

**Committee: Licensing Committee**

**Date: 6 July 2021**

Wards: All

**Subject: Report on the draft three yearly review of the Council's Statement of Policy and Principles under the Gambling Act 2005 including consideration on whether to re-state the 'no Casino' Policy**

**Lead officer:** Chris Lee, Director of Environment and Regeneration.

**Lead member:** Councillor Nick Draper, Chair of the Licensing Committee

**Forward Plan reference number:** N/A

**Contact Officer:** Caroline Sharkey, Licensing Manager, London Boroughs of Merton, Richmond upon Thames and Wandsworth Joint Regulatory Services Partnership and Guy Bishop Senior Lawyer Litigation and Planning Team.

**Recommendations:**

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- A. Approve the Draft Statement of Policy and Principles under the Gambling Act 2005 set out in Appendix A for consultation
  - B. Approve the proposal to consult on the re-stating of a 'No Casino' resolution under section 166 of the Gambling Act 2005
  - C. Approve the proposed arrangements for consultation on the Draft Statement of Policy and Principles under the Gambling Act 2005 as laid out in paragraphs 3.19 – 3.21.
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## **1. PURPOSE OF REPORT AND EXECUTIVE SUMMARY**

- 1.1 Section 349 of the Gambling Act 2005 (the 'Act') requires licensing authorities before each successive period of three years to  
“(a) prepare a statement of the principles that they propose to apply in exercising their functions under this Act during that period, and  
(b) publish the statement”
- 1.2 The next “successive period” starts on 31st January 2022. However, the Statement needs to be adopted by 31st December 2021 as it must be published at least 4 weeks before the date on which it comes into effect on the authority's website and also be available for inspection by the public. In addition, a notice advertising the publication must be placed on the Council's website and on a public notice board in the Town Hall.

1.3 Before determining its Policy the Authority is required to consult with the police, persons who represent the interests of gambling businesses and those who represent the interests of persons who are likely to be affected by gambling businesses. It is recommended that the public consultation period should last for a minimum period of ten weeks starting on the 19 July 2021

1.4 Following the end of the public consultation period, officers of the Licensing Authority will collate comments received. Details of the comments and any suggested changes to the draft Statement of Principles will be made available to Members for discussion at a meeting of the Licensing Committee to be held on the 14 October 2021. If approved the final Statement of Principles will be put to full Council for adoption.

## **2. DETAILS**

2.1 The London Borough of Merton, as the Licensing Authority under the Gambling Act 2005, is required to publish every three years a Statement of Principles, which it must apply when exercising its function under the Act.

2.2 The Gambling Act 2005 (the Act) came into effect on 1st September 2007 and, amongst other changes, gave to Local Authorities new and extended powers for licensing premises for gambling, including betting shops, casino gaming, bingo premises and gaming machine arcades. Local Authorities are also responsible for registering small society lotteries and for issuing permits to pubs and clubs for gaming machines.

2.3 The Act contains three licensing objectives which underpin the functions that the Commission and the licensing authority must perform. They are: -

(a) preventing gambling from being a source of crime or disorder, being associated with crime and disorder, or being used to support crime;

(b) ensuring that gambling is conducted in a fair and open way; and

(c) protecting children and other vulnerable persons from being harmed or exploited by gambling.

2.4 In making a decision about a premises licence under the Gambling Act, Licensing Authorities must aim to permit its use provided it is

- In accordance with any relevant code of practice issued by the Gambling Commission

