



ASHFORD
BOROUGH COUNCIL

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LICENSING AND HEALTH AND SAFETY COMMITTEE

Notice of a meeting to be held in the Council Chamber,
Civic Centre, Tannery Lane, Ashford on THURSDAY, the
19TH APRIL 2007 at 7.00 pm

The Members of the Committee are:

Cllr. Goddard (Chairman)
Cllr. Weller (Vice-Chairman)
Cllrs. Allcock, Claridge, Enock, Feacey, Harrington, Heyes, Koowaree,
Mrs Larkin, Link, Mrs Martin, Wallace

A G E N D A

Page Nos.

1. **Apologies/Substitutes** – To receive Notification of Substitutes in accordance with Procedure Rule 1.2(iii)
2. **Declarations of Interest** – Declarations of Interest under the Code of Conduct adopted by the Council on the 1st May 2002 relating to items on this Agenda should be made here. The nature as well as the existence of any such interest must be declared
3. **Minutes** – To approve the Minutes of the Meeting of this Committee held on the 29th November 2006

PART I – FOR DECISION

4. Gambling Act 2005 – Premises Licence Fees

PART II – FOR INFORMATION

5. Gambling Act 2005 – Determination of Applications - Delegations
6. Timetable for Ashford Borough Council Taxi Policy – Verbal Update

DWS/AEH
11th April 2007

Queries concerning this agenda? Please contact Danny Sheppard 330349
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LICENSING AND HEALTH AND SAFETY COMMITTEE

MINUTES of a **MEETING** of the **LICENSING AND HEALTH AND SAFETY COMMITTEE** held in the Council Chamber, Civic Centre, Tannery Lane, Ashford on the **29th NOVEMBER 2006**

PRESENT: Cllr. Goddard (Chairman);
Cllr. Weller (Vice-Chairman);
Cllrs. Claridge, Feacey, Harrington, Heyes, Mrs Larkin, Link, Mrs Martin, Wallace.

APOLOGIES: Cllr. Allcock

ALSO PRESENT: Licensing Manager, Environmental Health Manager (Commercial), Senior Solicitor, Member Services and Scrutiny Support Officer.

Prior to the commencement of the meeting the Chairman welcomed the new Senior Solicitor.

346 MINUTES

Resolved:

That the Minutes of the meeting of this Committee held on 17th March 2005 be approved and confirmed as a correct record.

347 REPORT ON LICENSING ACT 2003 – IMPLEMENTATION UPDATE

The Licensing Manager introduced and gave an overview of this report. He explained that it had been a year since the Licensing Act 2003 came fully into force. It was considered timely to have a review though unfortunately local crime and disorder statistics as relevant to the Act were not yet available. He explained that the Act was however helping to target resources on “problem” premises. He reported that the extended hours seemed to have been well accepted - especially as the leaving “rush” was now more spread out and so there was less noise all at once.

The Licensing Manager reported that only 25 licence applications required a hearing and there had been only two appeals.

The Licensing Manager explained that the licensing policy, approved by Ashford Borough Council in December 2004, had to be reviewed every three years. The Department of Culture Media and Sport was reviewing guidance to local authorities and this should be available in the spring of 2007. The licensing policy would need to be revised in the spring/summer of 2007 to be ready for December 2007. In response to a question from the Committee on why there had been no reviews of the licences that had been issued, the Licensing Manager explained that most complaints about licensed premises had been resolved by the parties involved without the need for a review. The Act was designed to encourage negotiation and most people did conform to what they were supposed to do. He further commented that all the Ashford town centre pubs had door staff after 11pm and that this was positive in terms of reducing crime and disorder, and public nuisance. Details of joint enforcement work with the Police and Trading Standards were provided. It was reported that in some authorities Members had accompanied Officers on enforcement visits. Members expressed interest in this approach. Enforcement visits were being made immediately after a complaint was received. This it was felt helped to resolve problems quickly.

The licensing of public spaces was discussed. The Licensing Manager indicated that premises licences had been obtained for Ashford Town Centre by the Ashford Town Centre Partnership and for North Park and Victoria Park by Cultural Services at Ashford Borough Council so these

areas could be used for community events without having to get a succession of temporary event notices. It was hoped that Tenterden Town Council would adopt a similar approach for Tenterden (for the Folk Festival, late night shopping etc).

The Licensing Manager advised that over the coming year he intended to establish a Licensing Forum, where Councillors, Officers, statutory bodies, trading representatives and the public could get together to discuss licensing issues.

