



Licensing Act 2003 Committee

Date:	Monday, 14 September 2009
Time:	5.30 pm
Venue:	Committee Room 1 - Wallasey Town Hall

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AGENDA

1. DECLARATIONS OF INTEREST

Members are asked to consider whether they have personal or prejudicial interests in connection with any item(s) on this agenda and, if so, to declare them and state what they are.

2. MINUTES (Pages 1 - 2)

To receive the minutes of the meeting held on 19 May, 2009.

3. DRAFT STATEMENT OF PRINCIPLES UNDER THE GAMBLING ACT 2005 (Pages 3 - 36)

4. ANY OTHER URGENT BUSINESS APPROVED BY THE CHAIR

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LICENSING ACT 2003 COMMITTEE

Tuesday, 19 May 2009

<u>Present:</u>	Councillor	S Taylor (Chair)	
	Councillors	WJ Davies	IO Coates
		A Taylor	W Duffey
		J Salter	S Niblock
		C Teggin	C Povall
		R Wilkins	D Knowles
		S Clarke	
<u>Apologies</u>	Councillor	H Smith	

1 DECLARATIONS OF INTEREST

Members were asked to consider whether they had any personal or prejudicial interests in connection with any item(s) on the agenda and, if so, to declare them and state what they were. No declarations were made.

2 MINUTES

The Committee was requested to receive the minutes of the meeting held on 29 September, 2008.

With regard to minute 5, the Licensing Manager updated the Committee on the appeal in respect of the premises, Red Cat, Greasby.

Resolved – That the minutes of the meeting held on 29 September, 2008, be approved as a correct record.

3 APPOINTMENT OF THE LICENSING ACT 2003 SUB-COMMITTEES

The Director of Law, HR and Asset Management, requested that the Committee appoint the Licensing Act 2003 Sub-Committee for 2009/10.

Resolved -

(1) That each Licensing Act 2003 Sub-Committee meeting be comprised of three members and one reserve member to be drawn from the pool of fifteen Committee members as follows:

Councillors SL Clarke, IO Coates, WJ Davies, WA Duffey, DS Kirwan, D Knowles, S Niblock, Cherry Povall, JJ Salter, H Smith, A Taylor, Sue Taylor, C Teggin, R Wilkins and 1 vacancy (Liberal Democrat) [subsequently notified as D Mitchell]

(2) That the Chairs of the Sub-Committees be appointed on the day of each meeting.

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WIRRAL COUNCIL

LICENSING ACT 2003 COMMITTEE – 14 SEPTEMBER 2009

REPORT OF THE DIRECTOR OF REGENERATION

DRAFT STATEMENT OF PRINCIPLES UNDER THE GAMBLING ACT 2005

1.0 EXECUTIVE SUMMARY

1.1 The purpose of this report is to seek Members approval of the Draft Statement of Principles under The Gambling Act 2005 in order that it may be circulated for consultation and a final statement can be presented to Council for approval on 14 December 2009.

2.0 BACKGROUND

2.1 Under the Gambling Act 2005 a new regime for regulating gambling and betting came into effect on 1 September 2007.

2.2 Wirral Borough Council became the Licensing Authority responsible for granting premises licenses in Wirral in respect of:

- Betting premises
- Bingo premises
- Family entertainment centres
- Adult gaming centres
- Casino premises

2.3 The Licensing Authority also has responsibility for certain gaming machine permits, temporary use notices and occasional use notices, as well as the registration of small society lotteries.

2.4 The Gambling Act 2005 requires the Council to prepare and publish a statement of Licensing Principles that the Authority will apply when considering applications under the Act. A Statement of Licensing Principles was approved by Council on 18 December 2006. It is a requirement that this policy document be reviewed every three years.

2.5 A revised draft statement of Licensing Principles, attached as Appendix 1, has been prepared having regard to the provisions of the Gambling Act 2005 and the Guidance issued by the Gambling Commission. The draft is also in accordance with a template prepared by the Local Authorities Co-ordinators of Regulatory Services (LACORS).

2.6 A list of consultees is attached in Appendix 2.

2.7 The consultation period closes on 14 December 2009.

2.8 Members are asked to approve the draft document so that it may be circulated for the required three month consultation period.

3.0 FINANCIAL IMPLICATIONS

3.1 Financial costs arising from the consultation process have been met from existing budgets.

4.0 STAFFING IMPLICATIONS

4.1 Staffing costs arising from the consultation process have been met from existing budgets.

5.0 EQUAL OPPORTUNITIES IMPLICATIONS

5.1 There are no equal opportunities implications arising out of this report.

6.0 COMMUNITY SAFETY IMPLICATIONS

6.1 Effective control of Gambling Legislation can assist in raising standards and improve the perception of community safety.

7.0 LOCAL AGENDA 21 IMPLICATIONS

7.1 There are no Local Agenda 21 implications arising out of this report.

8.0 PLANNING IMPLICATIONS

8.1 There are no planning implications arising out of this report.

9.0 ANTI-POVERTY IMPLICATIONS

9.1 There are no anti-poverty implications arising out of this report.

10.0 LOCAL MEMBER SUPPORT IMPLICATIONS

10.1 This report affects the entire Borough

11.0 BACKGROUND PAPERS

11.1 Draft Statement of Principles (Appendix 1)

11.2 List of Consultees (Appendix 2)

12.0 RECOMMENDATIONS

12.1 That the Draft Statement of Licensing Principles be approved as a document to be consulted upon so that a final statement can be considered by Council on 14 December 2009 for approval as the Statement of Principles to be applied under The Gambling Act 2005.

12.2 That a further progress report be submitted to the Licensing Act 2003 committee meeting of 9 November 2009.

Alan Stennard
Director of Regeneration

This report was prepared by Margaret O'Donnell who can be contacted on 691 8606



Draft
Statement of Principles
2009

Gambling Act 2005

**Wirral Licensing Authority
Town Hall
Brighton Street
Wallasey
CH44 8ED**

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The Licensing Objectives

In exercising most of their functions under the Gambling Act 2005, (The Act) Wirral Borough Council as the Licensing Authority must have regard to the following licensing objectives.

