

Cabinet Decision 6 October 2015	 TOWER HAMLETS
Report of: Stephen Halsey – Head of Paid Service, Communities, Localities, Culture – Corporate Director	Classification: Unrestricted
Gambling Policy Review– Statutory Consultation	

Lead Member	Councillor Shiria Khatun, Deputy Mayor and Cabinet Member for Community Safety
Originating Officer(s)	Andy Bamber – Service Head David Tolley – Head of Consumer and Business Regulations
Wards affected	All wards
Key Decision?	Yes
Community Plan Theme	A Safe and Cohesive Community

Executive Summary

As a Licensing Authority the Council must review the existing Gambling Policy and adopt a new policy by November 2016, as one of the responsibilities it has to administer 'high street' licences under the Gambling Act 2005. The purpose of the policy is to define how the responsibilities under the Act are going to be exercised and administered. This is highly prescribed and limited by statute. The Council is not able, for example, to ban gambling or specific forms of gambling.

A statutory consultation process must be undertaken. In addition there will be the opportunity for the local community to comment along with other partners. Following consultation the reviewed policy will ultimately go to Full Council for adoption.

Recommendations:

The Mayor in Cabinet is recommended to:

1. To agree the forward programme for revising the Gambling Policy
2. To agree that the proposed consultation should be based on the existing Policy updated in accordance with guidance from the central government agencies.

1. REASONS FOR THE DECISIONS

- 1.1 All relevant local authorities have to review their gambling policy, as one of the responsibilities they have, under the Gambling Act 2005.
- 1.2 The purpose of the policy is to define how the responsibilities under the Act are going to be exercised and administered.
- 1.3 A statutory consultation process must take place prior to the adoption of the revised Gambling Policy by full Council.

2. ALTERNATIVE OPTIONS

- 2.1 Pursuant to the Gambling Act 2005, the Council is a responsible authority for the licensing of premises used for gambling. If the Council did not have a policy it would be acting ultra vires with regards to any decisions it makes determining gambling premises licences.
- 2.2 The Gambling Commission has laid down requirements which the Council must follow with regards to the Gambling Policy. If these requirements are not followed, the Council could be at risk of judicial challenge. The Gambling Commission guidance has been followed in drafting the revised Gambling Policy. The policy is limited to considering the elements covered by the licensing objectives. The Council must follow the guidance laid down by the Gambling Commission.

3. DETAILS OF REPORT

- 3.1 The Gambling Act 2005 gives local authorities a range of responsibilities relating to gambling. The Gambling Policy states how the Licensing Authority will exercise its authority.
- 3.2 This policy covers the following:
 - How the Licensing Authority will use its regulatory powers in relation to applications and reviews of the activities it regulates, to the extent it is allowed by statute.
 - The main licensing objectives for the authority is protecting children, preventing crime and disorder and ensuring gambling is fair and open.
 - The Licensing Authorities approach to regulation
 - The scheme of delegation
- 3.3 The statutory and regulatory limitations of the Gambling Policy should also be noted with regards to addiction, noise, clustering and the provision of gambling machines.

