

<b>Item No.</b> 11.	<b>Classification:</b> Open	<b>Date:</b> 7 November 2018	<b>Meeting Name:</b> Licensing Committee
<b>Report title:</b>		The Gambling Act 2005 – Statement of Gambling Licensing Policy 2019-2022	
<b>Ward(s) or groups affected:</b>		All wards	
<b>From:</b>		Strategic Director of Environment and Leisure	

## RECOMMENDATION

1. That the committee recommend that Council Assembly agree the publication of the Southwark Statement of Gambling Licensing Policy for 2019-2022 (Appendix A) from 31 January 2019.

## BACKGROUND INFORMATION

2. The Gambling Act 2005 introduced a licensing regime for gaming and betting administered through a combination of the Gambling Commission and local licensing authorities.
3. The Act regulates the following sectors:
  - Arcades
  - Betting
  - Bingo
  - Casinos
  - Gambling software
  - Gaming machines
  - Lotteries
  - Remote (online) gaming.
4. The Gambling Commission is responsible for licensing operators and individuals involved in providing the above activities.
5. Licensing authorities are responsible for:
  - Issuing gambling operators with premises licences
  - Issuing gambling operators with permits (which allow low stakes gambling in venues which are primarily not for gambling)
  - Registering societies – allowing them to hold small lotteries
  - Compliance and enforcement of the Act locally.
6. Licensing authorities are required under section 349 of the Gambling Act 2005 to prepare and publish, every three years, a statement of the principles which they propose to apply when exercising their licensing functions. The Act requires that

before the licensing authority publishes its statement of licensing principles it must carry out a public consultation exercise.

7. Section 153 of the Act provides that licensing authorities shall aim to permit the use of premises for gambling in so far as they think it:
  - In accordance with relevant codes of practice
  - In accordance with the guidance for licensing authorities issued by the Gambling Commission
  - Reasonably consistent with the licensing objectives
  - In accordance with the authority's statement of licensing policy.
8. This authority's statement of principles (The Southwark Statement of Gambling Licensing Policy) was first published in January 2007. It was compiled having regard to a broad range of contributions from responsible authorities; representatives of the industry; and of the community. It has been subject of several reviews and amendments as policy and guidance has changed over the years. On 25 November 2015, the council assembly agreed to the continuation of the Southwark Statement of Gambling Licensing Policy for the period 2016-2019, pending the full review of the policy to take place due to the Gambling Commission issuing the fifth edition of its Guidance to local licensing authorities, with parts 17 (Casinos), 18 (Bingo) and 19 (Betting Premises) due to be amended in September 2016. The decision was:
  - "That the continuation of the Southwark statement of gambling licensing policy for 2013-2016 beyond 31 January 2016 be agreed, pending a full review of the policy document in the light of the publication of the fifth edition of the Gambling Commission guidance to local licensing authorities (September 2015)."
9. The changes in the Gambling Commission Licence Conditions and Codes of Practice (LCCP) requires all premises licensees to assess the local risks to the licensing objectives posed by the provision of gambling facilities at each of their premises, and have policies, procedures and control measures to mitigate those risks. In undertaking their risk assessments, they must take into account relevant matters identified in the licensing authority's statement of policy.
10. Licensees are now required to undertake a local risk assessment when applying for a new premises licence. Their risk assessment must also be updated:
  - when applying for a variation of a premises licence
  - to take account of significant changes in local circumstances, including those identified in a licensing authority's statement of policy
  - when there are significant changes at a licensee's premises that may affect their mitigation of local risks.
11. The guidance states that there is no mandatory requirement to have a local area profile, but there are a number of benefits:
  - it enables licensing authorities to better serve their local community, by better reflecting the community and the risks within it
  - greater clarity for operators as to the relevant factors in licensing authority

decision making, will lead to improved premises licence applications, with the operator already incorporating controls and measures to mitigate risk in their application

- it enables licensing authorities to make robust but fair decisions, based on a clear, published set of factors and risks, which are therefore less susceptible to challenge
- it encourages a proactive approach to risk that is likely to result in reduced compliance and enforcement action.

12. The current Statement of Gambling Policy was considered by the Licensing Committee on 20 June 2017 when the committee agreed for officers to consult on the revised Southwark Statement of Gambling Licensing Policy for 2016-2020 That the committee agreed to consult on the revision of the Southwark statement of gambling licensing policy for 2016-2020.
13. At the meeting of the Licensing Committee on 06 November 2017 members were informed that as the full review for the Southwark Statement of Gambling Licensing Policy was due for consultation in 2018 and, as there were very few applications and to save on resources, the amendments for local area profiles will be included in the full review of the 2018. Members noted this update.
14. The current consultation on the policy has been held up by the local elections in and the change in Cabinet member.

