

WEST NORTHAMPTONSHIRE COUNCIL
Alcohol and Gambling Licensing Committee
20th April 2022

Report Title	Draft Statement of Licensing Principles Policy under the Gambling Act 2005
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List of Appendices

Appendix A – Draft Gambling Act 2005 Statement of Licensing Principles Policy

1. Purpose of Report

To approve a draft West Northamptonshire Council Statement of Gambling Licensing Principles Policy, as set out at **Appendix A**, for a statutory and public consultation exercise as required by section 349 of the Gambling Act 2005 (“the Act”).

2. Executive Summary

- 2.1 West Northamptonshire Council is a Licensing Authority for the purposes of the Act and as such is responsible for issuing premises licences for premises where

gambling activities are proposed to take place within its area. Examples of such premises are betting shops, bingo halls and entertainment / gaming centres.

- 2.2 Licensing Authorities are also responsible for issuing permits for gaming machines, notices for one off gambling events and for registering societies who wish to carry out small scale lotteries, and for ensuring local compliance and enforcement of the Act.
- 2.3 The Gambling Commission is responsible for licensing operators and individuals involved in the provision of gambling activities, including online and remote facilities.
- 2.4 Under section 349 of the Act and the Gambling Act (Licensing Authority Policy Statement) (England and Wales) Regulations 2006 ("the Policy Statement Regulations"), a Licensing Authority is required to prepare and publish a three-year statement of its gambling licensing principles, or Statement of Gambling Licensing Principles Policy ("the Policy"), which sets out its approach to the consideration and determination of applications made under the Act and any subsequent necessary compliance and enforcement action.

3. Recommendations

- 3.1 That the Committee resolves to approve the draft West Northamptonshire Council Policy at **Appendix A** for statutory and public consultation (see resolution at paragraph 6.3 below) and
- 3.2 That the Committee resolves to make a recommendation to full Council that it does not make a "No Casino" resolution for inclusion within the final Policy (see resolution at paragraph 6.7 below).

4. Reason for Recommendations

- 4.1 The Council's licensing service is currently operating under three separate legacy Gambling Statement of Licensing Principles Policies, each made by the three former district councils that now make up the Council. These legacy policies remain lawful and in force until such time as the Council publishes its own Policy, as required by section 349 of the Act.

5. Report Background

- 5.1 Statements of Gambling Licensing Principles Policies made under the Act must be reviewed by Licensing Authorities at least every three years and either renewed or a new Policy published, following a statutory consultation exercise with the following statutory consultees;

- a) the chief officer of police for Licensing Authority's area,
 - b) 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
 - c) 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.
- 5.2 In preparing their Policy, the Licensing Authority must have regard to the current Guidance for Licensing Authorities issued by the Gambling Commission, along with any relevant Codes of Practice, the licensing objectives and any consultation responses.
- 5.3 The Act and the Policy Statement Regulations are prescriptive in terms of the form and the information to be provided within Licensing Authority policies, resulting in noticeable similarities between these policies across the country and limited local influence over what may be included within them.
- 5.4 Section 153 of the Act states that Licensing Authorities "shall aim to permit" gambling activities through the licensing of gambling premises, insofar as they consider the proposed activity to be in accordance with any relevant Code of Practice and any relevant guidance issued by the Gambling Commission, as well as with the Licensing Authority's Statement of Licensing Principles Policy. Any gambling activity should also be 'reasonably consistent' with the licensing objectives, which 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 and
 - Protecting children and other vulnerable persons from being harmed or exploited by gambling.
- 5.5 However, this framework does not result in a presumption that premises licenses will be granted and any which are will subject to mandatory conditions and the Codes of Practice issued by the Gambling Commission. Additional non-mandatory conditions can also be imposed on premises licences at a hearing where is it considered necessary.
- 5.6 Gambling activities which are carried out in licensed premises such as betting shops are generally considered by the Gambling Commission guidance to be safer for the user in terms of the control mechanisms in place to mitigate addictive or compulsive gambling behaviour because of the highly regulated nature of the environment. Users also have the ability to take advantage of self-exclusion schemes and signposting is available for treatment options for problem gamblers.

5.7 In terms of protecting children and other vulnerable persons from being harmed or exploited from gambling, the draft Policy clearly sets out, at Part B section 1.25, the Licensing Authority's expectations in relation to the measures it expects operators to take in order to ensure compliance with this objective. Control measures are suggested which operators can consider for inclusion within their local risk assessments depending on the local circumstances of the premises.