- Preventing gambling from being a source of crime and disorder, being associated with crime and 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

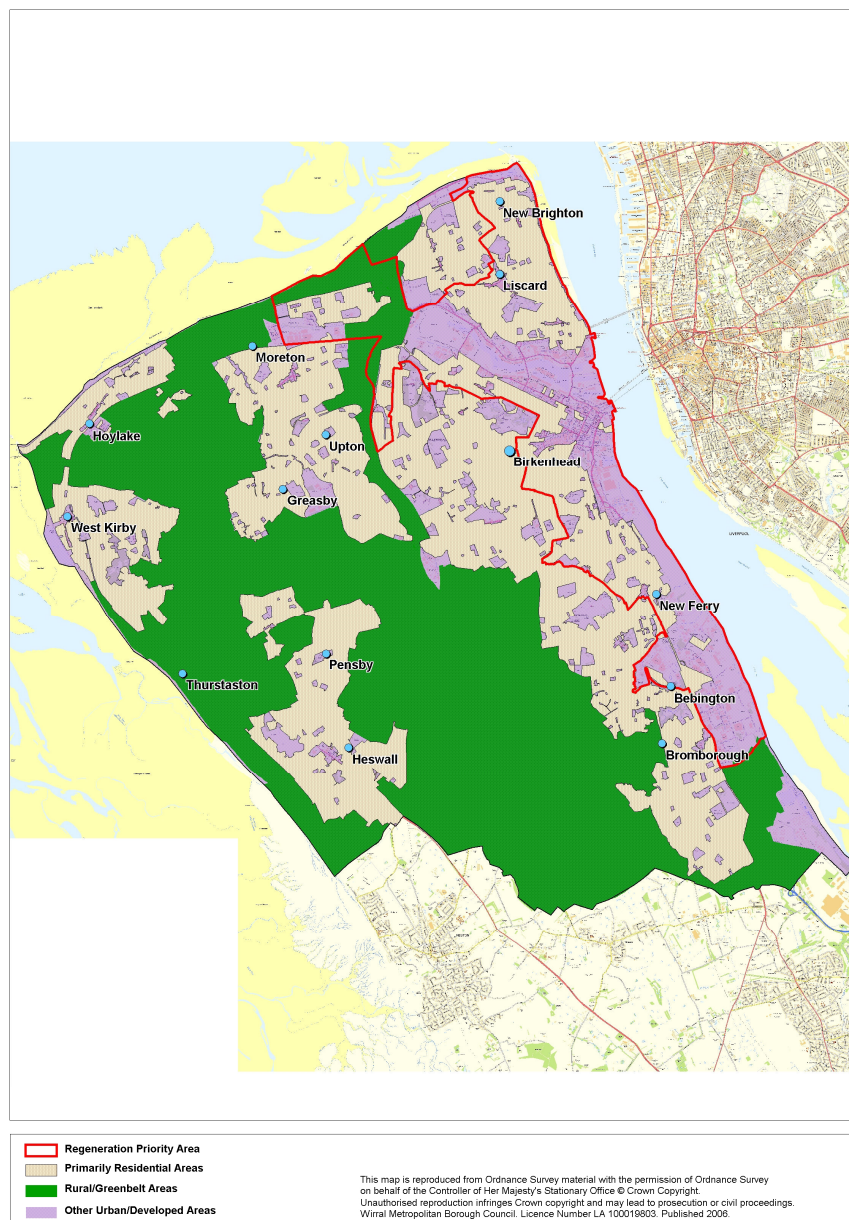
It should be noted that the Gambling Commission has stated: “The requirement in relation to children is explicitly to protect them from being harmed or exploited by gambling”.

This Licensing Authority is aware that in accordance with Section 153 of the Gambling Act 2005, in making decisions about premises licences and temporary use notices it should aim to permit the use of premises so far as it thinks 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 in accordance with the Authority’s Statement of Licensing Principles.

1.0 Introduction

1.1 Wirral Council is situated in the County of Merseyside, which contains no district Councils, but 5 metropolitan councils Knowsley, Liverpool, Sefton, St Helens and Wirral. The Council area has a population of 310,200 (ONS Mid 2007 Estimate) making it the second largest after Liverpool in the County in terms of population. Wirral is the third largest Metropolitan Council in the North West. In terms of area it is the largest in Merseyside, covering 60.1 square miles. The Borough is mainly urban in outlook, with 32.85 square miles (54.66% of the borough) covered in Residential, Industrial or Commercial buildings. These areas are shown in the map below.



The key provided identifies the urban / rural areas as well as regeneration priority areas.

- 1.2 Licensing authorities are required by the Gambling Act 2005 to publish a statement of the principles which they proposed to apply when exercising their functions. This statement must be published at least every three years. The statement must also be reviewed from “time to time” and any amended parts re-consulted upon. The statement must be then re-published.
- 1.3 The Gambling Act requires that the following parties are consulted by Licensing Authorities:
- 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
- 1.4 A list of the persons sent this document to for consultation is illustrated at **Appendix A.**
- 1.5 This statement of principles is available on our web site www.wirral.gov.uk and copies are also available in One Stop Shops, as well as at the Town Hall, Brighton Street, Wallasey, Wirral, CH44 8ED.
- 1.6 It should be noted that this policy statement will not override the right of any person to make an application, make representations about an application, or apply for a review of a licence, as each will be considered on its own merits and according to the statutory requirements of the Gambling Act 2005.

2.0 Declaration

2.1 In producing the final statement, this Licensing Authority declares that it has had regard to the licensing objectives of the Gambling Act 2005, the Guidance issued by the Gambling Commission, and any responses from those consulted on the statement.

3.0 Responsible Authorities

3.1 The Licensing Authority is required by regulations to state the principles it will apply in exercising its powers under Section 157(h) of the Act to designate, in writing, a body which is competent to advise the authority about the protection of children from harm. The principles are:

- the need for the body to be responsible for an area covering the whole of the Licensing Authority's area
- the need for the body to be answerable to democratically elected persons, rather than any particular vested interest group

3.2 In accordance with the suggestion in the Gambling Commission's Guidance for local authorities, this authority designates the Local Safeguarding Children Board for this purpose.

3.3 The Responsible Authorities under the Gambling Act 2005 are:

- Wirral Borough Council Licensing Department
- The Gambling Commission
- The Chief Constable, Merseyside Police
- Merseyside Fire and Rescue Service Authority
- Wirral Borough Council Planning Section
- Wirral Borough Council Environmental Health Section
- Local Safe Guarding Children Board
- H.M. Revenue & Customs

Subject to any other person being prescribed in Regulation by the Secretary of State. The contact addresses for these authorities are illustrated at **Appendix B.**

4.0 Interested parties

4.1 Interested parties can make representations about licence applications, or apply for a review of an existing licence. These parties are defined in the Gambling Act 2005 as follows:

“For the purposes of this Part a person is an interested party in relation to an application for or in respect of a premises licence if, in the opinion of the Licensing Authority which issues the licence or to which the application is made, the person-

- a) lives sufficiently close to the premises to be likely to be affected by the authorised activities
- b) has business interests that might be affected by the authorised activities
- c) represent persons who satisfy paragraph (a) or (b)

4.2 The Licensing Authority are required by regulations to state the principles we will apply in exercising our powers under the Gambling Act 2005 to determine whether a person is an interested party.

