

CHESHIRE EAST COUNCIL

Cabinet

Date of Meeting:	10 December 2012
Report of:	Borough Solicitor
Subject/Title:	Revised Statement of Gambling Principles
Portfolio Holder:	Councillor Paul Findlow

1.0 Report Summary

- 1.1 The Gambling Act 2005 requires local authorities to prepare and publish a statement of the principles that they propose to apply when exercising their functions under the Act during the three year period to which the statement applies.
- 1.2 The Council is required to review its existing statement of principles and publish the revised version by no later than 31st January 2013. In preparing a revised statement the Council must undertake a consultation exercise with stakeholders.
- 1.3 The purpose of this report is to give the Cabinet the opportunity to pass comment on the content of the Statement of Principles in accordance with the Council's Budget and Policy Framework Procedure Rules.

2.0 Recommendation

- 2.1 That Cabinet resolves to support the content of the Statement of Principles as set out in appendix 1 and recommend formal adoption by full Council.

3.0 Reasons for Recommendations

- 3.1 The Statement of Principles under the Gambling Act 2005 forms part of the Council's Policy Framework. Therefore, in accordance with the Framework Procedure Rules, the Cabinet should consider the content of the Statement, any consultation responses, any recommendations by other Council committees and then make a recommendation to full Council.

4.0 Wards Affected

- 4.1 All

5.0 Local Ward Members

- 5.1 All

6.0 Policy Implications

6.1 The decision within 2.0 seeks approval for a draft policy following consultation having taken place with relevant stakeholders.

7.0 Financial Implications (Authorised by the Director of Finance and Business Services)

7.1 No financial implications have been identified.

8.0 Legal Implications (Authorised by the Borough Solicitor)

8.1 By virtue of section 349 of the Gambling Act 2005 ('the 2005 Act') the Licensing Authority is required to prepare and publish a statement of the principles that it proposes to apply in exercising its functions under the 2005 Act during the three year period to which the policy applies. Whilst statements must usually be revised and published in respect of every period of three years, the Local Government (Structural Changes) (Transitional Arrangements) (No 2) Regulations 2008 confirms that the statement of principles approved in 2009 satisfied the requirements of the Gambling Act 2005 as regards the three year period commencing on 31st January 2010. For this reason the Council's statement must be reviewed and republished by no later than 31st January 2013.

8.2 The Statement of Principles forms part of the Council's Policy Framework. As such, the final decision to approve a statement of principles or a revision of the statement rests with full Council. In addition, in developing a revised statement of principles, the Authority must comply with its Budget and Policy Framework Procedure Rules (as set out within the Constitution).

8.3 Sub-section 349(3) of the 2005 Act prescribes that in preparing a revision of a statement a licensing authority is required to consult:

- (a) the chief officer of police for the authority's area;
- (b) one or more persons who appear to the authority to represent the interests of persons carrying on gambling businesses in the authority's 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 2005 Act.

8.4 The drafting of the Statement of Principles must take into account the requirements of The Gambling Act 2005 (Licensing Authority Policy Statement) (England and Wales) Regulations 2006 ('the 2006 Regulations'). In addition, the Gambling Commission's Guidance to Licensing Authorities ('the Guidance') prescribes that in determining its policy, the Licensing Authority must have regard to the Guidance and give appropriate weight to the views of those it has consulted.

8.5 Regulation 7 of the 2006 Regulations prescribes that before a revised statement comes into effect the authority must advertise the publication of the statement by way of a notice published on the authority's website and in one

or more of the following places: (i) a local newspaper circulating in the area covered by the statement; (ii) a local newsletter, circular or similar document circulating in the area covered by the statement; (iii) a public notice board in or near the principal office of the authority; (iv) a public notice board on the premises of public libraries in the area covered by the statement.

- 8.6 Consideration has been given to the application of the 'public sector equality duty' (as per section 149 Equality Act 2010) to the decision requested within paragraph 2.0 above. It is suggested that the decision requested would have a neutral impact in terms of its impact on those individuals with 'protected characteristics.'

9.0 Risk Management

- 9.1 It is suggested that (a) compliance with the provisions of section 349 of the 2005 Act and the 2006 Regulations; (b) having regard to the provisions of the Guidance; (c) compliance with the Budget & Police Framework Procedure Rules; and (d) giving appropriate weight and consideration to any consultation responses received will mitigate the risk of a successful challenge of the final Statement of Principles.