In response to further questions from Members of the Committee the Officers provided advice on:

- The Violent Crime Reduction Act in terms of speeding up licensing review (48 hour period), introduction of alcohol disorder zones and the charging of premises for enforcement controls that might need to be introduced.
- Underage selling of alcohol and the improved situation following a nationwide campaign by Trading Standards. It was noted that persistent underage selling of alcohol could result in revocation of licence/closure notice.

Resolved:

That the report be received and noted.

348 UPDATE ON GAMBLING ACT 2005

The Licensing Manger explained that Ashford Borough Council had to produce a Statement of Gambling Policy. This had been drafted and was to be presented to the Executive on Thursday 7th December 2006. Ashford Borough Council could expect to start receiving applications in April 2007, with full responsibilities transferred in September.

Personal/Operator Licences would be dealt with by the Gambling Commission. Ashford Borough Council would deal with premises licences e.g. for bingo, adult gaming (arcades), betting shops, horse racing/dog tracks etc.

Internet gambling was outside of regulation by local authorities – currently outside any regulation. He advised that the gambling industry was very well regulated but that the legislation was extremely complicated.

With regard to training he suggested that the Committee had some training in the spring because some applications could arrive in April. Further training/refresher could then happen, when required, after the Council elections. The hearing process for gambling applications was similar to that for licensing but each hearing was more likely to be unique.

In response to questions from Members of the Committee the Licensing Manager advised:

- It was not possible to predict whether Ashford would see an increase in gambling premises.
- An extra budget for start up costs for staffing, training etc had been requested.

Resolved:

That the report be received and noted.

Agenda Item No: 4
Report To: LICENSING, HEALTH AND SAFETY COMMITTEE
Date: 19th April 2007
Report Title: PROPOSED FEE LEVELS FOR 2007/8 FOR GAMBLING ACT 2005 RELATED APPLICATIONS
Report Author: Head of Environmental Services



Summary:	The report recommends the proposed fees for the premises licence fees for premises used for gambling for the financial year 2007/8.
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Key Decision: NO

Affected Wards: Not applicable

Recommendations: That the Licensing, Health and Safety Committee recommends the fees for premises licence fees for premises used for gambling as given in Appendix A to the Full Council.

Policy Overview: The process of setting the fees for premises licence fees for premises used for gambling is essential to ensure that operational costs are recovered and that Council budgetary objectives are met.

Financial Implications: The process of setting the fees is necessary to ensure that fees are set at a level that will enable the authority to recover the costs associated with the service provision.

Risk Assessment YES

Other Material Implications: Members should note generally that premises licence issued under the authority of the Gambling Act 2005 may be considered possessions and therefore Article 1 to Protocol 1 of the Human Rights Act 1998, the peaceful enjoyment of possessions, is relevant.

Exemption Clauses: Not applicable

Background Papers: None

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**Report Title: PROPOSED FEE LEVELS FOR 2007/8 FOR GAMBLING ACT
2005 RELATED APPLICATIONS**

Purpose of the Report

1. The report recommends the proposed fees for premises licence fees for premises used for gambling for the financial year 2007/8.

Issue to be Decided

2. Whether to approve the fees in Appendix A for recommendation to the Full Council.

Background

3. The Gambling Act 2005 Section 212 gives the Secretary of State power to make regulations prescribing the fees payable to the licensing authority. It also gives her the power to devolve to licensing authorities, in England and Wales, the freedom to set fees for premises licence applications, subject to any constraints she may prescribe. The Government has decided that for England and Wales, licensing authorities will determine their own fees for gambling premises licences but that the Secretary of State will prescribe the maximum fee payable for each category of licence.
4. After consulting widely and obtaining and considering information from licensing authorities and the gambling industry, the for Culture Media and Sport (DCMS) has prescribed maximum fees for each type of premises and each type of application for which a fee is payable. The maximum levels have been included in Appendix A in brackets for comparison purposes.
5. Local authorities have the authority to set fees for premises licences from within fee bands prescribed by DCMS. Each premises type will have separate fee bands.
6. There will be an initial fee to cover the cost of application and an annual "maintenance" fee.
7. The DCMS has asked Licensing Authorities to set fees to ensure full cost recovery and that the fee levels represent fairness and value for money for the gambling industry. All licensing authorities must set their fees upon a cost recovery basis only (Gambling Act Section 212 (2)(d)) and will be required to review their fee levels on an annual basis to ensure this.
8. The DCMS believe this approach will ensure fairness and value for money, while also allowing licensing authorities to fully recover the costs associated with premises licensing.
9. It is recognised that for the first fees setting exercise, costs will be estimates only, based upon the information available at the time. Actual costs may thus vary to some extent.
10. The Local Authorities Coordinators of Regulatory Services (LACORS) has published a fees toolkit to assist local authorities in compiling and has advised authorities that it believes trade bodies of gambling premises will be undertaking judicial review proceedings against authorities which it believes are not costing-out their fees on the basis of cost-recovery.
11. The DCMS has informed local authorities that the provisions of the Gambling Act 2005 Section 212 concerning fees will come into force on 21st May 2007. However, it has advised that licensing authorities can rely upon the Interpretation Act 1978 Section 13 to implement the provisions of Section 212 before it comes into force. This means that the power to set fees can be delegated prior to 21st May 2007. Clearly, the licensing authority will wish to do so and publish their fees in good time before 21st May 2007 i.e. the date when applications can be submitted to local licensing authorities.
12. The power to set fees can be delegated by the Council to a committee or an officer and this is subject to an additional report. It has suggested that the Licensing, Health and Safety Committee recommend the fees to the Full Council.
13. Fees must be set for all types of premises licences:

