

Council – 16 November 2006

GAMBLING ACT 2005 - 'STATEMENT OF PRINCIPLES'

Report of the Licensing Officer

Statutory Powers: Gambling Act 2005

Financial Implications: Uncosted risk of challenge as highlighted in paragraph 33 (Risk Assessment).

Purpose

1. The purpose of this report is for members to consider the recommendations made by the Licensing Committee to Council at their meeting on 16th October 2006.
2. To determine who the Council will designate in writing as competent to advise the authority about the protection of children from harm.
3. For Members to be aware that the Council may make a 'no casino' resolution at any time and this would take immediate effect.
4. To approve the triennial 'Statement of Principles' (**Appendix 'A'**) for the period 3/1/07 to 2/1/10.
5. To approve the scheme of delegation (**Appendix 'B'**) permitted under the Gambling Act.

Links to Council Aims and Priorities

6. There is a link to the Council's priority of CP2: 'Creating the conditions for the growth and maintenance of quality economic activity'.

RECOMMENDATION

That the Council RESOLVES to agree:-

- a. **to nominate in writing the Local Safeguarding Children Board as the body competent to advise the authority about the protection of children from harm issues (Section 157(h) Gambling Act 2005);**
- b. **not to make a 'no casino' resolution at this meeting but to monitor the seventeen Local Authorities where additional casinos will be approved by the Secretary of State and for Members to be mindful that if in the future the Government allow any additional casinos this Council has the right to make a 'no casino' resolution at any time and the decision will take immediate effect (Section 166 Gambling Act 2005);**

- c. **to approve the proposed triennial 'Statement of Principles' (Policy) for the South Hams for the period 3/1/07 to 2/1/10 (Appendix 'A');**
- d. **to approve the changes to the Constitution, as detailed in paragraph 29 of the report, with delegated authority being granted to the Monitoring Officer, to make any other amendments to the Constitution arising from the Council's licensing responsibilities.**

Background

7. The Gambling Act received Royal Assent on 7th April 2005 and gives effect to the Government's proposal for reform of the law on gambling. The Act contains a new regulatory system to govern the provision of all gambling in Great Britain other than the National Lottery and spread betting.
8. The Act repeals the Betting, Gaming and Lotteries Act 1963, the Gaming Act 1968 and the Lotteries and Amusements Act 1976.
9. The new Act removes from the courts all responsibility for granting gaming and betting permissions and the responsibilities will now be shared between the Gambling Commission and Councils, (as the new Licensing Authorities).
10. The Financial Services Authority and the National Lottery Commission will, for the time being, continue to regulate spread betting and the National Lottery respectively.
11. The Commission will be responsible for granting 'Operating Licences' and 'Personal Licences' for commercial gambling operation (such as casinos and bingo halls) and to personnel working in the industry.
12. Local Councils will have powers to licence gambling premises within their district as well as granting permits for gaming machines. The premises will include casinos, bingo halls, betting shops, adult and family entertainment centres (formerly known as amusement arcades) etc. The machines will include the ones found in public houses and the higher payout jackpot machines found in members clubs, betting shops, bingo and casinos.
13. The Act contains three licensing objectives which underpin the functions of licensing authorities. They are:-
 - Protecting children and other vulnerable people from being harmed or exploited by gambling;
 - Preventing gambling from being a source of crime or disorder, being associated with crime or disorder or being used to support crime; and
 - Ensuring that gambling is conducted in a fair and open way.

14. The Act makes significant changes to the regime for casinos. It removes certain regulatory controls which exist under the old Gaming Act (e.g. 'permitted' areas and the 'demand' test). Three categories of casino are introduced (regional, large and small) which are defined according to size. The Government are initially allowing just seventeen new casinos namely 1 x Regional (min 5,000 M² floor space); 8 x Large (min 1,500M² floor space) and 8 x small casinos (min 750M² floor space). To put this into perspective a small casino would be approximately six times the size of the Council chamber.
15. The Government established a 'bidding process' for local authorities to express a formal interest in having one or more of the seventeen casinos in their area. Over sixty councils made a 'bid' for one of the new casinos of which Torquay and Newquay were the only local contenders. Most councils appear to be 'waiting and seeing' what regeneration benefits a new style casino will bring but the Act also enables local authorities to 'close the door' on any applications by passing a resolution not to have any casino in its area. A council is not obliged to pass a 'no casino' resolution but may do so if so at any time in the future and the decision may be given immediate effect.
16. Members will see similarities between the Gambling Act and the Licensing Act. Both responsibilities have been transferred from the courts to Councils, both have licensing objectives, albeit different, and both require local authorities to write policies. As we have called the Licensing Act document a 'Licensing Policy' it is thought appropriate to call the Gambling Act policy a 'Statement of Principles' to differentiate between the two.
17. Since 24 November 2005, when we assumed responsibility for alcohol licensing we also inherited various other responsibilities from the courts for example the granting of the permits for gaming machines in pubs and dealing with Temporary Events (TEN's).
18. The responsibilities for councils under the Gambling Act will be very similar to that under the Licensing Act. We will be responsible for the licensing of premises for casinos, bingo, betting premises (including tracks), adult gaming centres and family entertainment centres. We will also grant other forms of authorisation namely, provisional statements; club gaming permits; club machine permits (jackpot payout machines); registration of small society lotteries; issue prize gaming permits and receiving temporary use notices and occasional use notices. We will also continue with the granting of machine permits for pubs.

