

<b>REPORT TO:</b>	<b>FULL COUNCIL 3 DECEMBER 2012</b>
<b>AGENDA ITEM:</b>	<b>11</b>
<b>SUBJECT:</b>	<b>THE GAMBLING ACT 2005 – STATUTORY REVIEW OF LONDON BOROUGH OF CROYDON STATEMENT OF PRINCIPLES</b>
<b>LEAD OFFICER:</b>	<b>EXECUTIVE DIRECTOR OF PLANNING &amp; ENVIRONMENT</b>
<b>CABINET MEMBER:</b>	<b>COUNCILLOR SIMON HOAR CABINET MEMBER FOR COMMUNITY SAFETY AND PUBLIC PROTECTION</b>
<b>WARDS:</b>	<b>ALL</b>
<b>CORPORATE PRIORITY/POLICY CONTEXT:</b>	
<b>FINANCIAL SUMMARY:</b> <p>The Gambling Act became fully operational on 1<sup>st</sup> September 2007. The Council has been processing applications with regard to this legislation since 21 May 2007, which was the start of the conversion period under the Act.</p> <p>There are no financial implications associated with this report, save for those set out in the body of the report with regard to decision making by the licensing committee and full Council.</p> <p>The costs of administering the functions associated with this report will be met from existing resources.</p>	
<b>FORWARD PLAN KEY DECISION REFERENCE NO.:</b>	

For general release

## **1. RECOMMENDATIONS**

1.1 Further to the recommendation of the Council's Licensing Committee at its meeting on 20 November 2012, adopt Croydon's Statement of Principles under the Gambling Act 2005 at Appendix 4 to this report.

## **2. EXECUTIVE SUMMARY**

2.1 The Gambling Act 2005 came into force on 1<sup>st</sup> September 2007 following a three month transitional period during which existing premises licence holders were able to swap their existing Magistrates' Court or Council licence for a new style Council one.

2.2 Local authorities, as licensing authorities, are only responsible for licensing the premises on which gambling takes place. They are not responsible for licensing operators as this function falls to the Gambling Commission. As well as issuing premises licenses, local authorities are responsible for issuing permits in respect of:

- Gaming machines in alcohol-licensed premises, such as pubs
- Gaming machines in members clubs
- Gaming in members clubs
- Unlicensed family entertainment centres (small stake and payout machines only)
- Prize gaming
- Occasional Use Notices
- Temporary Use Notices
- Provisional Statements

2.3 For comparison, the following shows the current number of licensed premises, as opposed to that in 2007:

- Betting Shops – 2007 **(59)** – 2012 **(66)**
- Bingo Premises – 2007 **(1)** – 2012 **(2)**
- Adult Gaming Centres – 2007 **(8)** – 2012 **(2)**
- Family Entertainment Centres – 2007 **(0)** – 2012 **(0)**

2.4 In addition to administering applications, the Council licensing team undertake inspections and enforce the conditions on issued licences, permits and notices. It also registers small scale society lotteries.

2.5 The Gambling Act 2005 also requires each licensing authority to publish a statement of the principles it intends to adopt when exercising its functions under the Act. The first London Borough of Croydon Statement of Principles was published on 3 January 2007. In each 3 year period thereafter, the Council must keep its statement under review and revise it as it considers necessary. In any event, before the conclusion of each 3 year period, the Act requires the Council to formally consult on its statement, amend it accordingly and re publish it.

2.6 The first statutory 3 year review of the Council's Statement of Principles was undertaken in 2009 and the Statement was re published on 7 December 2009.

2.7 For the second statutory review, the Council must re publish its Statement by 31 December 2012, being the required 4 weeks before the existing Statement expires.

### **3. DETAIL**

3.1 The Gambling Act 2005 came into force on 1 September 2007. It created a unified regulator for gambling in Great Britain called the Gambling Commission, as well as establishing a new licensing regime for commercial gambling. The Gambling Commission regulates all commercial gambling in Great Britain,

except the National Lottery and Spread Betting, and issues operating and personal licences.

3.2 The Gambling Act 2005 transferred all responsibility for licensing gambling premises from Licensing Justices to Licensing Authorities (the Local Authority in England and Wales). Licensing Authorities are also responsible for a number of different permits, as well as temporary and occasional use notices.

3.3 Local Authorities acting as Licensing Authorities issue premises licences for the following activities:

- bingo
- betting
- adult gaming centres
- family entertainment centres
- casinos
- horse racing and dog tracks.

3.4 They issue permits for:

- Gaming machines in alcohol licensed premises, such as pubs
- Gaming machines for members clubs
- Other gaming activities in Members' clubs
- Category D machines\* in unlicensed family entertainment centres
- Prize gaming.

\*Category D machines are those that can be used by children and have the lowest level of stakes and prizes

3.5 They also register and issue:

- Small society lotteries
- Occasional and temporary use notices
- Provisional statements.