- Casinos
 - Bingo
 - Betting (off-course)
 - Tracks (on-course betting)
 - Adult Gaming Centres
 - Family Entertainment Centres
14. The fees must be determined for the different classes of premises as set-out in the fees regulations (See Gambling Act 2005 Section 212(2)(b) and SI 2007 / 479 paragraph 3) and cannot be based, for example, upon premises size, rateable value, etc.
- Fees must be set by each licensing authority for the following:
- Application fee for fast-track applications (transitional applications only)
 - Application fee for non fast-track applications (transitional applications only)
 - Application for (new) premises licence
 - Application to vary a premises licence
 - Application to transfer the licence (Sections 188 and 189)
 - Application for re-instatement of the premises licence (Sections 195 & 196)
 - Application for a provisional statement
 - Application for a premises licence for a premises which already has a provisional statement
 - Fee to accompany a request for a copy of the premises licence (Sections 190)
 - Fee to accompany a notification of change of circumstances (only relevant change is that of address - Section 186)
15. Start-up costs cannot be included in the calculations for setting premises licence fees. The Secretary of State wrote to all Chief Executives of local authorities to inform them that provision had been made in the Revenue Support Grant (RSG), as part of the EPCS (Environmental, Protective and Cultural Services) settlement, for the start-up costs related to the Gambling Act 2005.
16. The letter to Chief Executives stated that for the years 2004/2005 and 2005/2006 monies were provided for:
- Training of existing licensing officers, councillors and administrative staff
 - Staff/recruitment costs (where additional staff are required to fulfill gambling premises licence responsibilities.)
 - Additional software/hardware requirements
 - Transfer of records from Magistrates to authorities
 - Producing and consulting on the three year licensing policy statement

Fees and Income

17. The fees have been calculated by examining how the 'time' it takes to carry out the various tasks and who in the authority is likely to carry them out. The hourly rates of staff, including on costs for various members of staff were provided by our finance section. Then these hourly rates are fed in to a spreadsheet produced by the DCMS to calculate costs for each type of activity. For each application the processes involved are identified and the costs of each process are calculated and entered in to the spreadsheet provided by LACORS, which produces an average cost for each type of application and an annual fee.
18. The type of tasks involved in a non-fast track premises application for example, include, assistance to applicant (pre-application stage, include telephone advice, sending forms, etc), the checking of an application for completeness when received, checking all required documents are attached, processing the application fee, check, process, bank and reconcile payments, entering the information into our computer system including scanning if appropriate, contacting the applicant to clarify application or chase missing information if required, assess representations for relevance, undertake informal mediation, undertaking site visits where necessary, checking operating licence once issued, determining the licence, arranging a hearing, holding a hearing, notification of the decision, prepare and issue the licence, update the records/register (including the notification of Gambling Commission), appeal preparation and holding an appeal hearing.

19. The costs associated with appeals and hearings have been estimated and an estimation has been made as to the likelihood of these events occurring is entered into the final calculations. The risk of appeals and hearings occurring has been based on assumptions gathered through training on the Gambling Act 2005 and from the authority's experience of the frequency of hearings and appeals under the Licensing Act 2003.

