



Report to Licensing (Regulatory) Committee

Date: 20th October 2021

Title: Draft Statement of Licensing Policy under the Gambling Act 2005

Author(s): Caroline Steven, Principal Licensing Officer.

Decision:

1. To approve the draft Statement of Licensing Policy under the Gambling Act 2005 as set out at Appendix 1 for a public consultation exercise.
2. To approve the draft fees as set out at Appendix 2.
3. To note the draft Local Area Profile at Appendix 3.

1. Background

- 1.1 In accordance with the Gambling Act 2005 (the 'Act'), Buckinghamshire Council, in its role as Licensing Authority, is responsible for authorising certain gambling activities at premises used for gambling purposes by the issue of premises licences and permits.
- 1.2 Under section 349 of the Act, the Licensing Authority is required to prepare and publish a Statement of Licensing 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.
- 1.3 The Council's licensing service is currently operating under separate legacy policies and fees, reflecting the four former district council areas. Under the terms of the transitional legislation, Buckinghamshire Council has two years to prepare and publish a new single policy under the Act and align service provision. The deadline for publication and implementation of the new Policy is no later than 1 April 2022.
- 1.4 A new draft policy has now been produced for consultation purposes and is attached to this report at Appendix 1 for consideration.

2. Main content of report

- 2.1 The Licensing Authority is responsible for issuing premises licences for premises where gambling activities are proposed to take place. 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 Statements of Licensing Policy made under the Act must be reviewed and published at least every three years further to consultation with named statutory consultees and other persons and bodies who may be affected by gambling activities.
- 2.5 In preparing their Statement of Licensing Policy the Licensing Authority must have regard to the Guidance for Licensing Authorities issued by the Gambling Commission along with any relevant Codes of Practice, the licensing objectives and any consultation responses.
- 2.6 The Act is prescriptive in terms of the information to be provided within licensing authority policies, resulting in noticeable similarities between these policies across the country and limited local influence.
- 2.7 Section 153 of the Act, states that local authorities should “aim to permit” gambling activities insofar as they consider the proposed activity to be in accordance with any relevant code of practice or guidance issued by the Gambling Commission and with the Licensing Authority’s Statement of Licensing 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
 - Protecting children and other vulnerable persons from being harmed or exploited by gambling
- 2.8 However, this framework does not result in a presumption that authorisations will be granted and any authorisations which are granted are subject to mandatory conditions and Codes of Practice issued by the Gambling Commission. Additional conditions can also be imposed on premises licences where it is considered necessary.

- 2.9 Gambling activities which are carried out in licensed premises such as betting shops are generally considered 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.
- 2.10 In terms of protecting children and other vulnerable persons from being harmed or exploited from gambling, the draft policy clearly sets out at section 19.3 the Licensing Authority's expectations in relation to the measures it expects operators to take 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.
- 2.11 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 and licences cannot be revoked either on the grounds of business need or because of moral objections.

Risk Assessments and Local Area Profiles

- 2.12 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 statement of licensing policy.
- 2.13 Applicants must carry out a local risk assessment when applying for a new premises licence and existing operators are reviewed 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.
- 2.14 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
- encourages a proactive approach to risk that is likely to result in reduced compliance and enforcement action.

2.15 A draft LAP for the Buckinghamshire Council area has been produced which signposts applicants and operators to relevant information to assist them in producing local risk assessments. The draft LAP is at Appendix 3.

Casinos

2.16 When the Gambling Act 2005 was implemented in September 2007 it was possible for local authorities to bid for the opportunity to obtain a casino licence within their area. The regulations permitted 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 licences although this situation may change in the future.

2.17 Licensing Authorities have the power under section 166 of the Act to resolve not to issue premises licences for casinos. In relation to the legacy district councils, Aylesbury, South Bucks and Wycombe decided not to make a resolution. However, Chiltern District Council passed a “no casino” resolution in 2018 which is currently still in force under the legacy council Policy

2.18 It is not currently legally possible to grant any casino licences due to the lack of quota availability. Were this situation to change and an application be submitted, 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.

2.19 Should any future application be possible, the Scheme of Delegation set out at Appendix 3 of the draft policy confirms that the consideration and determination of any such application would sit with the Licensing Committee. This would give the Committee the opportunity to scrutinise in detail any such application and to ensure that they were satisfied with the proposals set out within the application and the mitigation measures proposed prior to the grant of any licence.

2.20 Given this robust approach, it is suggested that a “no casino” resolution would not currently be advisable for the Buckinghamshire Council area and the most appropriate option is not to make a “no casino” resolution within the proposed policy statement.