- 3.4 The Gambling Policy is prescribed by central government and the Gambling Commission. The policy produced has to comply with guidance issued by both of these bodies. The current policy is compatible with this advice and guidance.
- 3.5 Members should note that some of the more common concerns about gambling are not addressed in the policy and in any consultation. For example, gambling addiction is outside the remit of the consultation, as are arguments about the public benefits, or otherwise, of a more liberal gambling regime.
- 3.6 In addition, 'noise nuisance' is not a licensing objective, so the regime will not consider the impact of licensed premises on nearby residents. Any issues relating to noise and nuisance will be dealt with by the Council's Environmental Health Service.
- 3.7 The Local Authority does not have the powers within its Gambling Policy to regulate on-line gambling sites. All gambling websites trading with, or advertising to, consumers in Britain must have a Gambling Commission licence issued by the Gambling Commission.
- 3.8 Earlier this year the government changed the use class order so that betting shops were removed from their previous A2 use class and made a 'sui generis' use. As such planning permission is now required to change the use from any other use to a betting shop. This has meant that there is slightly more control under planning legislation to control the growth of Betting Shops.
- 3.9 Planning powers cannot control existing betting shops if they have already opened up under a permitted change of use (i.e. before the recent changes to the use class order moving betting shops from A2 to 'sui generis'), however any further change of use applications for a betting shop would be subject to a planning application. As part of the determination of the application, issues such as the number of betting shops in the surrounding area could be a consideration if the area was becoming saturated with betting shops.
- 3.10 There have been several concerns raised through London Councils concerning the fixed odds betting terminals (FOBT's) that have been installed within betting shops. These B2 gambling machines play games of chance such as roulette. With a betting shop licence, the operator can install up to four machines, which have a maximum stake of £100 and a maximum prize of £500. London Councils are promoting that the maximum £100 stake on B2 machines should be changed to £2 to prevent the clustering of betting shops due to the profitability of such gambling machines. Tower Hamlets is a signatory to this campaign.
- 3.11 We have not experienced the same volume of applications in gambling as we have in other areas of licensing. There has been one application in the preceding year for a Paddy Power Shop in Roman Road. This application was objected to by the community, but after consideration by the Licensing Sub Committee and legal advice the licence was issued.

- 3.12 The issues of betting shop clustering and concern over fixed odd betting terminals (FOBT) have shown that gambling generates extremely strong feelings. Whilst licensing authorities do not have the powers to refuse new applications or limit FOBT machines, the requirement for operators to prepare local risk assessments in relation to their premises from April 2016 means that licensing authorities need to set out their expectations within their statements of Gambling Policy.
- 3.13 The additional requirements to include in the Gambling Policy are noted below:
- to set out a local profile, the Policy links to the Borough profile held on the website, therefore the profile can be updated without the need to re-consult on amending the full Policy.
 - details of the inspection format to be used
 - risk assessment format for operators
 - sample licence conditions
- 3.14 The responsibilities the Council have under the Gambling Act 2005 have not been controversial. Licences have been issued primarily to betting shops and adult amusement arcades. These businesses are nearly all national companies that have conducted their business within the legal requirements. The number of premises in a particular area is not grounds for objection.
- 3.15 The only controversial applications have been where betting shops have applied to open in close proximity to schools or places of worship. The powers the Council have are limited and it is not possible to make either policy or decisions regarding this issue under the Gambling Policy.
- 3.16 The Gambling Policy is in Appendix 1 to the report. Due to change in guidance, proposed changes to the policy are outlined in Appendix Two.
- 3.17 It is proposed that the current 'no casino' resolution that is currently in the existing policy remains.
- 3.18 An Equalities checklist has been undertaken as is at Appendix three.
- 3.19 The programme for adoption and consultation is as follows:-

Date	Committee / Action
6th October 2015	Cabinet
October 2015	Licensing Committee
October 2015	Consultation Starts
January 2016	Consultation ends
May 2016	Mayor's Executive Decision Making
June 2016	Overview and Scrutiny Update
September 2016	Full Council
October 2016	Publish Statutory Notices

4. COMMENTS OF THE CHIEF FINANCE OFFICER

- 4.1 The report sets out the responsibilities for the Council as a Licensing Authority to review the existing Gambling Policy and adopt a new policy following consultation on any changes. The adoption of any of the proposed changes listed in Appendix 2 can be delivered within the existing budgeted resources. The Licence fees are expected to cover the cost of administration and compliance.