20. Permits

Local authorities already issue a number of permits or registrations for activities under existing gambling legislation. Under the Gambling Act 2005, the Licensing Authority will be responsible for dealing with the following permits and registrations:

- Unlicensed Family Entertainment Centre Gaming Machine Permits
- Registration of small lottery licences
- Club Gaming Permits
- Club Gaming Machine Permits
- Licensed Premises Gaming machine Permits
- Prize Gaming Permits

Unlike premises licence fees, permit fees are prescribed by the Government and therefore licensing authorities have no discretion in this matter. For information only, at the time of writing, the only permit fees which have yet been prescribed are for Family Entertainment Centre Gaming Machines and Prize Gaming which are summarised below:

Fee Type Permit Type	Application fee	Renewal fee	Transitional Application Fee
FEC Gaming Machine	300	300	100
Prize Gaming	300	300	100

21. Miscellaneous Fees

	Change of Name £	Copy of Permit £	Variation £	Transfer £
FEC Permits	25	15	N/A	N/A
Prize Gaming Permits	25	15	N/A	N/A

Tracking costs

22. Licensing authorities have a number of ways in which we are able to track our costs. One method is to attach a piece of paper to each (or a sample of) licence applications and fill in the time it takes the different officers to complete work regarding the application. This would need to include costs of non licensing officers (such as legal) where their services are required. The time can thus be costed out using cost rates for officers which take account of all overheads, once the application is determined. Should there be future activity associated with the application such as compliance work, enforcement work, reviews etc. then the additional officer's time can be marked on the sheet.

Risk Assessment

23. The process of setting the proposed fees for premises licence fees for premises used for gambling is essential to ensure that operational costs are recovered and if no decision is taken, the Council budgetary objectives are unlikely to be met.

24. Should parts of industry believe the authority's fees are at a level which is greater than the costs of the statutory functions then it would be open to them to undertake judicial review proceedings. Should this arise, the authority would need to evidence how it arrived at the fee levels to demonstrate that they have been calculated on a cost recovery basis only.
25. Case law relating to fee levels in various licensing areas has agreed a general principle that licensing fees should not be used as a method of creating revenue and so setting a fee level that would result in an excess of revenue would leave the authority open to legal challenge.
26. LACORS is currently exploring what action it is appropriate for local authorities to take each year should they discover that they have either over or under-charged at the fee levels set. It has been suggested that the annual fees should be raised / reduced to reflect the over / under charge.

Consultation

27. Given the maximum fee levels were set by the DCMS on 21st February and the time taken to calculate the proposed fees, the time available for consultation has been limited. However a letter was sent out to operators listed in Appendix B, asking for their comments. Consultation responses.
28. The report has been reviewed by a member of legal services.
29. Only one reply was received and as the respondent had no premises in the Borough, they had no comment to make.
30. While Ashford Borough Council has shared its proposed fees with all the other authorities in Kent, we have yet to receive an indication of the fees set by our neighbours. Liverpool City Council has published its proposed fees and a comparison has been undertaken for guidance purposes. The proposed fees in Appendix A are broadly similar with those proposed by Liverpool.

Implications Assessment

31. As previously stated the recommendation does not represent a key decision. The consideration assessment indicates low impact in terms of human rights, legal and staffing implications. Note that the recommendation has been made with reference to key stakeholders.

Handling

32. The fees are to be reviewed by members at the Licensing, Health and Safety Committee meeting on 19th April 2007, before recommending the fees to the Full Council on 26th April. This will allow the authority to publish the fees by the 1st May 2007, three weeks in advance of the first date we can accept the first application.

Conclusion

33. The impact on income to the Council of these changes must be carefully monitored and annual reviews of fees must be continued to ensure that the service remains self-financing but avoids raising excessive revenue.
34. The only option presented to members has received little objection from the trade. The Licensing Section support this option, as the fee levels are estimated to cover our costs and are below the maximum limits set by the DCMS.

Portfolio Holder's Views

35. No comments received

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APPENDIX A: RECOMMENDED PREMISES LICENCE FEES

Premises Type	Transitional Fast-Track Application £	Transitional Non-Fast Track Application £	New Application £	Annual Fee £
Existing Casinos	n/a	n/a	n/a	n/a
New Small Casino	n/a	n/a	6285 (8000)	3575 (5000)
New Large Casino	n/a	n/a	7540 (10000)	7215 (10000)
Regional Casino	n/a	n/a	11880 (15000)	11140 (15000)

Bingo Club	250 (300)	1170 (1750)	2160 (3500)	670 (1000)
Betting Premises (excluding Tracks)	250 (300)	1170 (1500)	2160 (3000)	430 (600)
Tracks	250 (300)	940 (1250)	1690 (2500)	670 (1000)
Family Entertainment Centres	250 (300)	765 (1000)	1690 (2000)	580 (750)
Adult Gaming Centre	250 (300)	765 (1000)	1690 (2000)	670 (1000)