4.3 The Licensing Authority will consider the examples of consideration provided in the Gambling Commission’s Guidance to Licensing Authorities at Paragraph 8.14 and 8.15. We will also consider the Guidance that “ has business interests “ is given it’s widest possible interpretation and should include partnerships, charities, faith groups and medical practices.

4.4 The Gambling Commission has recommended that we state that interested parties include trade associations and trade unions, and residents and tenants associations at Paragraph 8.17. We will not however generally view these bodies as interested parties unless they have a member who can be classed as an interested person under the provisions of the Act ie. lives sufficiently close to the premises to be likely to be affected by the activities applied for.

4.5 Interested parties can be persons who are democratically elected such as a Ward Councillor, M.P. etc. No specific evidence of being asked to represent an interested party will be required as long as the Councillor / M.P. etc. represents the ward likely to be affected. Other than these however, this authority will generally require written evidence that a person/body (e.g. an advocate / relative) ‘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 from one of these persons, requesting the representation is sufficient.

4.6 If individuals wish to approach councillors to ask them to represent their views then care should be taken that the councillors are not part of the Licensing

Committee dealing with the licence application. If there are any doubts then please contact the Licensing Department at the Town Hall, Brighton Street, Wallasey, CH44 8ED.

5.0 Exchange of Information

- 5.1 The Licensing Authority are required to include in its policy statement the principles to be applied by the authority in exercising the functions under Sections 29 and 30 of the Act with respect to the exchange of information between us and the Gambling Commission, and the functions under Section 350 of the Act with respect to the exchange of information between ourselves and the other persons listed in Schedule 6 to the Act.
- 5.2 The principle that this Licensing Authority applies is that it will act in accordance with the provisions of the Gambling Act 2005 in its exchange of information which includes the provision that the Data Protection Act 1998 will not be contravened. We will also have regard to any Guidance issued by the Gambling Commission to local authorities on this matter, as well as any relevant regulations issued by the Secretary of State under the powers provided in the Gambling Act 2005.
- 5.3 Should any protocols be established as regards information exchange with other bodies then they will be made available.

6.0 Enforcement

- 6.1 Licensing authorities are required by regulation under the Gambling Act 2005 to state the principles to be applied by the authority in exercising the functions under Part 15 of the Act with respect to the inspection of premises; and the powers under Section 346 of the Act to institute criminal proceedings in respect of the offences specified.
- 6.2 This Licensing Authority's principles are that it will be guided by the Gambling Commission's Guidance for local authorities and will endeavour to be:
- Proportionate: regulators should only intervene when necessary: remedies should be appropriate to the risk posed, and costs identified and minimised
 - Accountable: regulators must be able to justify decisions, and be subject to public scrutiny
 - Consistent: rules and standards must be joined up and implemented fairly
 - Transparent: regulators should be open, and keep regulations simple and user friendly
 - Targeted: regulation should be focused on the problem, and minimise side effects

In accordance with the Gambling Commission's Guidance for local authorities this Licensing Authority will endeavour to avoid duplication with other regulatory regimes so far as possible.

- 6.3 This Licensing Authority is developing a risk-based inspection programme, based on;
- The Licensing Objectives
 - Relevant codes of practice
 - Guidance issued by the Gambling Commission, in particular at Part 36
 - The principles set out in this statement of licensing policy
- 6.4 The main enforcement and compliance role for this Licensing Authority in terms of the Gambling Act 2005 will be to ensure compliance with the premises licences and other permissions which it authorises. The Gambling Commission will be the enforcement body for operating and personal licences. Concerns about manufacture, supply or repair of gaming machines will not be dealt with by the Licensing Authority but will be notified to the Gambling Commission.
- 6.5 This Licensing Authority will also keep itself informed of developments as regards the work of the Better Regulation Executive in its consideration of the regulatory functions of local authorities.
- 6.6 Bearing in mind the principle of transparency, this Licensing Authority's enforcement/compliance protocols/written agreements will be available upon request at the Licensing Department, Town Hall, Brighton Street, Wallasey CH44 8ED.

7.0 Licensing Authority functions

- 7.1 Licensing Authorities are required under the Act to:
- Be responsible for the licensing of premises where gambling activities are to take place by issuing Premises Licences
 - Issue Provisional Statements
 - Regulate members' clubs and miners' welfare institutes who wish to undertake certain gaming activities via issuing Club Gaming Permits and/or Club Machine Permits
 - Issue Club Machine Permits to Commercial Clubs
 - Grant permits for the use of certain lower stake gaming machines at unlicensed Family Entertainment Centres
 - Receive notifications from alcohol licensed premises (under the Licensing Act 2003) for the use of two or fewer gaming machines

- Issue Licensed Premises Gaming Machine Permits for premises licensed to sell/supply alcohol for consumption on the licensed premises, under the Licensing Act 2003, where there are more than two machines
- Register small society lotteries below prescribed thresholds
- Issue Prize Gaming Permits
- Receive and Endorse Temporary Use Notices
- Receive Occasional Use Notices
- Provide information to the Gambling Commission regarding details of licences issued
- Maintain registers of the permits and licences that are issued under these functions

PART B

8.0 Premises Licences

General Principles

- 8.1 Premises Licences are subject to the requirements set-out in the Gambling Act 2005 and regulations, as well as specific mandatory and default conditions which are detailed in regulations issued by the Secretary of State.
- 8.2 The Licensing Authority are able to exclude default conditions and also attach other conditions, where we believe it to be appropriate.
- 8.3 This Licensing Authority is aware that in making decisions about premises licences we should aim to permit the use of premises for gambling in so far as we think 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
 - In accordance with this Statement of Licensing Principles
- 8.4 It is appreciated that gambling can be an emotive subject but acknowledge that in accordance with Gambling Commission Guidance for Local Authorities, “moral objections to gambling are not a valid reason to reject applications for premises licences”. Except in respect of a Casino resolution and also that unmet demand is not a criterion for a Licensing Authority.
- 8.5 Premises is defined in the Act as “any place”. Different premises licences cannot apply in respect of a single premises at different times. It is however possible for a single building to be subject to more than one premises licence, providing that each licence is for a different part of the building and such different parts can be properly regarded as different premises.
- 8.6 The Licensing Authority will judge each case on its individual merits to decide as a matter of fact, whether different parts of a building can be properly regarded as being separate premises.
- 8.7 The Gambling Commission, in their guidance, do not consider that areas of a building that are artificially or temporarily separate can be properly regarded as different premises. The Licensing Authority support this view.