Fees

- 2.21 In approving any policy made under the Act, the authority is also required to agree and publish a single set of application fees and charges for licences and permits issued under the Act.
- 2.22 Section 212 of the Act gives the Secretary of State power to make regulations prescribing the fees payable to the Licensing Authority. It also gives the power to devolve to Licensing Authorities in England and Wales the freedom to set fees for premises licence applications, subject to any constraints the Secretary of State may prescribe which includes a maximum fee level. The government has decided that for England and Wales, Licensing Authorities will determine their own fees for gambling premises licences but that the Secretary of State will prescribe the maximum fee payable for each category of licence.
- 2.23 There is no statutory requirement for public consultation when setting fees under the Act and it for the Licensing Committee to agree these fees. The proposed fees are included within this report solely for the purposes of consideration and for approval by the Committee.
- 2.24 Gambling fees are currently being charged separately in the legacy district areas. A comparison of all of the various current fees and charges for the legacy areas is provided at Appendix 2. In producing a single policy for the Council area, it will also be necessary to produce and publish a single set of fees.
- 2.25 Some fees, such as for small society lotteries, gaming machine permits and automatic entitlements are set by central government and there is no discretion locally. No fee is chargeable for Occasional Use Notices which are intended for infrequent (a maximum of 8 per year) track betting at events such as point-to-point meetings.
- 2.26 For premises licence fees and Temporary Use Notices, there are regulations which set maximum possible fee levels for each type of application. These maximum permitted fee levels have also been included in Appendix 2 for comparison purposes.
- 2.27 Fees should be set at a level to ensure full cost recovery whilst also being fair and value for money for the gambling industry. Fees should be reviewed on an annual basis.
- 2.28 There are currently 39 betting premises within the Council area and 9 other gambling premises that will be affected by the proposed fees.
- 2.29 The general methodology behind this review of fees has been determined by the Act and the document 'Open for business: Local Government Association (LGA) guidance on locally set licence fees'.

- 2.30 The core principles in the LGA guidance are that fees should be non-discriminatory; justified; proportionate; clear; objective; made public in advance; transparent; and accessible.
- 2.31 The guidance draws attention to two important judicial decisions in relation to fees. The first is *R (Cummings) v Cardiff [2014]* which rules that the charges within a licensing regime for different categories of licence should be accounted entirely separately and should not subsidise each other.
- 2.32 The second is *Hemming v Westminster [2013]* The principle ruling was that application fees relate solely to the costs of authorisation i.e. reviewing the application and granting or refusing it. Successful applicants should subsequently be charged an additional fee relating to the costs of on-going maintenance and enforcement. This aspect of fee setting is relevant to the Council's refund policy in relation to unsuccessful applications.
- 2.33 The LGA guidance acknowledges that Councils are free to design their licensing service in a manner that best serves the needs of their community and recover the costs accordingly. It provides a number of elements that Councils may wish to consider. These include administration, visits, third party costs, liaison with interested parties, management costs, local democracy costs, staffing on-costs, development, determination and production of licensing policies, web material, advice and guidance, setting and reviewing fees, monitoring and inspection visits and maintaining statutory registers.
- 2.34 The type of tasks involved in gambling premises applications include assisting applicants, checking received applications for validity, processing the application, assessing representations for relevance, undertaking informal mediation and site visits where necessary. Once applications have been processed, further costs include determining and issuing the licence or arranging for and holding a hearing, which also includes notification of the decision and updating the records and register.
- 2.35 The costs associated with possible magistrate court appeals and hearings have been estimated. The risk of appeals and hearings occurring has been based on historical experience of the legacy authorities.
- 2.36 The legislation does not require the Council to make a precise calculation so as to arrive at an income which exactly meets the cost of the administration of licences and permits. Councils are required, however, to take a reasonable and proportionate approach and should aim to set a fee level that is sufficient to cover the cost but not make a surplus. On that basis it is proposed that a full service review of fees is carried out on a rolling three year basis in line with the policy review, thus affording the opportunity to reconcile any surplus or deficit accrued.
- 2.37 In addition to this, the fees will be reviewed annually in relation to any increase in RPI and where appropriate an increase will be applied to the fee to recover related

increased costs to the Council. The Government are currently reviewing RPI and may replace it with another inflationary measure. If this is the case an annual increase in relation to any new measure prescribed, where appropriate, will be applied to the fee to recover related increased costs to the Council.