	Application to Vary £	Application to Transfer £	Application for Re-Instatement £	Application for Provisional Statement £	Licence Application (provisional Statement holders) £	Copy Licence £	Notification of Change £
Existing Casinos	n/a	n/a	n/a	n/a	n/a	n/a)	n/a)
New Small Casino	2580 (4000)	1500 (1800)	1260 (1800)	6285 (8000)	2240 (3000)	25 (25)	50 (50)
New large Casino	3410 (5000)	1760 (2150)	1985 (2150)	7540 (10000)	3700 (5000)	25 (25)	50 (50)
Regional Casino	5570 (7500)	4055 (6500)	4055 (6500)	11880 (15000)	5785 (8000)	25 (25)	50 (50)
Bingo Club	1475 (1750)	820 (1200)	820 (1200)	2160 (3500)	890 (1200)	25 (25)	50 (50)
Betting Premises (excluding Tracks)	1245 (1500)	820 (1200)	820 (1200)	2160 (3000)	890 (1200)	25 (25)	50 (50)
Tracks	1130 (1250)	820 (950)	820 (950)	1690 (2500)	890 (950)	25 (25)	50 (50)
Family Entertainment Centres	760 (1000)	820 (950)	820 (950)	1690 (2000)	735 (950)	25 (25)	50 (50)
Adult Gaming Centre	760 (1000)	820 (1200)	820 (1200)	1690 (2000)	890 (1200)	25 (25)	25 (25)

Ashford Borough Council's Licensing Authority proposes the following fees as shown in bold type in the table above. For ease of reference the maximum fees identified by DCMS that could be charged are shown in brackets.

APPENDIX B: ORGANISATIONS CONSULTED ON FEES

Overplus Ltd
38 Bank Street, Ashford, Kent, TN23 1BA

AMF Bowling
43-79 Station Road, Ashford, Kent, TN23 1PP

Association of Chief Police Officers
25 Victoria Street, London, SW1H 0EX

British Beer & Pub Association
Market Towers, 1 Nine Elms Lane, London,
SW8 5NQ

GALA Bingo
Glebe House, Vicarage Drive, Barking, Essex,
IG11 7NS

Association of British Bookmakers
Regency House, 1-4 Warwick Street, London,
W1B 5LT

British Holiday & Home Parks Association
6 Pullman Court, Great Western Road,
Gloucester, GL1 3ND

Leisure Link Group
3 The Maltings, Wetmoore Road, Burton on
Trent, Staffs

Cammegh Ltd
Old Surrenden Manor, Bethersden, Ashford,
Kent, TN26 3DL

BACTA
King's Cross House, 211 King's Cross Road,
London, WC1X 9DN

Ladbrookes
Ashford Truckstop Services, Waterbrook Lane,
Ashford, Kent, TN24 0GB

William Hill
37 Court Wurtin, Beaver Lane, Ashford, Kent,
TN23 1GD

Racecourse Association
Winkfield Road, Ascot, Berkshire, SL5 7HX

Betfair
PO Box 34467, London, W6 9WS

Victor Chandler Bookmakers
Leanse Place, 50 Town Range, Gibraltar

Ladbrookes
Imperial House, Imperial Drive, Harrow,
HA2 7JW

Leisure World
30 High Street, Ashford, Kent, TN24 8TE

British Amusement Catering Association
King's Cross House, 211 King's Cross Road, London
WC1X 9DN

BACTA
King's Cross House, 211 Kings Cross Road, London
WC1X 9DN

Bingo Association of Great Britain
Lexham House, 75 High Street North, Dunstable, Beds
LU6 1JF

Mecca Bingo
High Street, Ashford, Kent, TN24 8TF

British Casino Association
38 Grosvenor Gardens, London, SW1W 0EB

British Casino Operators
PO Box 55, Thorncombe, Chard, TA20 4YT

Automatic Amusements
6 Becketts Close, Hastingleigh, Ashford, Kent, TN25 5HS

British Greyhound Racing Board
32 Old Burlington Street, London, WS1 3AT

Panbet
8-9 Brookfield Court, Ashford, Kent, TN23 5ER

William Hill
23 Bank Street, Ashford, Kent, TN23 1DG

Licensed Victuallers Association
126 Bradford Road, Brighouse, West Yorkshire, HD6 4AU

Betfred
Spectrum, Benson Road, Birchwood, Warrington,
WA3 7PQ

William Hill PLC
7th Floor Milton House, Charter Row, Sheffield, S1 3FZ

Rank Group Gaming Division
Stafferton Way, Maidenhead, Berks, SL6 1AY

Agenda Item No: 5
Report To: LICENSING, HEALTH & SAFETY COMMITTEE
Date: THURSDAY 19TH APRIL 2007
Report Title: GAMBLING ACT 2005 – DETERMINATION OF APPLICATIONS - DELEGATIONS
Report Author: Democratic Services Manager



Summary:

The Gambling Act 2005 (Proceedings of Licensing Committees and Sub-committees) (Premises Licences and Provisional Statements) (England and Wales) Regulations 2007 were made on the 27th January 2007 and have an effective date of 30th April 2007.