10.0 Background and Options

- 10.1 As set out above, the Gambling Act 2005 requires Licensing Authorities to prepare and publish a Statement of Principles that it proposes to apply in exercising its functions under the Act. The current statement of principles was approved in 2009 and was based on the policies then in force in the areas of the three predecessor district Councils and took into account the requirements of the Gambling Act 2005 (Licensing Authority Policy Statement) (England and Wales) Regulations 2006 in terms of its form and content.
- 10.2 The draft statement, a copy of which is attached as Appendix 1, incorporates some minor amendments, but in essence remains substantially the same as the original statement. The Licensing Section has not received any comments about the drafting of the current statement from stakeholders in the period since it came into force, i.e. 1st April 2009. Similarly, the Council has not been challenged on the current Statement.
- 10.3 Following a review of the revised Statement of Gambling Principles on the 16th July 2012 the Statement was presented to the Licensing Committee where it was resolved to support the content. Following a subsequent decision of the Cabinet Member for Safer & Stronger Communities the Council has been consulting upon the revised Statement in accordance with the statutory requirements set out in the Legal Implications section of this report. The full list of consultees is set out within the Statement.
- 10.4 The period of the consultation ran from 1st August 2012 to 19th October 2012. No comments on the content of the Statement have been received. In total three responses have been received:

- i. On the 30th July 2012 an email was received from The Race Course Association confirming that as they have no venues in the Borough they would not be responding to the consultation.
- ii. On the 7th August an email was received from our Research and Consultation Section, which highlighted a number of spelling and grammatical errors that have been corrected
- iii. Letter received from the Association of British Bookmakers Ltd received 18th October 2012 (appendix 2)

10.5 On the 25th October 2012 the draft revised Statement was considered by the Council's Sustainable Communities Scrutiny Committee. The Committee resolved to recommend that Cabinet approve their comments prior to final submission to full Council. Their proposals were as follows:

Scrutiny Committee Proposals	Officer Comments
1. With regard to the Responsible Authorities, Town and Parish Councils should be included within paragraph 6.3 and consulted accordingly.	The status of Responsible Authority is given by the Gambling Act 2005 to prescribed bodies. The Council has no authority to increase the number or scope of the Responsible Authorities.
2. The last sentence of paragraph 8.6.2 should be a new paragraph	No comment
3. With regard to Reviews, it was agreed that Town and Parish Councils should be included in paragraph 9.1	A Review of a Licence can only be made by a Responsible Authority or an Interested Party. Town and Parish Councils cannot be regarded as Responsible Authorities. Town and Parish Councils can be considered an Interested Party. However, case law has shown that a Licensing Authority (the Council) cannot actively consult with one Interest Party and not with all those who may be Interested Parties. The way applications are advertised is set out in the Gambling Act 2005 and the Council should not go beyond those requirements. If we were to depart from the statutory requirements we would leave ourselves open to challenge by way of Judicial Review.
4. Noise leakage should be included in paragraph 10.2.2	Any conditions applied by the Licensing Authority must relate to the Licensing Objectives set out in the 2005 Act, must related to the gambling and should be enforceable. The Licensing Objectives are: (a) preventing gambling from being a source of crime or disorder, being associated with crime or disorder or being used to support crime, (b) ensuring that gambling is conducted in a fair and open way, and (c) protecting children and other vulnerable persons from being harmed or exploited by gambling.
5. With regard to the review of a premises licence and the application for a premises	The Gambling Act 2005 (Proceedings of Licensing Committees and Sub-committees) (Premises Licences and Provisional Statements) (England and

licence, these issues should be considered by the full Committee and not a Sub-Committee	Wales) Regulations 2007 confirms that the Committees and Sub-Committees constituted under the Licensing Act 2003 must also consider applications and reviews under the Gambling Act 2005. The Council has adopted the model delegations issued at the time the Act was commenced. These delegations confirm that hearings for opposed applications or reviews should be determined by a Sub-Committee of the Licensing Committee.
6. With regard to paragraph 13.1.5, applicants must provide information leaflets and helpline numbers to protect vulnerable persons.	Any conditions applied by the Licensing Authority must relate to the Licensing Objectives set out in the 2005 Act, must related to the gambling and should be enforceable. Similarly, the Gambling Commission issues Codes of Practice, which operators must have regard to that deal with the promotion of the Licensing Objectives. The Licensing Authority should therefore not duplicate the requirements placed on operators by the Gambling Commission.
7. Councillors should be notified of applications in their wards.	An email notification of Premises Licence applications is distributed to all Members. However, the Licensing Authority deals with very few new applications and has dealt no Reviews of Premises Licences.
8. Test purchases should be employed to ensure that underage gambling is not taking place.	Test purchasing is an operation function carried out by either the Council's Consumer Protection and Investigation Section, the Gambling Commission or the Police. Any operation functions that are not mandatory are subject to the individual department's priorities and budgetary constraints.

10.6 At its meeting on the 5th November 2012 the Licensing Committee considered the revised Statement in light of all the comments made during the consultation process. This included those comments made by the Sustainable Communities Scrutiny Committee. The Licensing Committee resolved to support the Statement subject only to amendment numbers 2 and 4 for the reasons set out above.

11.0 Access to Information

The background papers relating to this report can be inspected by contacting the report writer:

Appendix 1 - Revised Statement of Gambling Principles

Appendix 2 – Letter from the Association of British Bookmakers Ltd

Name: Miss K Evans

Designation: Licensing Team Leader

Tel No: 0300 123 5015

Email: kim.evans@cheshireeast.gov.uk