- In accordance with any relevant guidance issued by the Gambling Commission

- Reasonably consistent with the licensing objectives; and

- In accordance with the authority's statement of licensing policy

### **3. PROPOSED AMENDMENTS TO THE EXISTING STATEMENT OF POLICY AND PRINCIPLES**

- 3.1 Appendix A of the report sets out, for consultation, the proposed Statement of Policy and Principles by which this Authority will exercise its functions during the period 2022-2025
- 3.2 Although the proposed Statement does not make any reduction in the principles currently applied when determining applications under the Act, it has been strengthened in a number of areas as laid out in the following paragraphs.
- 3.3 Section 10 of the proposed Statement amplifies the principles that the Authority will apply in exercising its powers under the Act to determine whether a person is an interested party. In particular it makes it clear that this Authority will interpret the definition of the term ‘has a business interest’ in the widest possible way and will include, for example, representatives of charities, faith groups, medical practices and business improvement districts (Paragraph 10.9). In addition, the Statement makes it clear that the Authority will generally require written evidence that a person ‘represents’ someone, who either lives sufficiently close to the premises to be likely to be affected by the authorised activities, and, or has business interests that might be affected by the authorised activities. A letter or email from one of these persons requesting the representation will be sufficient. This would not apply to Councillors or MP’s provided they are intervening on behalf of a person living within their Ward or Constituency (Paragraph 10.10)
- 3.4 A new section has been added to the Statement regarding the definition of ‘premises’. (Paragraphs 12.12 -12.18). This builds on the experiences of other Licensing Authorities dealing with applications to split one existing premises into two or three venues in order to increase the number of higher value gaming machines that can be provided. The Statement of Principles now clearly lays out the expectations of the Authority when considering such applications.
- 3.5 It is proposed to add a section to the statement regarding controlling where gaming machines may be played and plans and the Council’s expectations with regard to information that should be provided on the plans submitted with all new or variation premises licence applications. This will assist in ensuring that premises are providing the gambling activity for which they are licenced, with any gaming machine provisions being ancillary only (Paragraphs 12.19- 12.22 )
- 3.6 In February 2015 the Gambling Commission published a revised version of its Licence Conditions and Codes of Practice (LCCP) which formalised the need for operators to consider local risks to the licensing objectives posed by the provision of gambling facilities at each of their premises and have policies, procedures and control mechanisms to mitigate those risks. In making their assessments, licensees have to take into account relevant matters identified in the council’s licensing policy. The assessments have

to be reviewed in response to significant changes in local circumstances, including those identified in licensing policies. Operators have to undertake a local risk assessment when applying for a new premises licence and when applying to vary their licence and must share these with licensing authorities when applying for a new or varied licence, or otherwise on request. Amendments have been made to this Statement of Policy to clearly indicate matters that the Authority would expect to be included in a local risk assessment (Appendix B to the Statement)

- 3.7 In order to assist operators in the risk assessment process, Local Authorities are encouraged to publish local area profiles including, for example, information on social deprivation, crime statistics, areas with a high concentration of children, location of venues such as existing gambling premises, educational establishments, centres dealing with vulnerable persons, leisure centres, playgrounds, libraries and pay day loan and pawn shops. This Authority has not published a local area profile to date. It is now proposed to do so. This will comprise maps forming part of the Statement of Policy indicating deprivation scores across the borough at Lower Layer Super Output Area (LSOA) level and location of existing gambling premises, educational establishments, community facilities and pay day loan and pawn shops as well as local ward profiles setting out the demographic, economic and crime profiles of every Ward in the borough. The Ward Profiles will be available on the Council's website, but do not form part of the Statement of Policy and Principles. A draft of the proposed Ward profiles is attached at Appendix B of the report.
- 3.8 New sections have been included in the Statement relating to:  
Travelling fairs (Section 14)  
Permits (section 18)  
Temporary Use Notices (Section 19)  
Occasional Use Notices (Section 20)  
Small Society Lotteries (Section 21)
- 3.9 Previous Statements have not included any reference to the Council's policy with regard to the above-mentioned matters. The opportunity has now been taken to include into policy the custom and practice of this Authority regarding the processing and enforcement of permits and small society lottery registrations. Although the Council has not to date had to deal with Travelling Fairs, Temporary or Occasional Use Notices it is proposed that the Statement of Intent should, nonetheless, include reference to them and, where appropriate, the Council's expectations when processing any such application in the future.
- 3.10 Sections of the existing Statement relating to the integration of Council Strategies have been removed. There is no requirement under the Gambling Act or associated Guidance to refer to Council strategies in its Statement of Intent. It should be noted, however, that when drawing up its Statement of Intent under the Gambling Act care is taken to ensure that it complements the Council's overall aims and policies.

#### **4. NO CASINO POLICY**

- 4.1 Section 166 of the Gambling Act 2005 allows a Licensing Authority to resolve not to issue a Casino Premises Licence or allow operators to make application for premises licences for casinos in its area. The decision must be taken by the authority as a whole and cannot be delegated to the Regulatory Committee. In passing such a resolution the Authority may take into account any principle or matter, not just the licensing objectives. Where a resolution is passed it must be published by the Authority in its three year licensing policy statement.
- 4.2 The resolution must apply to casino premises generally so that the authority cannot limit its effect to geographic areas or categories of casinos. The resolution must specify the date it comes into effect. The authority may revoke the resolution by passing a counter-resolution. The resolution will, in any event, lapse after three years when, if they wish to do so, the authority would be required to pass another resolution to keep the policy in place.
- 4.3 The resolution, if passed, would mean that no application for a Casino Premises Licence would be considered. Any application received would be returned with a notification that a 'no-casino' resolution was in place.
- 4.4 The Council approved a 'no casino' resolution at its meeting on 5<sup>th</sup> April 2006 and re-stated it in 2009, 2013, 2015 and 2018. The current Statement of Intent does not give any reasons for this resolution.
- 4.5 As there have been no changes to the profile of the borough that would indicate that the Council should change its position on resolving to adopt a 'no casino' policy and it is therefore proposed that, subject to consultation, the policy be re-stated. However, it is proposed to amend the Section on Casinos to state
- 'This licensing authority is proposing to re-state its 'no casino' resolution which has been in place since 2006. Merton borough is predominantly residential in nature and a casino would be out of character to the area. In making its initial decision the Licensing Committee had regard to the consultation responses including the view of Members' (Paragraph 13.1)
- 4.6 It should be noted that, whilst the Government has determined the location of the eight large and eight small casinos introduced under the Gambling Act 2005, a number of these have not been proceeded with. In addition, there is a will amongst casino operators and some local authorities to allow for the portability of casino licences granted under the 1968 Gaming Act to allow new casinos in areas previously prohibited from having casinos without increasing the total number across the country as a whole. However, there is no indication that the Government wishes to amend the law regarding casino licences or seek further bids for a large or small casinos.