The Regulations provide for a range of procedural issues to govern preparations for hearings, the rights of parties at hearings and various administrative matters. The Regulations also make provision for the timing of determinations following a hearing.

Now that these Regulations have been introduced the Council has to add the to terms of reference of the Licensing and Health and Safety Committee to determine applications received.

Key Decision: NO

Affected Wards: All

Recommendations: **The Committee is asked to note the recommendations to Selection & Constitutional Review Committee below. Selection will consider these recommendations at their meeting on 19th April and the position will be updated at the meeting.**

The Committee is asked to recommend to the Council that:-

1. The terms of reference of the Licensing and Health and Safety Committee and its Sub-Committees be amended as detailed in Appendix 1 to this report.
2. The functions, it is intended, will be exercisable by the Licensing Sub-Committee, delegated by the Licensing Committee. The sub-committee may then further delegate certain functions to an officer of the licensing authority.
3. The Council be requested to delegate authority to the Head of Legal and Democratic Services to finalise the detailed procedures to be followed at meetings of the Sub-Committee.
4. The Democratic Services Manager be delegated authority to select at random, according to their availability, three members per meeting from the membership of the Licensing and Health and Safety Committee to serve on individual meetings of the Sub-Committee.
5. The schedule of delegations to officers to determine applications

under the Gambling Act 2005, as contained in Appendix 2 to the report be approved and adopted.

6. The Council resolve that the Sub-Committee be not included within the political balance calculation of the authority.

Policy Overview:

At the meeting of the Council held on the 14th December 2006 the Council adopted its Gambling Statement of Policy for the Borough.

Following publication of the detailed regulations the scheme of delegations is set out in Appendix 2. It is anticipated that the number of determinations that will be relatively low and so no meetings have been programmed for the coming year.

Now that the Gambling Act 2005 (Proceedings of Licensing Committees and Sub-committees) (Premises Licences and Provisional Statements) (England and Wales) Regulations 2007 have been made it is necessary to finalise the arrangements for the Licensing Sub-Committee and to agree its terms of reference.

Applications to this Council for Licences and Permits under the Act will be received from the 21st May 2007. Following the statutory notification periods the first meeting for determination of applications could be held on the 2nd July 2007.

Financial Implications: None in the context of this report.

Risk Assessment Judicial review is a significant risk if the policy we adopt strays beyond the regulations provided under the authority of the Gambling Act 2005.

Other Material Implications: Legal – The Council is required by statute to establish a Licensing Committee, which may appoint a Sub-Committee or delegate authority to officers to determine applications. Strict time limits have to be applied between the date of receipt of applications and their determination.

Exemption Clauses: N/A

Background Papers: Nil –The report has been written following reference to the Gambling Act 2005 and Gambling Act 2005 (Proceedings of Licensing Committees and Sub-committees)(Premises Licences and Provisional Statements) (England and Wales) Regulations 2007

Contacts: trevor.robertson@ashford.gov.uk – Tel: (01233) 330504

Report Title: GAMBLING ACT 2005 – DETERMINATION OF APPLICATIONS - DELEGATIONS

Purpose of the Report

1. To advise the Committee of the appropriate provisions of Gambling Act 2005 and Gambling Act 2005 (Proceedings of Licensing Committees and Sub-committees) (Premises Licences and Provisional Statements) (England and Wales) Regulations 2007 and to recommend:
 - the terms of reference of the Licensing and Health and Safety Committee and its Sub-Committees be amended as detailed in Appendix 1 to this report.
 - the functions it is intended will be exercisable by the Licensing Sub-Committee, delegated by the Licensing Committee. The sub-committee may then further delegate certain functions to an officer of the licensing authority.
 - agree a scheme of delegation to officers, and;
 - to delegate authority for the Head of Legal and Democratic Services to approve the detailed procedures to be followed at meetings of the Sub-Committee.

Issue to be Decided

2. To recommend to the Council the adoption of the administrative structure and arrangements for the determination of applications received for licenses etc under the Gambling Act 2005.

