council, and the same situation has been noted nationally when speaking with other local authority colleagues.

4.9 The first response was from an individual who was supportive of the proposals for amendment. The sole comment made that requires a response is that:

'Operators often complain that compliance assessments are inconsistent so it is vitally important that (a) operators are aware of and understand the format and purpose of Compliance assessments and (b) council officials follow the correct format for assessments previously advised to operators.'

In reply North Devon Council has always used the same template inspection forms when undertaking premises visits to ensure a level of consistency. Work has been undertaken on this area with Devon Licensing Officers Group. Moreover, the limited number of staff in the team undertaking this area of work, due to the scale of the business, also means a higher level of consistency as it is likely to be the same officer inspecting across the district.

The proposal for insertion of information for Local Authority Expectations on Compliance inspections at UFECs is a new addition and this is in line the feedback, providing a clarity over the expectations upon inspection at this type of premises.

- 4.10 The second response was from Gosschalks LLP, acting for the Betting and Gaming Council (BGC). Their letter contains general information providing some context surrounding the position of gambling in respect of the national economy. That which is specific to the Council's proposed amends follows:

On behalf of the BGC we welcome paragraph 6 of Part A which recognises that the overriding principle when exercising its functions under the act is that the licensing authority will aim to permit the use of premises for gambling.

Paragraph 14.9 contains a long list of examples of matters that the authority expects to be taken into account when an operator is undertaking its risk assessment. This list is unnecessary. Everything in the list is part of the urban landscape and would all be identified in an applicant's local area risk assessment which would then outline mitigation measures to address any risks. It is important that the statement of policy recognises that the mere presence of these factors does not change the overriding principle that the authority will aim to permit the use of premises for gambling.

If this list of examples is to remain within the statement of policy then matters that have no relevance to any assessment of risk to the licensing objectives (for example issues of street drinking, youths participating in anti-social behaviour, drug dealing, graffiti/tagging etc) should be removed.

Paragraph 1.17 of part B refers to location of premises and refers to the possibility of a specific policy with regard to areas where gambling premises should not be located. Thereafter, it appears to create a rebuttable presumption of refusal akin to a Licensing Act 2003 cumulative impact area. These references should be removed. Location will always be relevant in the context of whether a particular proposal is consistent with the licensing objectives. The potential policy referred to in the existing paragraph, however, is likely to be unlawful and is certainly contrary to the "aim to permit" principle (contained within s153 and described as the overriding principle in paragraph 6 of Part A) and therefore references to it and the rebuttable presumption which creates an onus on the applicant overcoming concerns should be removed.

- 4.11 It is noted that very similar representation from Gosschalks was made in 2018. In order to provide some context, an extract from a report provided by Howard Bee, Service Lead Licensing and considered by Licensing Committee on the 9 October 2018 follows:



Gosschalks suggestion: Paragraph 1.17 of part B should be amended. This refers to the potential for a specific policy with regard to areas where gambling premises may not be located. The reference to this policy should be deleted as any such policy is likely to be unlawful and is certainly contrary to the overriding principle contained within S153 Gambling Act 2005 that the licensing authority must aim to permit the use of premises for gambling.

The Service Lead Licensing reported that:

There is no action required in respect of this point because the paragraph referred to does not preclude an application being submitted.

Under S153 of the Gambling Act 2005 the Licensing Authority understands it must aim to permit use of premises for gambling and in so far as it thinks the permission is in accordance with the Statement of Principles.

The inclusion of the specific policy is important as it would pay particular attention to location of a premises where it is felt there were issues regarding the protection of children and vulnerable persons from being harmed or exploited by gambling, as well as issues of crime and disorder.

Paragraph 1.17 clearly indicates 'that any such policy does not preclude any application being made and each application shall be decided on its merits, with the onus upon the applicant showing how potential concerns can be overcome. The licensing authority does expect that issues in respect of a premises location are addressed in local risk assessments required for any applications for premises licences.

Gosschalks suggestion: At paragraph 14.7, there is a list of bullet points that sets out matters that the licensing authority expects operators to take into account when conducting the risk assessment. This list of bullet points needs to be redrafted as it contains matters that are irrelevant as far as the local risk assessment is concerned. One of the bullet points within paragraph 14.7 is "gaming trends that reflect benefit payments". This bullet point should be removed as it is impossible to see how this could be relevant to an assessment of risk to the licensing objectives unless the licensing authority has determined the persons in receipt of benefits are automatically vulnerable or more likely to commit crime. We are certain that this predetermination has not been made.