- 2.38 A comprehensive review of the cost of delivering activities relating to gambling licences has been carried out and new fees are proposed that reflect both the full staffing costs of running the service as well as the support service costs. As required this review has factored in recoverable costs incurred by the Council such as Democratic Services and committees, corporate governance, office accommodation, IT provision, administration, supplies and services etc. It does not include Freedom of Information requests, Data Protection Act requests or activity related to unlicensed operators.
- 2.39 Benchmarking has also been carried out with other local authorities, both nationally and for surrounding authorities.
- 2.40 A fee schedule of the new proposed fees and charges is provided at Appendix 2 alongside benchmarking comparison information from other local authority areas.
- 2.41 Members will note that there is a large variance in fees both across the benchmarking and legacy area figures. The proposed fees are within the range of the legacy area fees, generally being lower than the current Chiltern, South Bucks and Wycombe fees whilst representing an increase for the Aylesbury area.
- 2.42 In terms of betting premises, which make up the majority of the licensed premises in the Buckinghamshire Council area, the proposals amount to a large decrease of over £1000 for an application for a new licence compared with the current Chiltern and South Bucks area. The decrease is smaller for Wycombe and Aylesbury, being £44 and £3 respectively. In terms of wider benchmarking, out of the remaining 12 benchmarked authorities only three have lower annual fees for betting shops; Royal Borough of Kensington and Chelsea (£1,175), Three Rivers (£890) and Darlington (£1,300).
- 2.43 It should also be noted that new applications for betting premises are, however, very low in number and there has been a continued downward trend in this respect since the reduction in stakes on fixed odds betting terminals.
- 2.44 The proposed annual fee for betting shops is £415 which amounts to a reduction of £185 for the Chiltern and South Bucks areas and a small increase of £15 for the Wycombe area. The proposal represents a larger increase of £156 in the Aylesbury area where there are currently 11 premises benefitting from this type of licence (in Wycombe there are 18 such premises and in Chiltern and South Bucks there are 10). Overall the proposed annual fee would therefore result in a net reduction for businesses across the Council area.

- 2.45 In terms of wider benchmarking for betting shop annual fees, the proposed fee is lower than any of the remaining benchmarked authorities which indicates that it represents value for money for operators.

3. Next steps and review

- 3.1 If approved, the draft policy will be subject to a consultation exercise for a period of 6 weeks. A further report with details of consultation responses and any consequent proposed amendments to the policy will be presented to this committee. The following time scales are proposed in order to meet the publication deadline of 1 April 2022:

- Draft policy 6 week public consultation – October to December 2021
- Result of consultation reported to Cabinet Member - TBC
- Results of consultation reported to Licensing Committee – 02 February 2022 (TBC)
- Final version of policy presented to Council for adoption – 23 February 2022

4. Other options considered

None. The preparation and publication of a Statement of Licensing Policy under the Gambling Act 2005 is a legal requirement under section 349 of the Act. Failure to do so would be likely to result in legal challenge and reputational damage to the Licensing Authority.

5. Legal and financial implications

- 5.1 Section 349 of the Gambling Act 2005 requires licensing authorities to prepare, review and publish a statement of licensing policy at least every three years, which sets out how the authority will consider and determine applications made under the Act along with its approach to enforcement activities.
- 5.2 The Act is prescriptive in terms of the information to be included within the policy and in producing any such policy the authority must take into account the Gambling Commission's Guidance to Licensing Authorities, the licensing objectives, any relevant Codes of Practice and any consultation responses received.
- 5.3 The work involved in preparing and publishing the new Statement of Licensing Policy is a function of the licensing service with the work performed by officers as part of their duties. No significant additional costs to the Council are envisaged.

6. Corporate implications

- 6.1 Protecting the vulnerable – The licensing objectives underpinning the Gambling Act 2005 include the requirement to protect children and other vulnerable persons from

being harmed or exploited by gambling. It is important that the Licensing Authority clearly sets out the measures it intends to take to fulfil this objective within the policy document.

6.2 Property – N/A

6.3 HR – N/A

6.4 Climate change – N/A

6.5 Sustainability – N/A

Equality – an equality impact screening assessment has been completed which indicates that a full equalities impact assessment is not required

6.6 Data – N/A

6.7 Value for money – the Licensing Service has ensured that the costs involved in delivering the service are kept to a minimum whilst also ensuring that the provision of the service is cost neutral.

Key documents:

“Open for Business”, LGA Guidance on locally set fees:

<https://www.local.gov.uk/open-business-lga-guidance-locally-set-licence-fees>