Background

3. The Gambling Act 2005³ transfers responsibility for Licensing of licensed premises from the Magistrates Court system to the Local Authority. The effective date for the transfer of these functions is the 21st May 2007. In preparation for the transfer the Council has adopted and publicised a Gambling Policy Statement in accordance with the Act.
4. Although the Act includes some provisions relating to the administrative structure to be operated by Local Authorities, no details were available until Gambling Act 2005 (Proceedings of Licensing Committees and Sub-committees) (Premises Licences and Provisional Statements) (England and Wales) Regulations 2007 were made on the 27th January 2007.
5. A summary of the main provisions of the Act and the Hearing Regulations relating to Licensing Committees, the exercise and delegation of functions, and proceedings of Licensing Committees and Sub-Committees are set out below.

Matters not capable of delegation – full Council decisions

6. The following matters must be determined by the full Council and may not be delegated (section 154(2)):
 - (a) A resolution not to issue casino premises licences (section 166);
 - (b) Functions in relation to the Council's licensing policy (section 349).
This includes the adoption of statements of principles in relation to Family Entertainment Centre Gaming Machine Permits (Schedule 10, paragraph 7) or Prize Gaming Permits (Schedule 14, paragraph 8).

Delegation to the Licensing Committee

7. By section 154, all decisions relating to premises licences are automatically delegated to the Licensing Committee except:
- (a) A resolution not to issue casino licences;
 - (b) Functions in relation to the Council's licensing policy;
 - (c) Setting fees – to the extent that the licensing authority has delegated powers in relation to fees. These decisions may be delegated to the licensing committee but this is not automatic.

Delegations by the Licensing Committee

8. In general decisions that are delegated to the Licensing Committee may be further delegated to a sub-committee, which may arrange for them to be exercised by an officer.

Premises licences

9. The following decisions regarding premises licences may not be made by an officer and must be made by either the Licensing Committee or a sub-committee – section 154(4) - :
- (a) determining an application for a premises licence where representations have been made and not withdrawn;
 - (b) determining an application for variation of a premises licence where representations have been made and not withdrawn;
 - (c) determining an application for transfer of a premises licence, following representations made by the Gambling Commission;
 - (d) determining an application for a provisional statement where representations have been made and not withdrawn;
 - (e) determining a review of a premises licence.
10. The licensing authority may prepare a statement of principles in relation to Family Entertainment Centre Gaming Machine Permits (Schedule 10) or in relation to Prize Gaming Permits (Schedule 12), although it does not have to do so. The guidance of LACORS is that these functions may not be delegated by the Licensing Committee although this is not clear from the Act. However it is suggested that in any event these functions should remain with the Licensing Committee.

Temporary use notices

11. Decisions on temporary use notices are automatically delegated to the Licensing Committee and may be further delegated to a sub-committee or to an officer. However' if objections are received to the notice (and the authority itself can object to the notice) then a hearing must be held - section 222(2) – unless all parties agree in writing that a hearing is unnecessary. Representations can be made at the hearing by the person who gave the Notice, the objector(s) and others who were entitled to raise objections. If following the hearing the licensing authority considers that the temporary use notice should not have effect, or should effect only with modification, it may give a counter-notice to this effect to the person who gave the Notice (section 224).
12. In order to meet these requirements, it is recommended that the consideration of objections to a temporary use notice should be dealt with by a sub-committee of the licensing committee.

Permits – general issues

13. Decisions in relation to permits are automatically delegated to the Licensing Committee and may be further delegated to a sub-committee or to an officer. The exceptions within the Act are that these decisions may not be made by an officer:

- (a) determining an application for a club gaming permit or club machine permit where objections have been made and not withdrawn;
 - (b) cancellation of a club gaming permit or club machine permit.
14. The Commission's Guidance suggests (paragraph 4.7) that an important consideration in determining whether any particular decision should be delegated will be whether delegation might give rise to a risk of judicial review challenge (particularly on the basis of an appearance of bias). This arises in particular where the Act requires a process of considering representations before a decision is made.
15. A further consideration is that certain decisions may give rise to the right of appeal to the Magistrates' Court, including refusals of applications for permits, and there is an argument that if there is an effective hearing process before applications are refused by the authority then this will reduce the number of decisions which are taken to appeal.

Alcohol licensed premises gaming machine permits

16. Under section 282 of the Act premises which have an on-premises alcohol licence, under the Licensing Act 2003, have an automatic entitlement to two gaming machines (of category C or D). The holder of the premises licence can apply for a permit to hold a greater number of gaming machines, and this application may be granted or refused. A further option is to grant the application but in respect of a smaller number of machines or different category of machines. There is no provision by which conditions can be attached to the permit. If the licensing authority intends to refuse the application, in full or in part, then it must notify the applicant and give the applicant an opportunity to make representations either orally or in writing – Schedule 13, paragraph 6.
17. It is recommended that the consideration of representations in these circumstances should be a matter for a sub-committee of the licensing committee.
18. The authority also has the power under section 284 to remove the automatic entitlement to two machines (on certain specified grounds) and the power to cancel a permit granted for a greater number of machines (again on certain specified grounds). Again in these circumstances the licensing authority has to give notice to the permit holder, consider any representations made by the permit holder and, if so requested, hold a hearing for this purpose. The holder of the permit has the right of appeal against cancellation to the Magistrates' Court.
19. It is recommended that the consideration of representations in these circumstances should also be a matter for a sub-committee of the licensing committee.