Child Protection

19. One of the requirements under the Gambling Act is for the council to designate in writing who it considers competent to advise the authority about the protection of children from harm.

20. As the Local Safeguarding Children Board in Dartington, Totnes is the responsible consultee for this authority under the Licensing Act, Members may wish to nominate the same Board. (They have indicated their willingness if so nominated).

Casino resolution

21. As mentioned in '3' above, the other decision Councils may choose to make, although not obligatory and can be made at any time in the future and can take immediate effect, is whether or not to make a 'no casino resolution' for the District. At the moment Members may feel such a resolution to be a premature exercise as nominations have closed for one of the seventeen new style casinos. Members may prefer to 'wait and see' any regeneration benefits the new casinos will bring to areas selected.

Statement of Principles - Consultation

22. Before Councils' approve their three yearly licensing 'Statement of Principles' the Gambling Act requires that the following parties to be consulted:-
- The Chief Officer of Police;
 - One or more persons who appear to the authority to represent the interests of persons carrying on gambling businesses in the authority's area;
 - One or more persons who appear to the authority to represent the interests of persons who are likely to be affected by the exercise of the authority's functions under the Gambling Act 2005.
23. Public consultation took place between 5th June and 31st August 2006 (12 weeks) and the draft document (dated 24th May 2006) now forms part of the background papers. This authority consulted the:-
- Citizen's Advice Bureau
 - Crime and Disorder Reduction Partnership
 - Devon and Cornwall Constabulary
 - Devon County Council Social Services/Education Department
 - Devon Fire and Rescue Service
 - Environmental Health
 - Gamblers Anonymous
 - Gambling Commission
 - Gamcare
 - Local businesses and their representatives
 - Local faith groups
 - Local residents and their representatives
 - Mencap
 - NSPCC
 - Primary Care Trust
 - Representatives of existing licence-holders
 - Voluntary & Community organisations working with children & young people

24. During the month of September 2006 and up to and including the 16th October 2006 (when the Licensing Committee sat) Members of the Licensing Committee have had opportunity to review the consultation returns and to give proper weight to the views of all consultees responses prior to making the recommendations to full Council. At the meeting of the Licensing Committee on 16/10/06 the draft 'Statement of Principles' was amended to reflect the views of the public consultation.

Fees

25. The Department of Culture Media & Sport (DCMS) are not expected to release the fee structure to local authorities until December 2006 at the earliest but will ensure that the system provides cost recovery for local authorities. The fees will be set within bands (like the fees under the Licensing Act) and there is some suggestion where an authority is rated 'excellent' under the Audit Commission's Comprehensive Performance Assessment (CPA) the Secretary of State may devolve the power to set fees to those authorities.
26. However, looking at the existing fees payable to the court of £1,495 for a renewal of a bingo licence and £25 for the renewal of a betting office licence the reality is to impose full cost recovery of implementing this Act onto one bingo premises at Kingsbridge and a few betting shops around the district is not a realistic option.

Executive

27. The Executive Function Regulations have been amended (S. I. 2006 No. 886) to ensure that the 'Statement of Principles' (policy statement) and any 'no casino' resolution are approved by Full Council rather than the Executive.