## **KEY ISSUES FOR CONSIDERATION**

### **Amendments made to the existing gambling policy**

15. The proposed policy has being consulted on for the six week period from 20 August 2018 to 07 October 2019.
16. No responses were received during the consultation period for the licensing policy from residents, the gambling industry or their representatives.
17. Consultation with Public Health made some recommendations to the policy in the form of advice and best practice to applicants and these were incorporated within the draft Policy.
18. The Gambling Commission responded to the Council and informed us that they were not making representation with regards to the consultation but did offer some comments for consideration. These comments were mainly matters within the policy that needed clearer explanation and have also been incorporated into the draft policy.
19. A copy of the draft Southwark Statement of Gambling Licensing Policy 2019-22 is attached at Appendix A with the changes highlighted in red.

20. The changes that have been made to the policy are:
- To deal with the political composition of the Authority under Section 2 – All about Southwark including the new ward map.
  - Introduction of local area profiles.
  - Public Health comments
    - Section two, replace 4 to 7 for up to date information about Southwark.
    - Section five, 110 add two bullet points on training records for staff on underage sales and the use of a refusals book.
    - Section five, local area profiles this is a new section, 137 added by Public Health
    - Section five, door supervisors additional recommendation at 149
  - Gambling commission comments
    - Section five, replace primary gambling activity 77 to 79 with gaming machines in gambling premises
    - Section five, 110 similar to Public Health, add one bullet points and the use of a refusals book on underage sales.
    - Section five 113, built points on location, expand the built point relating to places or worship. Remove the built point regarding over concentration of similar gambling premises.
    - Section six 190 to 194 replace section on Club gaming and machine permits.
  - Correction of some minor errors with in the Policy and updating contact details within section 9 of the document.
21. The draft policy will be presented to the Licensing Committee on the meeting in February 2019 to review and make recommendations to Council Assembly.
22. Any amendments made by the Licensing Committee will be incorporated into the draft policy and presented to Council Assembly in March 2019.

**Community impact statement**

23. The Southwark statement of gambling licensing policy recognises that as long as gaming and betting premises are well run and premises management acknowledges the value of working together with the local community, they can make a significant contribution toward building community cohesion and cultural development.
24. The policy equally recognises that negative impacts can also occur if good management practices are not followed. Potential negative impacts may arise in the form of noise, nuisance, disturbance and crime and disorder problems. With gaming and betting establishments there are also risks of individual gambling addiction.
25. The policy seeks to provide the necessary balance between responsible business operators contributing toward a thriving business and late night economy whilst ensuring that the quality of life of those who live and work in the Borough is

protected and enhanced through the licensing system. We believe these aims are achievable if all parties concerned work together.

26. Central to this, is a licensing process which aims to be inclusive and ensures that local community concerns are understood, debated and resolved. This is supported by offering broad support to licensees, through the range of involved authorities, to establish best practice management, and by a strong directed enforcement resource.
27. The equalities impact assessment has been revisited as part of the revision of this policy. As the extension of this policy document is primarily a technical matter, no new issues are identified at this stage.

### **Resource implications**

28. This extension of the Southwark statement of gambling licensing policy 2013-16 does not have any resource issues in itself.
29. The resource costs of managing this process may be borne within the current licensing budget.

### **Consultation**

30. The Gambling Act 2005 requires that each revision of the licensing authorities statement of policy is subject to consultation which is required to take place with
  - Chief officer of police for the authority's area
  - 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.
31. The statutory consultees were notified of the review and consultation of the gambling policy and how to respond. The consultation has also been advertised in the at the Council's offices in Tooley street and on the Council's website. The draft policy has been available for comment for a 12 week period on the Council website.

## **SUPPLEMENTARY ADVICE FROM OTHER OFFICERS**

### **Director of Law and Democracy**

32. The Gambling Act 2005 ("the 2003 Act") requires the council, as the licensing authority, to prepare and publish a statement of its gambling licensing policy every three years.
33. In determining its policy, the council is exercising a licensing function and as such must have regard to with codes of practice issued under section 24, the guidance issued by the Secretary of State under section 25 of the 2005 Act. It must also give appropriate weight to the views of those persons/bodies listed in the Act which it is required to consult before determining its policy.

