



Report to Council

Date: 23 February 2022

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

Relevant councillor(s): Cllr Nick Naylor, Cabinet Member for Housing, Homelessness and Regulatory Services.
Cllr Heather Wallace, Chairman of Licensing Committee

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Recommendations:

1. To approve and adopt the Statement of Licensing Policy for Buckinghamshire Council under the Gambling Act 2005, to take effect from 1 April 2022.

1. Introduction

- 1.1 In accordance with the Gambling Act 2005 (the 'Act'), Buckinghamshire Council, in its role as Licensing Authority, is responsible for regulating certain premises-based gambling activities within the Borough. The Council carries out this function by granting premises licence and permits and receiving notices and registrations for gambling-based activities. The Council is also responsible for the associated enforcement activity to ensure compliance under the Act. The Council's full functions under the Act are shown in Section 8 of the draft Policy. A copy of the draft Policy is shown in Appendix 1.
- 1.2 The predominant gambling activities regulated by Buckinghamshire Council relate to betting shops, adult gaming centres, bingo premises, gaming and gaming machines and registering small society lotteries.
- 1.3 The Council shares responsibility for regulating gambling activities with the Gambling Commission. The Gambling Commission are the national regulator for gambling and are responsible for issuing operator licences and personal licences (where required), regulating online gambling and the National Lottery, and issuing guidance to local licensing authorities.
- 1.4 Under section 349 of the Act, the Council is required to prepare and publish a Statement of Licensing Policy, ('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. As with the Licensing Act 2003, the way the Council performs its duties under the Act is guided by prescribed objectives. For the purposes of regulating gambling activities these objectives are:

- a) preventing gambling from being a source of crime or disorder, being associated with crime or disorder, or being used to support crime
- b) ensuring that gambling is conducted in a fair and open way
- c) protecting children and other vulnerable persons from being harmed or exploited by gambling

1.5 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. The new Policy must be published at least four weeks before it is effective, the deadline for publication of the Policy is therefore 4 March 2022.

1.6 Following a five-week period of public consultation, a new Policy has been drafted and approved by the Council's Licensing Committee with a recommendation that it now be adopted by the Council.

2. Main Report

2.1 On 20th October 2021, the Licensing Committee agreed a draft Policy for public consultation. The Licensing Committee report of 20th October 2021 sets out in more detail the necessary statutory and other considerations and requirements in producing a new draft Policy. A link to the report is provided in the key document section of this report.

2.2 The Act is prescriptive in terms of the information to be provided within the Policy statement, resulting in noticeable similarities between local authority statements. It is also important to highlight a number of areas related to the regulation of gambling activity which the Council is unable to influence (paragraphs 2.3 to 2.7 below):

2.3 Moral or ethical objections are not considered valid reasons to reject applications. The Gambling Commission statutory guidance clearly states, (paragraph 5.34):

"Licensing authorities should be aware that other considerations such as moral or ethical objections to gambling are not a valid reason to reject applications for premises licences. In deciding to reject an application, a licensing authority should rely on reasons that demonstrate that the licensing objectives are not being, or are unlikely to be, met, and such objections do not relate to the licensing objectives. An

authority's decision cannot be based on dislike of gambling, or a general notion that it is undesirable to allow gambling premises in an area (with the exception of the casino resolution powers)."

- 2.4 The Council cannot determine the level of stakes and prizes for gambling activities as these are prescribed by legislation.
- 2.5 The Council has no regulatory control related to online gambling activity (remote gambling) and sale of National Lottery products; these are regulated by the Gambling Commission
- 2.6 The Council, in its role as Licensing Authority, cannot consider whether or not a premises complies with law related to planning or building regulations when determining licence applications. (Section 210 of the Act). These matters are dealt with under separate legislation.
- 2.7 The Council cannot consider expected demand for the gambling facilities proposed, sometimes referred to as commercial need, when determining licence applications. (Section 153(2) of the Act).
- 2.8 However, the Council is able to influence the following important areas, and these matters are reflected in the draft Policy:
- 2.9 **"Interested parties"**. These are persons other than responsible authorities who the Council consider eligible to make representation, and seek review, in relation to licence applications. (draft Policy section 5). Councils are able to stipulate within their policies the criteria they intend to apply in establishing whether a party fulfils the definition of interested party. The draft Policy sets out broad parameters and proposes that the Council will adopt an "open mind" in this respect. The draft Policy makes it clear that interested parties includes ward councillors and town and parish councils and that these parties will also be consulted when licence applications are submitted in their area.
- 2.10 **Approach to enforcement.** The draft Policy sets out the proposed approach to enforcement. A proactive and reactive approach to enforcement is necessary to safeguard the licensing objectives. The Council, in reviewing applications for premises licences, will have regard to the measures put in place to ensure compliance with the licensing objectives (draft Policy section 19) and in the use of proactive visits to ensure that the required safeguards are in place and being complied with. For example, when considering the protection of children and vulnerable people from being harmed or exploited. These safeguards include procedures for monitoring customer gambling activity and intervention policies, access to problem gambling support literature and effective self-exclusion policies. Underage test purchase exercises can help ensure licensed premises have robust measures to prevent underage gambling.