- 8.8 The Gambling Commission states that “Whether different parts of a building can properly be regarded as being separate premises will depend on the circumstances. The location of the premises will clearly be an important consideration and the suitability of the division is likely to be a matter for discussion between the operator and the licensing officer. However, the Commission does not consider that areas of a building that are artificially or temporarily separated, for example by ropes or moveable partitions, can properly be regarded as different premises”.
- 8.9 The Licensing Authority make particular note of the Gambling Commission’s Guidance to Licensing Authorities which states that: licensing authorities should take particular care in considering application for multiple licences for a building and those relating to a discrete part of a building used for other (non-gambling) purposes. In particular they should be aware of the following:
- The third licensing objective seeks to protect children from being harmed by gambling. In practice that means not only preventing them from taking part in gambling, but also preventing them from being in close proximity to gambling. Therefore premises should be configured so that children are not invited to participate in, have accidental access to or closely observe gambling where they are prohibited from participating.
 - Entrances to and exits from parts of a building covered by one or more premises licences should be separate and identifiable so that the separation of different premises is not compromised and people do not ‘drift’ into a gambling area. In this context it should normally be possible to access the premises without going through another licensed premises or premises without a permit.
 - Customers should be able to participate in the activity named on the premises licence.
- 8.10 The Guidance also gives a list of factors which the Licensing Authority should be aware of, which may include:
- Do the premises have a separate registration for business rates?
 - Is the premises’ neighbouring premises owned by the same person or someone else?
 - Can each of the premises be accessed from the street or a public passageway?
 - Can the premises only be accessed from any other gambling premises?
- 8.11 This authority will consider these and other relevant factors in making its decision, depending on all the circumstances of the case.

8.12 The Gambling Commission's relevant access provisions for each premises type are reproduced below:

Casinos

- The principal access entrance to the premises must be from a street (as defined at 7.23 of the Guidance)
- No entrance to a casino must be from premises that are used wholly or mainly by children and/or young persons
- No customer must be able to enter a casino directly from any other premises which holds a gambling premises licence

Adult Gaming Centre

- No customer must be able to access the premises directly from any other licensed gambling premises

Betting Shops

- Access must be from a street (as per para 7.23 Guidance to Licensing Authorities) or from another premises with a betting premises licence
- No direct access from a betting shop to another premises used for the retail sale of merchandise or services. In effect there cannot be an entrance to a betting shop from a shop of any kind and you could not have a betting shop at the back of a café – the whole area would have to be licensed.

Tracks

- No customer should be able to access the premises directly from:
 - a casino
 - an adult gaming centre

Bingo Premises

- No customer must be able to access the premise directly from:
 - a casino
 - an adult gaming centre
 - a betting premises, other than a track

Family Entertainment Centre

- No customer must be able to access the premises directly from:
 - a casino
 - an adult gaming centre
 - a betting premises, other than a track

8.13 Part 7 of the Gambling Commission's Guidance to Licensing Authorities contains further guidance on this issue, which this authority will also take into account in its decision-making.

9.0 Premises “ready for gambling”

- 9.1 The Guidance states that a licence to use premises for gambling should only be issued in relation to premises that the Licensing Authority can be satisfied are going to be ready to be used for gambling in the reasonably near future, consistent with the scale of building or alterations required before the premises are brought into use.
- 9.2 If the construction of a premises is not yet complete, or if they need alteration, or if the applicant does not yet have a right to occupy them, then an application for a provisional statement should be made instead.
- 9.3 In deciding whether a premises licence can be granted where there are outstanding construction or alteration works at a premises, this authority will determine applications on their merits, applying a two stage consideration process:-
- First, whether the premises ought to be permitted to be used for gambling
 - Second, whether appropriate conditions can be put in place to cater for the situation that the premises are not yet in the state in which they ought to be before gambling takes place.
- 9.4 Applicants should note that this authority is entitled to decide that it is appropriate to grant a licence subject to conditions, but it is not obliged to grant such a licence.
- 9.5 More detailed examples of the circumstances in which such a licence may be granted can be found at paragraphs 7.59-7.66 of the Guidance.

10.0 Location

- 10.1 This Licensing Authority is aware that demand issues cannot be considered in relation to the location of premises but that considerations made in terms of the licensing objectives can be considered.
- 10.2 The Licensing Authority, in accordance with the Gambling Commission’s Guidance for local authorities, pay particular attention to the protection of children and vulnerable persons from being harmed or exploited by gambling, as well as issues of crime and disorder.
- 10.3 This authority has not adopted any specific policy in relation to areas where gambling premises should not be located. Should any such policy be decided upon regarding such areas where gambling premises should not be located, this policy statement will be updated.
- 10.4 It should be noted that any such future policy will not preclude any application being made and each application will be decided on its merits, with the onus upon the applicant showing how any potential concerns can be overcome.

11.0 Planning

- 11.1 The Gambling Commission Guidance to Licensing Authorities states:
7.59 – In determining applications the Licensing Authority has a duty to take into consideration all relevant matters and not to take into consideration any irrelevant matters, in effect those not related to gambling and the licensing objectives. One example of an irrelevant matter would be the likelihood of the applicant obtaining planning permission or building regulations approval for their proposal.
- 11.2 This authority will not take into account irrelevant matters as per the above guidance. In addition this authority notes the following excerpt from the Guidance:
7.66 - When dealing with a premises licence application for finished buildings, the Licensing Authority should not take into account whether those buildings have or comply with the necessary planning or building consents. Those matters should be dealt with under relevant planning control and building regulation powers, and not form part of the consideration for the premises licence. Section 210 of the 2005 Act prevents licensing authorities taking into account the likelihood of the proposal by the applicant obtaining planning or building consent when considering a premises licence application. Equally the grant of a gambling premises licence does not prejudice or prevent any action that may be appropriate under the law relating to planning or building.