34. Although the guidance represents best practice, it is not binding on the council. As long as the guidance has been properly and carefully understood and considered, licensing authorities may depart from it if they have reason to do so. In this event they will need to give full reasons for their decisions, which must be consistent with the objectives of the 2003 Act.
35. The council is required to have regard to the statement of licensing policy and make decisions in accordance with it. Licensing authorities may depart from their policy if the individual circumstances of any case merit such a decision in the interests of promoting the licensing objectives. In this event it is important that full reasons are given for departing from the published statement of licensing policy.
36. Members should note that the 2005 Act imposes a duty on the council, as the licensing authority, to carry out its functions under the Act with a view to promoting the 3-licensing objectives, namely:
  - Preventing gambling from being a source of crime or disorder, being associated with crime or 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.
37. Each of these objectives is of paramount and equal importance. There are no other licensing objectives and therefore the council cannot reject an application for a licence or impose conditions on a licence for any purpose unrelated to the promotion of these objectives.
38. The statement of gambling licensing policy cannot seek to impose blanket conditions. Each application must be considered on its own merits. Conditions can only be imposed on a licence if they are necessary to promote the licensing objectives in relation to the specific premises and are a proportionate response to the specific situation to be addressed. The guidance provides that if the situation the condition is intended to address is already addressed by a provision in the 2005 Act or any other legislation then the condition cannot be said to be 'necessary'.
39. The licensing is about regulating the carrying on of gambling activities within the terms of the 2005 Act. The statement of gambling policy should make it clear that gambling law is not the primary mechanism for the general control of nuisance and anti-social behaviour by individuals once they are beyond the direct control of the individual, club or business carrying on gambling activities. However, the guidance also states that gambling law is a key aspect of such control and should always be part of a holistic approach to the management of the evening and night-time economy. It is therefore desirable that the statement of licensing policy is in line with the council's wider objectives and consistent with other policies.
40. Members should note that the statement of gambling policy must not be inconsistent with the provisions of the 2005 Act and must not override the rights of any individual as provided for in that Act. Nor must the statement of gambling policy be inconsistent with obligations placed on the council under any other legislation, including human rights legislation. Members should also note that the council has a

duty under section 17 of the Crime and Disorder Act 1998, when carrying out its functions as a licensing authority under the 2005 Act, to do all it reasonably can to prevent crime and disorder within the borough.

41. Positive equalities obligations are placed on local authorities, sometimes described as equalities duties, with regard to race, disability and gender. Race equality duties were introduced by the Race Relations Amendment Act 2000 which amended the Race Relations Act 1976. Gender equalities duties were introduced by the Equality Act 2006, which amended the Sex Discrimination Act 1975. Disability equality duties were introduced by the Disability Discrimination Act 2005 which amended the Disability Act 1995.
42. Equality impact assessments are an essential tool to assist councils to comply with our equalities duties and to make decisions fairly and equalities and human rights impact assessments that are carried out should be mindful of the protected characteristics under the Equality Act 2010.
43. Under the Local Authorities (Functions and Responsibilities) (England) Regulations 2000, as amended, decisions relating to licensing matters cannot be the responsibility of an authority's executive. The 2005 Act provides that whilst the majority of the functions of the licensing authority, are to be taken or carried out by its licensing committee, decisions relating to the statement of licensing policy cannot be delegated in such a way. The decision on whether to adopt the statement of licensing policy must therefore be taken by council assembly.

**Strategic Director of Finance and Governance (E&L/15/016)**

44. The Strategic Director of Finance and Governance notes the recommendations for the continuation of the Southwark Statement of Gambling Licensing Policy for 2013-2016 pending a full review and that the head of service has confirmed that the cost implications of this updated policy will be contained within the existing licensing revenue budget for the division.

**BACKGROUND DOCUMENTS**

Background Papers	Held At	Contact
The Gambling Act 2005 plus secondary regulations <a href="https://www.legislation.gov.uk/ukpga/2005/19/contents">https://www.legislation.gov.uk/ukpga/2005/19/contents</a>	The Licensing Service, Southwark Council C/O PO BOX 64529 London SE1P 5LX	Name: Mrs Kirtikula Read Phone number: 020 7525 5748
The Gambling Commission Guidance to Local Licensing Authorities <a href="https://www.gamblingcommission.gov.uk/for-licensing-authorities/GLA/Guidance-to-licensing-authorities.aspx">https://www.gamblingcommission.gov.uk/for-licensing-authorities/GLA/Guidance-to-licensing-authorities.aspx</a>		

## APPENDICES

No.	Title
Appendix A	Draft Southwark Statement of Licensing Policy 2016-2019

## AUDIT TRAIL

<b>Lead Officer</b>	Deborah Collins, Strategic Director of Environment and Leisure	
<b>Report Author</b>	David Franklin, Licensing Team Leader	
<b>Version</b>	Final	
<b>Dated</b>	24 October 2018	
<b>Key Decision?</b>	Yes	
<b>CONSULTATION WITH OTHER OFFICERS / DIRECTORATES / CABINET MEMBER</b>		
<b>Officer Title</b>	<b>Comments Sought</b>	<b>Comments included</b>
Director of Law and Democracy	Yes	Yes
Strategic Director of Finance and Governance	Yes	Yes
<b>Cabinet Member</b>	Yes	Yes
<b>Date final report sent to Constitutional Team</b>	24 October 2018	