5.8 Should concerns arise, premises licences can be reviewed upon receipt of an acceptable review application, which can be made by any responsible authority or interested party. The Licensing Authority may also request a review of a premises licence where it considers it to be appropriate. It should be noted that applications cannot be refused or licences revoked on the grounds of either business need or because of moral objections to gambling generally.

5.9 The Act states that a resolution to publish a Policy must be made by the full Council. It cannot be the subject of a Licensing Committee resolution or Cabinet.

5.10 **Risk Assessments and Local Area Profiles**

5.11 The Gambling Commission Licence Conditions and Codes of Practice (LCCP) require all premises licensees to assess the local risks to the licensing objectives posed by the provision of gambling facilities at each of their premises and to have policies, procedures and control measures to mitigate those risks. In undertaking their risk assessments, premises licensees must take into account relevant matters identified in the Licensing Authority's Policy.

5.12 Applicants must carry out a local risk assessment when applying for a new premises licence and existing operators are required to review and update risk assessments when applying for a variation of their licence or when there are any changes in the local area which may affect the provision of gambling activities.

5.13 The Gambling Commission Guidance for Local Authorities states that there is no mandatory requirement for local authorities to produce a Local Area Profile (LAP), but there are a number of benefits in doing so. A Local Area Profile:

- enables licensing authorities to better serve their local community, by better reflecting the community and the risks within it,
- provides greater clarity for operators as to the relevant factors in licensing authority decision making, which will lead to improved premises licence applications, with the operator already incorporating controls and measures to mitigate risk in their application,

- enables licensing authorities to make robust but fair decisions, based on a clear, published set of factors and risks, which are therefore less susceptible to challenge and
 - encourages a proactive approach to risk that is likely to result in reduced compliance and enforcement action.
- 5.14 There is currently no gambling LAP for West Northamptonshire Council, however engagement with relevant partners will be undertaken to include this information in future policy reviews.
- 5.15 It is proposed that the outline guidance on factors to be considered in the local risk assessments are:
- The location of services for children such as schools, playgrounds, leisure/ community centres and other areas where children will gather,
 - The vicinity of the premises to gambling or addiction support or treatment centres where children or vulnerable groups may be present,
 - Range of facilities in proximity to the licensed premises such as other gambling outlets, banks, post offices, service tills, refreshment and entertainment type facilities,
 - The demographics of the area in relation to vulnerable groups,
 - Whether the premises are in an area subject to high levels of crime and / or disorder,
 - Local risk assessments should show how vulnerable people, including people with gambling dependencies are protected and
 - Known problems in the area such as problems arising from street drinkers, youths participating in anti-social behaviour, drug dealing activities, etc.

Casinos

- 5.16 Section 7(1) of the 2005 Act states that a casino is “*an arrangement whereby people are given an opportunity to participate in one or more casino games*”. Casino games are defined by the 2005 Act to mean games of chance which are not equal chance gaming. Equal chance gaming is gaming which does not involve playing or staking against a bank, and where the chances are equally favourable to all participants.
- 5.17 When the Gambling Act 2005 was implemented in September 2007 it was possible for local authorities to submit a bid to the Gambling Commission for the opportunity to obtain a non-remote casino operating licence within their

area. The regulations permitted operating licences for one regional casino, 8 large casinos and 8 small casinos within the United Kingdom. All of the licences for large and small casinos were awarded, although not all of the planned casinos were subsequently built. The plans for a regional casino in Manchester were scrapped by the government in 2008. There is currently no provision legally to grant any further casino non-remote operating licences due to the quota limits on the overall number of operating licenses having been reached, although this situation may change in the future.