3.6 The Gambling Act 2005 contains three licensing objectives that underpin the entire legislation:

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

3.7 Section 349 of the Gambling Act 2005 requires local authorities to prepare and publish a statement of the principles (henceforth to be referred to as the 'statement of principles') that they propose to apply in exercising their functions under the Act. The statement shall last for a period of 3 years and then must be reviewed. However, a local authority may review their statement sooner should the need arise.

3.8 The Act requires that prior to adopting and publishing their statement, or subsequently reviewing it, a local authority shall consult:

- The chief officer of police for the authority's area
- One or more persons who appear to the authority to represent the interests of persons carrying on gambling businesses in the authority's area and
- One or more persons who appear to the authority to represent the interests of persons who are likely to be affected by the exercise of the authority's functions under the Act.

3.9 The consultation on the review took place between 3 August 2012 and 5 October 2012 and the statement was amended to reflect any relevant responses/comments made.

3.10 Attached at Appendix 1 is a list of persons/bodies consulted with.

3.11 Attached at Appendix 2 are the responses received during consultation. These comments came from the Metropolitan Police.

3.12 Attached at Appendix 3 is a schedule of the specific comments made by the Police, showing where the Statement has, or has not, been changed as a result of those comments.

3.13 Accordingly, attached at Appendix 4 to this report is a copy of the draft revised 'Statement of Principles'. The amendments made are shown in bold & italics. These reflect the police comments. The other amendments are made to reflect updates to the statutory guidance issued by the Gambling Commission.

3.14 Appendix 5 gives a Glossary of Terms for the Gambling Act 2005.

3.15 The Council's Licensing Committee have considered the draft revised Statement including amendments made as detailed in 3.13 and have recommended it to Full Council for adoption.

### **Councillors and the Act**

3.16 For premises licence applications and reviews, Councillors sit on licensing committees as they do for the Licensing Act 2003. For permits, other arrangements may apply, depending upon delegations.

3.17 Councillors may make representations without being asked by a resident specifically to do so, although they will have to bear in mind wider issues of bias, pre-determination, prejudice and declarations of personal and prejudicial interests. Representations may only be made in relation to premises licences, not permits.

3.18 A Licensing Authority should aim to permit the use of premises for gambling if it believes that the application is:

- In accordance with any relevant Guidance or Codes of Practice issued by the Gambling Commission.
- Reasonably consistent with the licensing objectives.
- In accordance with the Authority's Statement of Principles (Gambling Policy).

## Processing Applications – Premises Licences

- 3.19 When an application for a premises licence is made, representations from external parties may be made about the application. The Licensing Authority will consider all relevant representations, as well as other factors, before making a final decision.
- 3.20 Only representations made by a *Responsible Authority* or *Interested Party* will be considered and they must be relevant. The definitions of these two categories differ from those included in the Licensing Act 2003.
- 3.21 A Responsible Authority must be notified by the applicant when an application for a premises licence is made. A Responsible Authority is a public body which can make a representation in relation to the application, as well as to an existing licence. They are:
- A Licensing Authority in England and Wales in whose area the premises is wholly or partly situated.
  - A Local Authority (in Scotland).
  - The Gambling Commission.
  - A Police Authority.
  - A Fire and Rescue Authority.
  - A Planning Authority.
  - An Environmental Health Authority (or equivalent).
  - The body designated by the local authority as competent to advise about the protection of children from harm (Social Services etc).
  - The body which is competent to advise about the protection of vulnerable adults (to be designated by the Secretary of State).
  - The HM Revenue and Customs.
  - Navigation Authorities (Environment Agency, British Waterways Board, Maritime and Coastguard Agency) and the Secretary of State (for vessels only).
- 3.22 An Interested Party is a person who:
- Lives sufficiently close to the premises to be affected by the authorised activities.
  - Has business interests that might be affected by the authorised activities.
  - Represents people in either of the above groups (eg lawyer, accountant, councillor, community association, chamber of commerce etc.).
- 3.23 Representations that are relevant are those issues which relate to the Gambling Commission's Guidance or Codes of Practice; issues related to the Gambling Act 2005's three licensing objectives (as listed in paragraph 3.6 above); or issues related to the Authority's Statement of Principles (Gambling Policy). Where Responsible Authorities make representations that are not relevant under the Act, they may take action under their own legislation and enforcement powers.

- 3.24 A premises licence, once issued, has unlimited duration but the Licensing Authority does have the power to review and revoke it any time, and it may be surrendered or lapse due to the death or bankruptcy of the holder.
- 3.25 The Licensing Authority may grant premises licences to pleasure boats and floating restaurants, but a vessel going into international waters (eg a cross-channel ferry) does not need a licence. Trains and cars are not entitled to hold a premises licence.

### **Licence Conditions – Premises Licences**

- 3.26 There are a number of conditions attached to premises licences under the Act, and additional conditions may also be attached by both the Secretary of State and the Licensing Authority.
- 3.27 Mandatory conditions are set by the Secretary of State. A Licensing Authority has no power to remove or vary these mandatory conditions.
- 3.28 Default conditions are attached in the same way as mandatory conditions however, the Licensing Authority may remove or replace them. The Gambling Commission's Guidance suggests that these default conditions are expected to be the industry norm. Whilst Licensing Authorities may remove default conditions if they think this is appropriate, they must consider carefully before imposing a regime that is stricter than the one that is expected to be the industry norm.
- 3.29 The Licensing Authority may also attach individual conditions to a licence. Unlike the Licensing Act, officers may make recommendations to add conditions to premises licences without the need to make formal representations.