## **5. CONSULTATION**

5.1 Before determining its policy the Authority is required to consult with a number of statutory consultees namely:-  
(a) the chief officer of police for the area;  
(b) one or more persons who appear to the authority to represent the interests of persons carrying on gambling businesses in the 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.  
However, an Authority may consult more widely if it so wishes.

5.2 It is proposed to consult with the following persons, premises and organisations:

- The Chief Officer of Police
- The Council's Children Services and Adult Social Care Services
- Trade associations
- Businesses or their representatives involved in gambling
- Ward Councillors and local Members of Parliament
- Faith groups
- Residents Associations
- Voluntary and Community Organisations working with children and vulnerable adults
- Wimbledon Civic Forum
- Advocacy Groups (e.g. Citizens Advice and Trade Unions)
- Responsible Authorities
- Organisations working with people who are problem gamblers
- The Gambling Commission
- Local planning authority
- Environmental Services in its capacity as the body responsible for the prevention of pollution to the environment and protection of public health
- HM Revenue and Custom

5.3 The consultation will also be posted on the Council's website.

5.4 It is proposed that a minimum ten week public consultation be undertaken on the proposed Statement of Principles under the Gambling Act commencing on the 19 July and ending on the 27th September 2021.

## **6. Timetable.**

6..1 Following the consultation a further report will be brought to the Licensing Committee on the 14<sup>th</sup> October 2021. The final draft Statement Principles under the Gambling Act, including the 'no casino' resolution will be presented to Full Council meeting for adoption towards the end of this year. The Statement will then be published for at least 4 weeks and come into effect on the 31<sup>st</sup> January 2022.

## **7. Financial, resource and property implications.**

7.1 None for the purposes of this report

## **8. Legal and statutory implications.**

- 8.1 Section 349 of the Gambling Act 2005 requires the Licensing Authority to prepare and publish as Statement of Licensing Policy every 3 years. The next Statement must be come into effect by the 31<sup>st</sup> December 2021 when the previous policy expires.
- 8.2 Section 349(3) of the Gambling Act 2005 the lists the persons the Licensing Authority is required to consult in preparing its Statement as set out at paragraph 3.18 of this report.
- 8.3 Section 25 of the Gambling Act 2005 requires the Authority to have regard to the Gambling Commission's Guidance when preparing its Statement of Licensing Policy risk assessment

## **9. Human rights, equalities and community cohesion implications.**

- 11.6 These are statutory functions and are applied globally.

## **10. Crime and Disorder Implications.**

- 12.1 The service has a statutory duty to contribute to the reduction of crime and disorder within the London Borough of Merton under Section 17 Crime and Disorder Act 1988. Preventing gambling from being a source of crime or disorder, being associated with crime and disorder, or being used to support crime and protecting children and other vulnerable persons from being harmed or exploited by gambling are two of the three licensing objectives as defined in the Gambling Act 2005 and form the main principles of the Council's Statement under the Gambling Act.

## **11. Risk management and health and safety implications.**

- 11.1 All risk and health and safety implications have been considered when compiling this report. None are apparent.

## **12. Appendices – the following documents are to be published with this report and form part of the report.**

- 12.1 Appendix "A" Draft revised Statement of Principles under the Gambling Act 2005..
- 12.2 Appendix "B" - Local Area Profile, economic and demographic profiles.

## **13. Background Papers – the following documents have been relied on in drawing up this report but do not form part of the report.**

- 13.1 The Gambling Act 2005  
[https://www.legislation.gov.uk/ukpga/2005/19/pdfs/ukpga\\_20050019\\_en.pdf](https://www.legislation.gov.uk/ukpga/2005/19/pdfs/ukpga_20050019_en.pdf)
- 13.2 Gambling Commission Guidance to Licensing Authorities  
<https://www.gamblingcommission.gov.uk/for-licensing->

13.3 Existing Statement of Intent under the Gambling Act

[GamblingPolicyNovember2018.pdf \(merton.gov.uk\)](#)