- 5.18 Licensing Authorities have the power under section 166 of the Act to resolve not to issue premises licences for casinos anywhere in their area, which is known as a "No Casino" resolution. This resolution does not necessarily have to be made when an Licensing Authority makes a new or revised Policy. However, a "No Casino" resolution can only be made at a full meeting of the Council, rather than at the Alcohol and Gambling Licensing Committee or Cabinet. If made, it would form part of the Policy itself.
- 5.19 A "No Casino" resolution would only prevent the creation of new casinos. It would not have any effect on casino premises licences issued before the resolution takes effect or on provisional statements issued before that date. Similarly a resolution will not affect the ability of existing casinos with preserved entitlements from the Gaming Act 1968 ("grandfather rights") from continuing to operate as casinos.
- 5.20 In relation to the legacy district councils, Northampton Borough Council decided not to make a "No Casino" resolution. There are a total of four premises licences issued for existing casinos in Northampton, each of which were automatically converted by grandfather rights to have effect under the 2005 Act. However, South Northants and Daventry District Councils each passed a "No Casino" resolution and these are currently still in force in the former district areas, along with the legacy council Policies themselves, and will remain so until West Northamptonshire Council publishes its own Policy.
- 5.21 As set out at paragraph 5.16 above, it is not currently legally possible for the Gambling Commission to grant any casino operating licences due to the lack of quota availability. Were this situation to change and an application submitted to the Council for a premises license in due course, the grant of such a licence could provide significant economic and employment benefits to the local area. The requirements within the Act, the relevant Codes of Practice and planning controls provide safeguards so as to ensure that any such premises would be properly operated and would not cause a detrimental impact on the surrounding area.
- 5.22 Should any future premises license applications be possible, where any relevant representations are received or where Licensing Officers propose to exclude a standard condition or add a non-standard condition, they would have to be determined by an Alcohol and Gambling Licensing Sub-Committee. This is in accordance with the Alcohol and Gambling Committee terms of reference as set

out at paragraph 4.2 of the West Northamptonshire Council Constitution. This would give the Committee the opportunity to scrutinise in detail any application and to ensure that it was satisfied with the proposals set out and the mitigation measures proposed prior to the grant of any premises licence.

- 5.23 Given this robust approach, it is suggested that a "No Casino" resolution would not currently be advisable for the West Northamptonshire Council Licensing Authority area and the most appropriate option is not to recommend to full Council that it make a "No Casino" resolution.
- 5.24 If a "No Casino" resolution were to be made at full Council, this would not affect existing casino premises licences, but would apply only to any new application for a premises license. If a resolution is passed it would have effect only for a period of three years, following which it would lapse and a new resolution would be required. If made, a resolution may be revoked at any time by further resolution of the full Council. If no resolution is made for inclusion in the draft Policy, that would not prevent full Council from considering whether to do so in the future.

6. **Issues and Choices**

- 6.1 The choices available to the Committee regarding the draft Policy at **Appendix A** are as follows;
- A. To approve the draft Policy for statutory consultation in accordance with section 349 of the Act (see paragraph 5.1 above). **This is recommended.** As a Licensing Authority, the Council is legally required to review and publish a Policy as part of its functions under Act 2005. The three year periods in which the legacy council policies will soon expire. If the Council fails to complete a review and publish its own Policy, it will be in breach of its legal obligations and may be subject to judicial review proceedings in the High Court by any aggrieved person.
 - B. To specify amendments to the draft Policy before the statutory consultation process can begin in accordance with section 349 of the Act. **This is not recommended** as the content of the Policy must comply with the requirements of the Policy Statement Regulations, which Members of the Committee may be unfamiliar with.
 - C. To reject the draft Policy at **Appendix A. This is not recommended.** The reason for this is the same as set out at choice A above.
- 6.2 A "No Casino" resolution under Section 166 of the Act may only be made by the full West Northamptonshire Council and cannot be lawfully delegated to the Committee. The choices available to the Committee regarding a "No Casino" resolution are as follows;

- D. To make a resolution to recommend to the full Council that it not make a “No Casino” resolution for inclusion within the final Policy. **This is recommended.** See paragraphs 5.21 to 5.23 above.
- E. To not make a decision at this time regarding a “No Casino” recommendation to full Council. **This is not recommended.** Also see paragraphs 5.21 to 5.23 above. However, the Committee will have to make a decision when it considers the final draft Policy for recommendation to full Council following the conclusion of the consultation exercise.

Implications (including financial implications)

7. Resources and Financial

- 7.1 The issuing of relevant licenses would generate income revenue, subject to certain limitations in relation to the level at which such fees can be set. Otherwise there are no resource implications.