In the case of the above the Service Lead Licensing cited:

It is not recommended that there be any redraft of this paragraph 14.7 and the list of bullet points. The local risk assessment needs to recognise the socio-economic make-up of the area in which the premises is located. It is

known that certain groups are more vulnerable to gambling harm as per <https://www.geofutures.com/research/gambling/> There is clear evidence to show that more betting shops are located in areas of deprivation than in areas of relative affluence.

- 4.12 In terms of the proposed action following the latest feedback from Gosschalks, in terms of Part B, 1.17, (outlined in 4.11) the following is noted:

The latest version of the Gambling Commission's Guidance to Local Authorities (6.38) cites:

the policy statement may comment on the location of premises and the general principles it will apply in considering the location so far as it relates to the licensing objectives. For example, a policy statement may set out that the licensing authority will carefully consider applications for premises licences and whether there is a need for conditions to mitigate risks, in respect of certain kinds of gambling located very close to a school or a centre for those experiencing or at risk of gambling harm, in light of the third licensing objective. The policy statement must be clear that each case will be decided on its merits and will depend to a large extent on the type of gambling that is proposed for the premises.

The comments made by the Service Lead Licensing provided on the 9 October 2018 in the Licensing Committee report extract still remain valid, however considering this comment has been raised for the second time, there is a suggestion that the section is updated in line with that latest guidance provided by the Gambling Commission above and as follows:

This Licensing Authority is aware that demand issues cannot be considered with regard to the location of premises but that considerations in terms of the licensing objectives are relevant to decision making. As per the Gambling Commission's Guidance to Licensing Authorities, this authority shall pay particular attention to the protection of children and vulnerable persons from being harmed or exploited by gambling, as well as issues of crime and disorder. The authority will carefully consider applications for premises licences and whether there is a need for conditions to mitigate risks, in respect of certain kinds of gambling located very close to a school or a centre for those experiencing or at risk of gambling harm. It should be noted this statement does not preclude any application being made and each application shall be decided on its merits, with the onus upon the applicant showing how potential concerns can be overcome. The Licensing Authority does expect that issues in respect of a premises location are addressed in local risk assessments required for any applications for premises licences.

- 4.13 In terms of the feedback relating to paragraph 14.9 it is believed that it is still pertinent to share some examples of the types of inclusions that

operators may wish to include within their risk assessments. We have found this to have been beneficial, and something suggested during the workshop held locally to provide assistance to operators in this area, shortly after the legislation was brought into effect requiring such an assessment to be formulated. Furthermore, the view held by the authority in 2018 that certain groups are more vulnerable to gambling harms remains.

4.14 Members should be mindful that the list contained in the statement is solely provided as a recommendation of those areas that operators may wish to include. As such there is no proposed amendment to that list contained in para 14.9.

4.15 The amendment detailed above at 4.13 has been reflected in the proposed Gambling Act Statement of Licensing Principles contained in **Appendix B**.

5 RESOURCE IMPLICATIONS

5.1 There are no financial or human resource implications to the Council associated with this report.

6 EQUALITIES ASSESSMENT

6.1 There are no equalities implications anticipated as a result of this report.

7 CONSTITUTIONAL CONTEXT

7.1 Article of Part 3 Annexe 1 paragraph:

Part 3, Annex 1, Paragraph 2, delegated power.

8 STATEMENT OF CONFIDENTIALITY

8.1 This report contains no confidential information or exempt information under the provisions of Schedule 12A of 1972 Act.

9 BACKGROUND PAPERS

9.1 The following background papers were used in the preparation of this report: (The background papers are available for inspection and kept by the author of the report).

- Gambling Act 2005.
- Gambling Act 2005 (Licensing Authority Policy Statement (England and Wales) Regulations 2006.
- Gambling Commission's Guidance to Local Authorities (1 April 2021).

10 STATEMENT OF INTERNAL ADVICE

10.1 The author (below) confirms that advice has been taken from all appropriate Councillors and Officers:

Katy Nicholls, Public Protection Manager

20.10.21