5. LEGAL COMMENTS

- 5.1 Pursuant to the Gambling Act 2005, the Council is a responsible authority for the licensing of premises used for gambling.
- 5.2 Section 349 of the Gambling Act 2005 requires the Council to prepare a statement of the principles that it proposes to apply in exercising its functions under the Act and to determine and then publish this statement. This statement is more commonly known as a gambling policy. The preparation of the statement of principles is to be undertaken every 3 years. The latest statement of policy was published on 1st November 2013, and therefore the fresh statement should be published before 1st November 2016.
- 5.3 The Gambling Act 2005 (Licensing Authority Policy Statement) (England and Wales) Regulations 2006 set out the required form of the statement and the current gambling policy complies with that form. The revised Gambling Policy will also comply with that form.
- 5.4 Prior to publishing the statement, the Council must undertake the statutory consultation as provided by section 349(3) of the Gambling Act 2005 and any Regulations made under the Act. The Council must consult with the following people: the chief officer of police for Tower Hamlets; one or more persons who represent the interests of gambling businesses in Tower Hamlets; and one or more persons who represent the interests of person who are likely to be affected by the exercise of the Council's functions under the Gambling Act.
- 5.5 The report sets out the timeframe for consultation. The consultation should comply with the following criteria: (1) it should be at a time when proposals are still at a formative stage; (2) the Council must give sufficient reasons for any proposal to permit intelligent consideration and response; (3) adequate time must be given for consideration and response; and (4) the product of consultation must be conscientiously taken into account. The duty to act fairly applies and this may require a greater deal of specificity when consulting people who are economically disadvantaged. It may require inviting and considering views about possible alternatives.
- 5.6 The Gambling Act 2006 (Licensing Authority Policy Statement) (England and Wales) Regulations 2006 set out a process that must be followed in respect of publishing the statement and before the statement comes into effect. A

minimum of 4 weeks is required between publication and the statement coming into effect.

- 5.7 Pursuant to Article 4.01(a) of the Council's constitution the publication of the statement of Policy under section 349 of the Gambling Act 2006 is within the council Policy Framework and must be approved by the full Council. The Budget and Policy Framework Procedure Rules specify the procedure to be followed in preparing and agreeing policies in the Policy Framework and will need to be complied with in relation to the Gambling Policy. The terms of reference of the Licensing Committee also provides that it considers statements of Licensing Policy, so consultation with that Committee may also be appropriate.
- 5.8 In carrying out its functions, the Council must have due regard to the need to eliminate unlawful conduct under the Equality Act 2010, the need to advance equality of opportunity and the need to foster good relations between persons who share a protected characteristic and those who do not (the public sector equality duty). An equality analysis will be required which is proportionate to the function in question (adopting a new Gambling Policy) and its potential impacts. The current equality checklist will likely require development into a more detailed analysis in the course of the consultation process.

6. ONE TOWER HAMLETS CONSIDERATIONS

- 6.1 The Equalities Impact Assessment has been reviewed in respect of this policy and no adverse issues have been identified.

7. BEST VALUE (BV) IMPLICATIONS

- 7.1 The Gambling policy details the regulatory approach to gambling establishments with the Borough. The fees imposed for the licence are set by government and have been adopted by the Licensing Committee. The fees cover the cost of regulating and administrating the Gambling Policy.

8. SUSTAINABLE ACTION FOR A GREENER ENVIRONMENT

- 8.1 There are no environmental impacts with regards to this policy or the consultation process.

9. RISK MANAGEMENT IMPLICATIONS

- 9.1 There are no risk management issues with the revised policy or the consultation process.

10. CRIME AND DISORDER REDUCTION IMPLICATIONS

- 10.1 One of the key licensing objectives is to prevent gambling from being a source of crime and disorder. The policy supports and assists with crime and disorder reduction by controlling those who are able to offer gambling to members of the public and imposing conditions on relevant premises licences.

11. SAFEGUARDING IMPLICATIONS

- 11.1 A statutory licensing objective of the Gambling Policy concerns the protection of children from harm. The Policy details how regulation through licencing promotes this objective.
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Linked Reports, Appendices and Background Documents

Linked Report

None

Appendices

Appendix One: Gambling Policy 2013-2016

Appendix Two: Gambling Policy proposed changes for consultation

Appendix Three: Equalities Checklist

Background Documents – Local Authorities (Executive Arrangements)(Access to Information)(England) Regulations 2012

None

Officer contact details for documents:

N/A