12.0 Duplication with other regulatory regimes

- 12.1 This Licensing Authority will seek to avoid any duplication with other statutory / regulatory systems where possible, including planning. This authority will not consider whether a licence application is likely to be awarded planning permission or building regulations approval, in its consideration of it. It will though, listen to, and consider carefully, any concerns about conditions which are not able to be met by licensees due to planning restrictions, should such a situation arise.
- 12.2 When dealing with a premises licence application for finished buildings, this authority will not take into account whether those buildings have to comply with the necessary planning or buildings consents. Fire or health and safety risks will not be taken into account, as these matters are dealt with under relevant planning control, buildings and other regulations and must not form part of the consideration for the premises licence.

13.0 Licensing objectives

- 13.1 Premises licences granted must be reasonably consistent with the licensing objectives. With regard to these objectives, this Licensing Authority has considered the Gambling Commission's Guidance to local authorities and some comments are made below.

13.2 Preventing gambling from being a source of crime or disorder, being associated with crime or disorder or being used to support crime.

This Licensing Authority is aware that the Gambling Commission takes a leading role in preventing gambling from being a source of crime. The Gambling Commission's Guidance does however envisage that the Licensing Authority should pay attention to the proposed location of gambling premises in terms of this licensing objective. Therefore, where an area has known high levels of organised crime, we will consider carefully whether gambling premises are suitable to be located there and whether conditions may be suitable, such as the provision of door supervisors. Responsible authorities would however have the right to make representation with regard to such premises.

13.3 The Licensing Authority is aware of the distinction between disorder and nuisance and will consider factors such as whether police assistance was required and how threatening the behaviour was to those who could see it, so as to make that distinction. It should be noted that prevention of nuisance is not a Gambling Act licensing objective.

13.4 In considering licence applications, the Council will particularly take into account the following:

- The design and layout of the premises
- The training given to staff in crime prevention measures appropriate to those premises
- Physical security features installed in the premises. This may include matters such as the position of cash registers or the standard of CCTV that is installed
- Where premises are subject to age-restrictions, the procedures in place to conduct age verification checks
- The likelihood of any violence, public order or policing problem if the licence is granted

13.5 Ensuring that gambling is conducted in a fair and open way.

This Licensing Authority is aware that the Gambling Commission has stated that it would generally not expect licensing authorities to become concerned with ensuring that gambling is conducted in a fair and open way as this will be addressed by the operator and personal licensing system.

13.6 Protecting children and other vulnerable persons from being harmed or exploited by gambling.

This Licensing Authority notes the Gambling Commission Guidance to local authorities states that this objective relates to preventing children from taking part in gambling as well as the restriction of advertising so that gambling products are not aimed at or are, particularly attractive to children.

13.7 The Licensing Authority will therefore consider, as suggested by the Gambling Commission's Guidance, whether specific measures are required at individual premises to promote the licensing objectives.

- 13.8 Appropriate measures may include supervision of access points, segregation of areas etc.
- 13.9 This Licensing Authority is also aware of the Gambling Commission Codes of Practice as regards this licensing objective, in relation to specific premises.
- 13.10 In reference to the term “vulnerable persons” we note that the Gambling Commission or statute law does not seek to offer a definition but the Commission states that “it will for regulatory purposes assume that this group includes:
- People who gamble more than they want to
 - People who gamble beyond their means
 - People who may not be able to make informed or balanced decisions about gambling due to a mental impairment, alcohol or drugs.
- 13.11 This Licensing Authority will consider promotion of this licensing objective on a common sense, case by case basis. Should a practical definition prove possible in future then this policy statement will be updated with it, by way of a revision.

14.0 Conditions

- 14.1 Any conditions attached to licences will be proportionate and will be:
- Relevant to the need to make the proposed building suitable as a gambling facility
 - Directly related to the premises and the type of licence applied for
 - Fairly and reasonably related to the scale and type of premises
 - Reasonable in all other respects
- 14.2 Decisions upon individual conditions will be made on a case by case basis, although there will be a number of measures this Licensing Authority will consider utilising should there be a perceived need, such as the use of supervisors, appropriate signage for adult only areas etc. There are specific comments made in this regard under some of the licence types below. This Licensing Authority will also expect the licence applicant to offer his/her own suggestions as to ways in which the licensing objectives can be met effectively.
- 14.3 This Licensing Authority will also consider specific measures which may be required for buildings which are subject to multiple premises licences. Such measures may include the supervision of entrances; segregation of gambling from non-gambling areas frequented by children; and the supervision of gaming machines in non-adult gambling specific premises in order to pursue

the licensing objectives. These matters are in accordance with the Gambling Commission's Guidance.

14.4 This authority will also ensure that where category C or above machines are on offer in premises to which children are admitted:

- All such machines are located in an area of the premises which is separated from the remainder of the premises by a physical barrier which is effective to prevent access other than through a designated entrance
- Only adults are admitted to the area where these machines are located
- Access to the area where the machines are located is supervised
- The area where these machines are located is arranged so that it can be observed by the staff or the licence holder
- At the entrance to and inside any such areas there are prominently displayed notices indicating that access to the area is prohibited to persons under 18

14.5 These considerations will apply to premises including buildings where multiple premises licences are applicable.

14.6 This Licensing Authority is aware that tracks may be subject to one or more than one premises licence, provided each licence relates to a specified area of the track. As per the Gambling Commission's Guidance, this Licensing Authority will consider the impact upon the third licensing objective and the need to ensure that entrances to each type of premises are distinct and that children are excluded from gambling areas where they are not permitted to enter.

14.7 It is noted that there are conditions which the Licensing Authority cannot attach to premises licences, they are

- Any condition on the premises licence which makes it impossible to comply with an operating licence condition
- Conditions relating to gaming machine categories, numbers, or method of operation
- Conditions which provide that membership of a club or body be required. (The Gambling Act 2005 specifically removes the membership requirement for casino and bingo clubs and this provision prevents it being reinstated)
- Conditions in relation to stakes, fees, winning or prizes

15.0 Door Supervisors

15.1 The Gambling Commission advises in its Guidance to Licensing Authorities that if a Licensing Authority is concerned that a premises may attract disorder

or be subject to attempts at unauthorised access (for example by children and young persons) then it may require that the entrances to the premises are controlled by a door supervisor, and is entitled to impose a premises licence condition to this effect.

- 15.2 Where it is decided that supervision of entrances/machines is appropriate for particular cases, a consideration of whether these need to be SIA licensed or not will be necessary. It will not be automatically assumed that they need to be licensed, as the statutory requirements for different types of premises vary (as per the Guidance, Part 33).