### **Hearings**

- 3.30 The Licensing Committee must consider an application at a hearing if relevant representations are made and not withdrawn, or if the licensing officer proposes that individual conditions should be attached to the licence (either new conditions or the removal/variation of default conditions). There are specific Regulations regarding hearings.
- 3.31 Appeals against decisions made by Licensing Authorities in England and Wales are made to the Magistrates' Court.

### **Fees**

- 3.32 Premises licence fees were set by the Secretary of State via a series of bands, each with a prescribed maximum. Licensing Authorities then set precise fees within the bands, limited to cost recovery. This allows Authorities flexibility and the industry a degree of certainty.
- 3.33 In addition, excellent performing Authorities (those with top CPA ratings) are able to set premises licence fees outside these bands, limited to cost recovery.

The Secretary of State also set the fees for permits and other services and these are detailed in specific Regulations.

## Casinos

3.34 Local Authorities have powers to:

- Issue premises licenses for casinos.
- Resolve not to issue any further casino premises licenses in their area.

3.35 The Act created three new casino categories and initially allowed for 17 new premise licences to be issued across Britain: 1 regional, 8 large and 8 small casinos.

3.36 An independent panel advised the Government where these new casinos should be located, once an assessment of their social impact and the likely regeneration benefits had been made.

## 4. CONSULTATION

4.1 The Gambling Act requires all Local Authorities to prepare, consult and publish a Statement of Principles, which sets out how the authority will exercise its functions under the Act. The statement then has to be reviewed by the end of each subsequent three year period. The review is open to public consultation and the revised document must be approved by the full Council before its publication.

4.2 Croydon's Statement of Principles was initially published in January 2007 and now requires review. The document has been revised and publicly consulted on and the timetable leading up to the policy being re published is as follows:

DATE	ACTION
05.10.12	Deadline for consultation responses.
20.11.12	Licensing Committee
03.12.12	Full Council
31.12.12	Publication (by)

## 5. FINANCIAL CONSIDERATIONS

### 5.1 Revenue and Capital consequences of report recommendations

There are no direct financial implications associated with this report. This matter is being processed as part of normal duties and therefore the work associated with it is contained within the departmental budget.

### 5.2 The Effect of the Decision

There are no direct financial impacts of the recommendations in this report

### 5.3 Risks

There are no direct risks associated with the recommendations in this report

### 5.4 Options

There are no other options available to the Council

5.5 Savings/Future Efficiencies

None identified

(Approved by: Dianne Ellender, Head of Finance – Planning & Environment & Central Departments)

**6. COMMENTS OF THE SOLICITOR TO THE COUNCIL**

6.1 The Solicitor to the Council comments that the procedures associated with the implementation of the Gambling Act 2005 are determined by regulations and statutory guidance.

6.2 (Approved by: Gabriel MacGregor, Head of Corporate Law on behalf of the Solicitor to the Council).

**7. HUMAN RESOURCES IMPACT**

7.1 The procedures implemented to determine premises' licence applications are compliant with the provisions of the Human Rights Act.

**8. CUSTOMER IMPACT**

8.1 The Gambling Act impacts on existing and potential premises' licensees. Well managed licensed premises attract customers and contribute to a vibrant local economy.

**9. EQUALITIES IMPACT**

9.1 There are no perceived inequalities associated with this legislation.

**10. ENVIRONMENTAL AND DESIGN IMPACT**

10.1 There are potential environmental and design impacts associated with the development of large casinos. However, the majority of gambling premises in Croydon are small buildings like betting shops, amusement arcades and bingo halls. Many of these premises already have established use and are not considered to impact on the local environment.

**11. CRIME AND DISORDER REDUCTION IMPACT**

11.1 There are not considered to be any local crime and disorder problems associated with the local authority being responsible for the administration of premises licences. The local authority is only responsible for premises. The licensing of operators is the responsibility of the Gambling Commission.

**12. RISK ASSESSMENT**

12.1 Any licensee has the right of appeal to the Magistrates' Court if they feel aggrieved over the Council's decision to grant, refuse or vary a licence. There



is a risk that if the appellant wins, legal costs could be awarded against the Council.

**13. HUMAN RIGHTS IMPACT**

- 13.1 The Gambling Act 2005 is compliant with the Human Rights Act but it will be necessary to ensure that procedures for dealing with applications also meet the Acts requirements.

**14. FREEDOM OF INFORMATION/DATA PROTECTION CONSIDERATIONS**

- 14.1 The Statement of Principles will be accessible as part of the Council's Publication Scheme maintained under the Freedom of Information Act.
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**BACKGROUND DOCUMENTS:** None