- 2.11 **Risk assessments.** Gambling operators are required to assess the local risks posed by the provision of gambling facilities at their premises and consider whether these risks may undermine the licensing objectives. Among other factors, the risk assessment must take into account relevant matters identified in the Council's Policy. The Council can refer to the content of an operators risk assessment as a means of assessing whether risks have been adequately assessed and appropriate control measures are in place to address the licensing objectives. The draft Policy (draft Policy section 15) sets out expectations on operators with respect to the content and sharing of risk assessment.
- 2.12 **Local Area Profiles, ('LAPs').** To assist Council decision making and operators when preparing and reviewing their risk assessment, Councils are encouraged to prepare and publish LAPs to provide, or signpost, relevant geographical information to help identify areas at higher risk to the licensing objectives. This information may include such things as locations of schools and colleges and treatment services provided for those with gambling problems. The Council's licensing service has prepared a draft LAP, (Appendix 2). It is intended that this document be referenced in the Policy but published outside of the Policy to allow timely modifications to be made to its content without the requirement for full consultation.
- 2.13 **Licence fees** for premises licences. Unlike the Licensing Act 2003, the Council has the power to determine the appropriate level of licence application and ongoing maintenance fees for licensed gambling premises, within statutory limits. This helps to ensure that fees can be set at a level to secure full cost recovery of Council costs. The Licensing Committee have agreed a schedule of fees to be implemented from 1 April 2022. Fee levels have been set at levels estimated to ensure recovery, without incurring a surplus and will be kept under regular review. Further information about the approved fee levels is provided in the Licensing Committee report of 20th October 2021.
- 2.14 **Casino resolution.** The Council has the authority to pass a resolution not to licence any casinos. Of the legacy councils, only Chiltern District Council had adopted such a resolution. The number and location of casinos permitted nationally are controlled by legislation. The locations of the eight large and eight small casinos permitted under the regulations have been allocated and it is not currently possible to grant any casino licences within Buckinghamshire Council's area. For this reason, it is not deemed necessary to consider whether or not a "no casino" resolution is required. Further information on casinos is provided within the Licensing Committee report of 20th October 2021.

Consultation

- 2.15 The draft Policy agreed by Licensing Committee on 20th October 2021 was subject to a five week public consultation exercise, which included direct communications with

all statutory consultees and other stakeholders or bodies and groups who might be affected by gambling activities in the Buckinghamshire Council area. The consultation ran from the 1st November until the 10th December 2021.

- 2.16 Nine responses were received to the consultation, eight by way of response to an online survey through Your Voice Bucks and one by way of letter. Whilst the response rate may appear low, this is by no means unusual for public consultations on local authority gambling policies and typically a low number of responses are received. Of the online responses, four agreed, or strongly agreed with the policy (response from Thames Valley Police), three were neutral, and one disagreed. A letter was submitted on behalf of the Betting and Gaming Council.
- 2.17 In light of comments made by consultation respondents, some minor amendments were made to the draft Policy wording, where considered appropriate and consistent with statutory guidance from the Gambling Commission. In addition to wording changes, the draft Policy has been amended to include a commitment to notify ward councillors and local town and parish councils when an application for a new or variation of gambling premises licence is made in their area. This approach mirrors the approach adopted in the Licensing Act 2003 recently approved by the Council with a view to facilitating greater community engagement in local decision making.
- 2.18 On 2nd February 2022, the Licensing Committee considered the consultation responses and proposed amendments to the draft Policy. Members unanimously agreed to recommend the revised version of the draft Policy for adoption by the Council. Full details of the consultation responses are contained in the Licensing Committee report of 2nd February 2022. A link to this report is provided in the key documents section.

3. Next steps and review

- 3.1 If approved, an adopted version of the Policy will be published together with the statutory notice 4 weeks before the new policy takes effect on 1st April 2022.
- 3.2 Once adopted and published, the Council has a legal obligation to review and consult on the policy content at least every 3 years.

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 Gambling Act 2005 (Licensing Authority Policy Statement) (England and Wales) Regulations 2006 require that a policy once adopted must be published, along with a statutory notice, at least four weeks before the policy takes effect.
- 5.4 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:

Appendix 1

[Statement of Licensing Policy under the Gambling Act 2005](#)

Appendix 2

[Draft Local Area Profile](#)

Report to Licensing Committee of 20th October 2021 (Item 6)

<https://buckinghamshire.moderngov.co.uk/ieListDocuments.aspx?CId=349&MId=17178>

Report to Licensing Committee of 2nd February 2022 (Item 4)

<https://buckinghamshire.moderngov.co.uk/ieListDocuments.aspx?CId=349&MId=16904>

Gambling Commission statutory “Guidance to licensing authorities”

Gambling Act 2005, Section 25

<https://www.gamblingcommission.gov.uk/guidance/guidance-to-licensing-authorities>