16.0 Adult Gaming Centres

- 16.1 This Licensing Authority will specifically have regard to the need to protect children and vulnerable persons from harm or being exploited by gambling and will expect the applicant to satisfy the authority that there will be sufficient measures to for example, ensure that under 18 year olds do not have access to the premises.
- 16.2 This Licensing Authority will expect applicants to offer their own measures to meet the licensing objectives, appropriate measures or licence conditions may cover issues such as:
- Proof of age schemes
 - CCTV
 - Supervision of entrances / machine areas
 - Physical separation of areas
 - Location of entry
 - Notices/signage
 - Specific opening hours
 - Self-exclusion schemes
 - Provision of information leaflets / helpline numbers for organisations such as GamCare.

This list is not mandatory, nor exhaustive, and is merely indicative of example measures.

17.0 (Licensed) Family Entertainment Centres:

- 17.1 This Licensing Authority will specifically have regard to the need to protect children and vulnerable persons from harm or being exploited by gambling and will expect the applicant to satisfy the authority, for example, that there will

be sufficient measures to ensure that under 18 year olds do not have access to the adult only gaming machine areas.

17.2 This Licensing Authority will expect applicants to offer their own measures to meet the licensing objectives, appropriate measures / licence conditions may cover issues such as:

- CCTV
- Supervision of entrances / machine areas
- Physical separation of areas
- Location of entry
- Notices / signage
- Specific opening hours
- Self-exclusion schemes
- Provision of information leaflets / helpline numbers for organisations such as GamCare.
- Measures / training for staff on how to deal with suspected truant school children on the premises

This list is not mandatory, nor exhaustive, and is merely indicative of example measures.

17.3 This Licensing Authority will, in accordance with the Gambling Commission's guidance, refer to the Commission to see any conditions that apply to operating licences covering the way in which the area containing the category C machines should be delineated. This Licensing Authority will also make itself aware of any mandatory or default conditions on these premises licences.

18.0 Casinos

18.1 **No Casinos resolution** - This Licensing Authority has not passed a 'no casino' resolution under Section 166 of the Gambling Act 2005, but is aware that it has the power to do so. Should this Licensing Authority decide in the future to pass such a resolution, it will update this policy statement with details of that resolution. Any such decision will be made by the Full Council.

18.2 **Betting machine** - This Licensing Authority will in accordance with the Gambling Commission's Guidance, take into account the size of the premises, the number of counter positions available for person-to-person transactions and the ability of staff to monitor the use of the machines by children and young persons (it is an offence for those under 18 to bet) or by vulnerable

people, when considering the number/nature/circumstances of betting machines an operator wants to offer.

19.0 Bingo Premises

19.1 This Licensing Authority notes that the Gambling Commission's Guidance states:

18.4 Licensing authorities will need to satisfy themselves that bingo can be played in any bingo premises for which they issue a premises licence. This will be a relevant consideration where the operator of an existing bingo premises applies to vary their licence to exclude an area of the existing premises from its ambit and then applies for a new premises licence, or multiple licences, for that or those excluded areas.

This authority also notes the Guidance at paragraph 18.8 regarding the unusual circumstances in which the splitting of a pre-existing premises into two adjacent premises might be permitted, and in particular that it is not permissible to locate sixteen category B3 gaming machines in one of the resulting premises, as the gaming machine entitlement for that premises would be exceeded.

18.7 Children and young people are allowed into bingo premises; however they are not permitted to participate in the bingo and if category B or C machines are made available for use these must be separated from areas where children and young people are allowed.

20.0 Betting Premises

20.1 **Betting machines** This Licensing Authority will, in accordance with the Gambling Commission's Guidance, take into account the size of the premises, the number of counter positions available for person-to-person transactions, and the ability of staff to monitor the use of the machines by children and young persons (it is an offence for those under 18 to bet) or by vulnerable people, when considering the number/nature/circumstances of betting machines an operator wants to offer.

21.0 Travelling Fairs

21.1 This Licensing Authority is responsible for deciding whether, where category D machines and/or equal chance prize gaming without a permit is to be made available for use at travelling fairs, the statutory requirement that the facilities for gambling amount to no more than an ancillary amusement at the fair is met.

21.2 This Licensing Authority will also consider whether the applicant falls within the statutory definition of a travelling fair.

21.3 It has been noted that the 27-day statutory maximum for the land being used as a fair, is per calendar year, and that it applies to the piece of land on which

the fairs are held, regardless of whether it is the same or different travelling fairs occupying the land. This Licensing Authority will work with its neighbouring authorities to ensure that land which crosses our boundaries is monitored so that the statutory limits are not exceeded.

22.0 Provisional Statements

- 22.1 Developers may wish to apply to this authority for provisional statements before entering into a contract to buy or lease property or land to judge whether a development is worth taking forward in light of the need to obtain a premises licence. There is no need for the applicant to hold an operating licence in order to apply for a provisional statement.
- 22.2 Section 204 of the Gambling Act provides for a person to make an application to the Licensing Authority for a provisional statement in respect of premises that he or she:
- expects to be constructed;
 - expects to be altered; or
 - expects to acquire a right to occupy.
- 22.3 The process for considering an application for a provisional statement is the same as that for a premises licence application. The applicant is obliged to give notice of the application in the same way as applying for a premises licence. Responsible authorities and interested parties may make representations and there are rights of appeal.
- 22.4 In contrast to the premises licence application, the applicant does not have to hold or have applied for an operating licence from the Gambling Commission (except in the case of a track) and they do not have to have a right to occupy the premises in respect of which their provisional application is made.
- 22.5 The holder of a provisional statement may then apply for a premises licence once the premises are constructed, altered or acquired. The Licensing Authority will be constrained in the matters it can consider when determining the premises licence application, and in terms of representations about premises licence applications that follow the grant of a provisional statement, no further representations from relevant authorities or interested parties can be taken into account unless:
- they concern matters which could not have been addressed at the provisional statement stage, or
 - they reflect a change in the applicant's circumstances.
- 22.6 In addition, the authority may refuse the premises licence (or grant it on terms different to those attached to the provisional statement) only by reference to matters:
- which could not have been raised by objectors at the provisional statement stage;
 - which in the authority's opinion reflect a change in the operator's circumstances; or

- where the premises has not been constructed in accordance with the plan submitted with the application. This must be a substantial change to the plan and this Licensing Authority notes that it can discuss any concerns it has with the applicant before making a decision.

23.0 Reviews

23.1 Requests for a review of a premises licence can be made by interested parties or responsible authorities, however, it is for the Licensing Authority to decide whether the review is to be carried-out.