8. Legal

- 8.1 Section 349 of the Act requires all licensing authorities to prepare and publish a statement of the principles that they propose to apply in exercising their functions under the Act during the three-year period to which the policy applies.
- 8.2 The Policy Statement Regulations require a statement of gambling licensing policy to include certain information. The draft Policy at Appendix A includes that proscribed information.
- 8.3 Section 175 (2) of the Act sets out that no more than 8 “large” casino premises licenses may have effect at any time and section 175 (3) sets out the same with regard to “small” casino premises licenses. This does not include converted casino premises licenses. Section 175 (1) in respect of “regional” casino premises licenses is not currently in force, so no such licenses may be granted.
- 8.4 However, only those licensing authorities named in the Gambling (Geographical Distribution of Large and Small Casino Premises Licences) Order 2008 may currently award either “large” or “small” casino premises licenses. West Northamptonshire Council is not named as one of those authorities and neither are Daventry District Council, Northampton Borough Council or South Northants District Council. As a result, West Northamptonshire Council is not currently able to consider applications for casino premises licenses unless the 2008 Order is amended by Parliament. However, the Council must still comply with the requirement to publish a three year statement of gambling licensing policy as required by section 349 of the Act.

- 8.5 Section 154 of the Act states that a licensing authority may not delegate the decision to resolve to publish its Policy in accordance with section 349 of the Act nor make a 'No Casino' resolution under section 166. Accordingly, only the full West Northamptonshire Council may lawfully decide whether to make a resolution in respect of either decision and not the Alcohol and Gambling Licensing Committee.
- 8.4 However, as the statutory committee responsible for the discharge of the Council's gambling licensing functions under the Act, the Committee is able to approve a draft Policy, consult upon that draft in accordance with section 349 of the Act and recommend to the full Council that it make a resolution to publish it as the West Northamptonshire Council Policy for the period 2022 to 2025, in accordance with that section and the publicity provisions of the Policy Statement Regulations.
- 8.5 As regards a "No Casino" resolution, at present the Council is not currently able to lawfully grant any new casino premises licences as set out above. However, a number of licenses automatically continue to have effect having been granted under previous gambling legislation. New legislation amending the current casino quota numbers would be required in order for the Council to consider granting new casino premises licences. Despite this, it would be still be necessary to have clear and strong reasons to pass a lawful "No Casino" resolution. There is no legal provision preventing consideration of a resolution were new legislation concerning quota numbers to be introduced in the future.

9. **Risk**

- 9.1 As a result of the ages of the three legacy council Policies, failing to publish a West Northamptonshire Council Policy for the period 2022 to 2025 would be unlawful and would leave the Council open to legal challenge by way of judicial review in the High Court.
- 9.2 It is highly likely that the outcome of such a challenge would be that the Council would be ordered to comply with section 349 of the Act and publish a Policy. It is also likely that, in the event that such an order is made, the Council would be required to pay most of, if not all, of the legal costs of the entire judicial review process.
- 9.3 As a result, the Committee is recommended to approve the draft at Appendix A for consultation in accordance with the requirements of section 349 of the Act.

Comments added and checked by James Chadwick, Senior Licensing and Litigation Solicitor.

10 **Consultation**

- 10.1 If the draft Policy is approved for consultation, Officers propose to carry out a non-statutory public consultation regarding the Policy for a period of 6 weeks,

in addition to the statutory consultation process. A further report with details of all consultation responses and any consequent proposed amendments to the draft Policy will be presented to the Committee in due course.

10.2 The following time scales are proposed;

- 6-week public consultation period and statutory consultation commence– TBC
- Result of consultations reported to the Committee with a view to resolving a recommended final draft Policy to full Council – TBC
- Final draft Policy recommended to full Council for publication – TBC

11 Climate Impact

11.1 There are no climate impact implications arising from this report or from the statutory gambling licensing regime in general.

12 Community Impact

12.1 There are no identified distinct community impacts arising from the approval of a draft Policy to undergo consultation. Responses to the consultation process may include detail about any current or potential impacts in specific parts of the Council's area. These will be addressed within the further report to the Committee following the conclusion of the consultation process.

13 Communications

13.1 A consultation will be carried out in accordance with the statutory requirements.

14 Background Papers

14.1 Gambling Commissions Guidance for Local Authorities
<http://www.gamblingcommission.gov.uk/for-licensing-authorities/GLA/Guidance-to-licensing-authorities.aspx>

14.2 Gambling Commission Local Authority Bulletin
<http://www.gamblingcommission.gov.uk/PDF/LA-bulletin/Licensing-authority-bulletin-January-2018.pdf>