Key target dates

28. Key target date:-
- Full Council to adopt 'Statement of Principles' and approve scheme of delegation. 16th November 2006
 - Publication of South Hams District Council's Statement of Principles (latest possible date - 3rd Jan 2007) 4th December 2006
 - Council's statement of Principles comes into force. 3rd January 2007
 - First Appointed Day for advanced applications and commencement of 'transitional period'. 30th April 2007
 - Deadlines for advanced application and 'continuation rights'. (end of conversion period). 31st July 2007
 - Application considered 'new' from this date. 1st August 2007

- Second Appointed Day ‘new’ licences supersede ‘old’ licences
1st September 2007
 - Gaming Act 1968, Betting Gaming and Lotteries Act 1963 and the Lotteries and Amusement Act 1976 all repealed. 1st September 2007
29. Article 15 of the Constitution states that amendments to the Constitution need to be authorised by the full Council. **Appendix ‘B’ attached** are recommended delegated functions to the Licensing Committee, Licensing Sub-Committee and Licensing Officer. These will enable the Council to fulfil its obligations as the Licensing Authority according to the Gambling Act 2005. Consequently, if the Policy is approved, the Constitution will need to be revised to incorporate the delegated functions. It is proposed that the Constitution be amended as follows:

Responsibility for the Licensing Authority Functions

Full Council	As per appendix ‘B’	Gambling Act 2005
Licensing Sub-Committee	As per appendix ‘B’	Gambling Act 2005

Scheme of Delegations – Licensing Officer

Subject matter	Action Delegated
1. Gambling Act 2005	As per appendix ‘B’ Power to make minor amendments to the peripheral contents of the Statement of Principles in consultation with the Chairman of the Licensing Committee

Risk Assessments

Risk	Mitigation
None specific to this particular report but subsequently, if the ‘Statement of Principles’ (Policy) is not properly adopted by the District Council the Authority could be liable to legal challenge which if successful could entail heavy costs being awarded against the District Council.	To take the Statement of Principles to full Council on 16 th November so if there are any unforeseen difficulties it may be adjourned until the December meeting and still be published by the deadline on 3 rd January 2007.
If Members fail to consider the consultation responses and give proper weight to comments.	Discussions have been held with the Members of the Licensing Committee who have been able to give due weight

If the scheme of delegation is not correctly approved.	Any licenses approved by the Licensing Officer may be ultra vires.
If the Statement of Principles is not adopted before 3 rd January 2007.	It is scheduled to go before full Council on 16 th November to allow a safety margin.

Conclusion

30. As with the 'Policy' under the Licensing Act, the attached 'Statement of Principles' under the Gambling Act is also a living document and may be reviewed at any time, it has to be reviewed anyway every three years.
31. Should in the future the Government decide to increase the number of casinos and this Council decides to make a 'no casino' resolution any such a decision will take immediate effect.
32. The Licensing Committee have given due weight to all the public consultation responses and amended the draft statement accordingly. The amended version and final document for approval is attached (**Appendix 'A'**).
33. This Council must have their 'Statement of Principles' published at the latest by 3rd January 2007.

Graham Munson
Licensing Officer

Council
16 November 2006

Ian Bollans
Head of Environmental Health

Background papers:

Gambling Act

Gambling Commission Guidance to Licensing Authorities published April 2006

Draft consultation 'Statement of Principles' dated 24th May 2006.

Consultation replies, summary and recommendation of the Licensing Committee

Agenda item and minutes of the meeting of the Licensing Committee held on 16 October 2006.

APPENDIX B

Administration, Exercise and Delegation

Recommended delegation functions permitted under the Gambling Act.

(X indicates the lowest level to which decisions can be delegated)

Matter to be dealt with	Full Council	Sub-committee of licensing committee	Licensing Officer
Three year licensing Statement of Principles	X		
Policy not to permit casinos	X		
Fee setting (when appropriate)			X (to be approved by the Executive)
Application for premises licences		Where representations have been received and not withdrawn	Where no representations received/representations have been withdrawn
Application for a variation to a licence		Where representations have been received and not withdrawn	Where no representations received/representations have been withdrawn
Application for a transfer of a licence		Where representations have been received from the Commission	Where no representations received from the Commission
Application for a provisional statement		Where representations have been received and not withdrawn	Where no representations received/representations have been withdrawn
Review of a premises licence		X	
Application for club gaming/ club machine permits		Where objections have been made (and not withdrawn)	Where no objections made/objections have been withdrawn
Cancellation of club gaming/ club machine permits		X	
Applications for other permits			X
Applications for Small Lottery Registration		Where objections have been made (and not withdrawn)	Where no objections made/objections have been withdrawn
Cancellation of licensed premises gaming machine permits			X
Consideration of temporary use notice			X
Decision to give a counter notice to a temporary use notice		X	