23.2 This will be on the basis of whether the request for the review is relevant to the matters listed below, as well as consideration as to whether the request is frivolous, vexatious, will certainly not cause this authority to wish to alter/revoke/suspend the licence, or whether it is substantially the same as previous representations or requests for review.

- 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
- In accordance with the authority's Statement of Principles

23.3 The Licensing Authority can also initiate a review of a licence on the basis of any reason which it thinks is appropriate.

23.4 Once a valid application for a review has been received by the licensing authority, representations can be made by responsible authorities and interested parties during a 28 day period. This period begins 7 days after the application was received by the Licensing Authority, who will publish notice of the application within 7 days of receipt.

The Licensing Authority must carry out the review as soon as possible after the 28 day period for making representations has passed.

The purpose of the review will be to determine whether the Licensing Authority should take any action in relation to the licence. If action is justified, the options open to the Licensing Authority are:-

- (a) add, remove or amend a licence condition imposed by the Licensing Authority;
- (b) exclude a default condition imposed by the Secretary of State or Scottish Ministers (e.g. opening hours) or remove or amend such an exclusion;
- (c) suspend the premises licence for a period not exceeding three months; and
- (d) revoke the premises licence.

In determining what action, if any, should be taken following a review, the Licensing Authority must have regard to the principles set out in section 153 of the Act, as well as any relevant representations.

In particular, the Licensing Authority may also initiate a review of a premises licence on the grounds that a premises licence holder has not provided facilities for gambling at the premises. This is to prevent people from applying for licences in a speculative manner without intending to use them.

Once the review has been completed, the Licensing Authority must, as soon as possible, notify its decision to:

- the licence holder
- the applicant for review (if any)
- the Commission
- any person who made representations
- the chief officer of police or chief constable; and
- Her Majesty's Commissioners for Revenue and Customs

PART C

PERMITS/TEMPORARY AND OCCASIONAL USE NOTICE

24.0 Unlicensed Family Entertainment Centre gaming machine permits. (Statement of Principles on Permits – Schedule 10 Paragraph 7)

- 24.1 Where a premises does not hold a premises licence but wishes to provide gaming machines, it may apply to the Licensing Authority for this permit. It should be noted that the applicant must show that the premises will be wholly or mainly used for making gaming machines available for use as required by Section 238.
- 24.2 The Gambling Act 2005 states that a Licensing Authority may prepare a *statement of principles* that they propose to consider in determining the suitability of an applicant for a permit and in preparing this statement, and/or considering applications, it need not (but may) have regard to the licensing objectives and shall have regard to any relevant guidance issued by the Commission under section 25.
- 24.3 The Gambling Commission's Guidance for local authorities also states: "In their three year licensing policy statement, licensing authorities may include a statement of principles that they propose to apply when exercising their functions in considering applications for permits....., licensing authorities will want to give weight to child protection issues."
- 24.4 The Gambling Commission's Guidance also states: ".....An application for a permit may be granted only if the Licensing Authority is satisfied that the premises will be used as an unlicensed FEC, and if the chief officer of police has been consulted on the application. In accordance with the Guidance, this Licensing Authority will expect applicants to demonstrate:
- A full understanding of the maximum stakes and prizes of the gambling that is permissible in unlicensed FECs
 - That an applicant has no relevant convictions, those that are set out in Schedule 7 of the Act
 - That staff are trained to have a full understanding of the maximum stakes and prizes
- 24.5 We note that a Licensing Authority can grant or refuse a licence but cannot attach conditions to this type of permit.
- 24.6 This Licensing Authority will expect the applicant to show that there are policies and procedures in place to protect children from harm. Harm in this context is not limited to harm from gambling but includes wider child protection considerations.

24.7 The efficiency of such policies and procedures will each be considered on their merits, however, they may include appropriate measures / training for staff as regards suspected truant school children on the premises, measures / training covering how staff would deal with unsupervised very young children being on the premises, or children causing perceived problems on / around the premises.

25.0 (Alcohol) Licensed premises gaming machine permits - (Schedule 13 paragraph 4(1))

Automatic Entitlement: 2 Machines

25.1 There is provision in the Act for premises licensed to sell alcohol for consumption on the premises, to automatically have 2 gaming machines, of categories C and/or D. The premises merely need to notify the Licensing Authority. The Licensing Authority can remove the automatic authorisation in respect of any particular premises if:

- Provision of the machines is not reasonably consistent with the pursuit of the licensing objectives
- Gaming has taken place on the premises that breaches a condition of Section 282 of the Gambling Act (i.e. that written notice has been provided to the Licensing Authority, that a fee has been provided and that any relevant code of practice issued by the Gambling Commission about the location and operation of the machine has been complied with)
- The premises are mainly used for gaming
- An offence under the Gambling Act has been committed on the premises

Permit: 3 or more machines

25.2 If a Premises Licence Holder wishes to have more than 2 machines, then they need to apply for a permit and the Licensing Authority must consider that application based upon the licensing objectives, any guidance issued by the Gambling Commission issued under Section 25 of the Gambling Act 2005, and “*such matters as they think relevant.*”

25.3 This Licensing Authority considers that “such matters” will be decided on a case by case individual basis, but generally there will be regard to the need to protect children and vulnerable persons from being harmed or being exploited by gambling and will expect the applicant to satisfy the authority that there will be sufficient measures to ensure that under 18 year olds do not have access to the adult only gaming machines.

25.4 Measures which will satisfy the authority that there will be no access may include the adult machines being in sight of the bar, or in the sight of staff who will monitor that the machines are not being used by those under 18. Notices and signage on the machines or in the premises may also help. As regards

the protection of vulnerable persons, applicants may wish to consider the provision of information leaflets / helpline numbers for organisations such as GamCare.

25.5 It is recognised that some alcohol licensed premises may apply for a Premises Licence for their non-alcohol licensed areas. Any such application would normally need to be applied for, and dealt with as an Adult Gaming Centre Premises Licence.

25.6 It should be noted that we as the Licensing Authority can decide to grant the application with a smaller number of machines and/or a different category of machines than that applied for. Conditions other than these cannot be attached to a permit.

25.7 It should also be noted that the holder of a permit must comply with any Code of Practice issued by the Gambling Commission about the location and operation of the machine.

26.0 Prize Gaming Permits - (Statement of Principles on Permits - Schedule 14 paragraph 8 (3))

26.1 The Gambling Act 2005 states that a Licensing Authority may “prepare a statement of principles that they propose to apply in exercising their functions under this Schedule” which “may, in particular, specify matters that the Licensing Authority propose to consider in determining the suitability of the applicant for a permit”.

26.2 This Licensing Authority has prepared a Statement of Principles which is that the applicant should set out the types of gaming that he or she is intending to offer and that the applicant should be able to demonstrate:

- That they understand the limits to stakes and prizes that are set out in Regulations
- That the gaming offered is within the law
- Clear policies that outline the steps to be taken to protect children from harm.

26.3 In making its decision on an application for this permit the Licensing Authority does not need, but may, have regard to the licensing objectives but must have regard to any Gambling Commission Guidance.

26.4 It should be noted that there are conditions in the Gambling Act 2005 by which the permit holder must comply, but that the Licensing Authority cannot attach conditions. The conditions in the Act are:

- The limits on participation fees, as set out in regulations, must be complied with

- All chances to participate in the gaming must be allocated on the premises on which the gaming is taking place and on one day
- The game must be played and completed on the day the chances are allocated
- The result of the game must be made public in the premises on the day that it is played
- The prize for which the game is played must not exceed the amount set out in regulations (if a money prize), or the prescribed value (if non-monetary prize)
- Participation in the gaming must not entitle the player to take part in any other gambling

27.0 Club Gaming and Club Machines Permits

- 27.1 Members Clubs and Miners' Welfare Institutes (but not Commercial Clubs) may apply for a Club Gaming Permit or a Clubs Gaming Machines Permit.
- 27.2 The Club Gaming Permit will enable the premises to provide gaming machines (3 machines of categories B, C or D), equal chance gaming and games of chance as set-out in regulations.
- 27.3 A Club Gaming Machine Permit will enable the premises to provide gaming machines (3 machines of categories B, C or D).
- 27.4 The Gambling Commission Guidance states: "Members clubs must have at least 25 members and be established and conducted "wholly or mainly" for purposes other than gaming, unless the gaming is permitted by separate regulations. It is anticipated that this will cover bridge and whist clubs, which will replicate the position under the Gaming Act 1968.
- 27.5 A members club must be permanent in nature, not established to make commercial profit, and controlled by its members equally. Examples include working men's clubs, branches of Royal British Legion and clubs with political affiliations."
- 27.6 The Commission Guidance also notes that licensing authorities may only refuse an application on the grounds that:
- The applicant does not fulfil the requirements for a members' or commercial club or miners' welfare institute and therefore is not entitled to receive the type of permit for which it has applied
 - The applicant's premises are used wholly or mainly by children and/or young persons
 - An offence under the Act or a breach of a permit has been committed by the applicant while providing gaming facilities

- A permit held by the applicant has been cancelled in the previous ten years
- An objection has been lodged by the Commission or the police

27.7 There is also a 'fast-track' procedure available under the Act for premises which hold a Club Premises Certificate under the Licensing Act 2003 (Schedule 12 paragraph 10).

27.8 As the Gambling Commission's Guidance for local authorities states: "Under the fast-track procedure there is no opportunity for objections to be made by the Commission or the police and the grounds upon which an authority can refuse a permit are reduced". and "The grounds on which an application under the process may be refused are:

- That the club is established primarily for gaming, other than gaming prescribed under Schedule 12.
- That in addition to the prescribed gaming, the applicant provides facilities for other gaming.
- That a club gaming permit or club machine permit issued to the applicant in the last ten years has been cancelled."

There are statutory conditions on Club Gaming Permits that no child uses a category B or C machine on the premises and that the holder complies with any relevant provision of a code of practice about the location and operation of gaming machines.

28.0 Temporary Use Notices

28.1 Temporary Use Notices allow the use of premises for gambling where there is no premises licence but where a gambling operator wishes to use the premises temporarily for providing facilities for gambling. Premises that might be suitable for a Temporary Use Notice, according to the Gambling Commission, would include hotels, conference centres and sporting venues.

28.2 The Licensing Authority can only grant a Temporary Use Notice to a person or company holding a relevant operating licence, i.e. a non-remote casino operating licence.

28.3 The Secretary of State has the power to determine what form of gambling can be authorised by Temporary Use Notices, and at the time of writing this Statement the relevant regulations (SI no 3157: The Gambling Act 2005 (Temporary Use Notices) Regulations 2007) state that Temporary Use Notices can only be used to permit the provision of facilities or equal chance gaming, where the gaming is intended to produce a single winner, which in practice means poker tournaments.

- 28.4 There are a number of statutory limits as regards Temporary Use Notices. The meaning of "premises" in Part 8 of the Act is discussed in Part 7 of the Gambling Commission Guidance to Licensing Authorities. As with "premises", the definition of "a set of premises" will be a question of fact in the particular circumstances of each notice that is given. In the Act "premises" is defined as including "any place".
- 28.5 In considering whether a place falls within the definition of "a set of premises", the Licensing Authority needs to look at, amongst other things, the ownership/occupation and control of the premises.
- 28.6 This Licensing Authority expects to object to notices where it appears that their effect would be to permit regular gambling in a place that could be described as one set of premises, as recommended in the Gambling Commission's Guidance to Licensing Authorities.

29.0 Occasional Use Notices

- 29.1 The Licensing Authority has very little discretion as regards these notices aside from ensuring that the statutory limit of 8 days in a calendar year is not exceeded.

Consultees

This draft document is being circulated to a number of consultees including those listed below. Should you consider there are any other bodies or individuals who should be consulted please contact: licensing@wirral.gov.uk

- Elected Councillors, Metropolitan Borough of Wirral
- Head of Regeneration, Metropolitan Borough of Wirral
- Trading Standards Manager, Metropolitan Borough of Wirral
- Environmental Health Manager, Metropolitan Borough of Wirral
- Planning Officer, Metropolitan Borough of Wirral
- Local Safe Guarding Children Board
- Wirral Federation of Tenants and Residents Association
- The Gambling Commission
- The Chief Officer of Police
- The Fire Authority
- H. M. Revenue & Customs
- Primary Care Trusts
- Citizen's Advice Bureau
- The Bingo Association
- Association of British Bookmakers
- British Casino Association
- Casino Operators Association of the UK
- British Holiday & Home Parks Association
- British Beer & Pub Association
- Gaming Machine Suppliers
- All persons who hold a Betting Office Premises Licence
- All persons who hold a Bingo Premises Licence
- Amusement Arcades that hold Adult Gaming Centre and Family Entertainment Centre Premises Licences
- Representatives holders of various licences

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