Club Gaming Permits and Club Machine Permits

20. Applications for these permits are automatically delegated to the licensing committee but can be delegated to an officer to determine. The Gambling Commission and the police may lodge objections to the application. The application may be granted or refused; conditions may not be attached to a permit. If the licensing authority is minded to refuse the application (on one or more of the statutory grounds) then it must hold a hearing to consider the application – Schedule 12, paragraph 7. It should be noted that the application can be refused even if no objections have been submitted. The requirement for a hearing may be dispensed with if all parties agree. The same procedure applies where the holder of a club premises certificate (under section 72 of the Licensing Act 2003) applies for a permit under the fast-track procedure.

21. The licensing authority has the power to cancel the permit on specified grounds. Before doing so it must serve notice on the permit-holder, consider any representations made, and hold a hearing if so requested (Schedule 12, paragraph 21).
22. It is recommended that the following matters be dealt with by a sub-committee of the licensing committee:
 - determination of application for a permit where objections have been received or where the licensing authority is minded to refuse the application;
 - cancellation of permits.

Family Entertainment Centres (“FEC”)

23. Applications for Family Entertainment Centre Gaming Machine Permits are automatically delegated to the licensing committee but can be delegated to an officer to determine. The application may either be granted or refused; there is no facility to attach conditions to the permit. If the licensing authority is minded to refuse an application, due to its own concerns or if the police object to the application, then it must give the applicant an opportunity to make representations either orally or in writing (Schedule 10, paragraph 10).
24. It is recommended that in these circumstances the application for a permit should be decided by a sub-committee of the licensing committee.
25. The permit lapses if the licensing authority serves notice that the premises are not being used as a family entertainment centre, subject to the permit-holder’s right of appeal to the Magistrate’s Court.

Prize Gaming Permits

26. Applications for Prize Gaming Permits are automatically delegated to the licensing committee but can be delegated to an officer to determine. The application may either be granted or refused; there is no facility to attach conditions to the permit. If the licensing authority is minded to refuse an application, due to its own concerns or if the police object to the application, then it must give the applicant an opportunity to make representations either orally or in writing (Schedule 14, paragraph 11).
27. It is recommended that in these circumstances the application for a permit should be decided by a sub-committee of the licensing committee.

Small Society Lotteries

28. These are functions of the Local Authority rather than the Licensing Authority (Schedule 11 paragraph 42(1)). The discharge of these functions may therefore be delegated to an officer under section 101 Local Government Act 1972.

Fees

29. The Regulations regarding fees for premises licences (the Gambling (Premises Licence Fees) (England and Wales) Regulations 2007) were published on 21st February 2007 and come into force on 21st May 2007.
30. Local authorities will be able to set fees for premises licences from within prescribed fee bands. There will be an initial fee to cover the cost of application, a “first annual fee” relating to the first year of the licence and an “annual fee” for the subsequent years. The fee selected must be limited to recovering the costs associated with premises licensing; and may not generate revenue income beyond that.

31. Each premises type will have separate fee bands. The categories of premises licence relevant to Ashford (i.e. excluding the various casino premises) will be:
- (a) Bingo premises licence
 - (b) Adult gaming centre premises licence
 - (c) Family entertainment centre premises licence
 - (d) Betting premises (general) licence
 - (e) Track premises licence.
32. The prescribed fee bands are set out in the Schedule to the Regulations. By way of information, the fee bands in respect of a betting premises licence will include:
- | | |
|---|--------|
| Maximum conversion fee – fast track application | £300 |
| Maximum conversion fee for non-fast track application | £1,500 |
| Maximum non-conversion fee (i.e. new premises) | £3,000 |
| Maximum annual fee | £600 |
| Maximum fee for application to transfer | £1,200 |
| Maximum fee for notifying change of circumstances | £50 |
| Maximum fee for copy of a licence | £25 |
33. The statutory requirements in relation to the setting of fees are set out in section 212 of the Act. These requirements upon the licensing authority are that:
- (a) it shall determine the amount of the fee;
 - (b) it may determine different amounts for different classes of case as specified in the regulations;
 - (c) it shall publish the amount of the fee as determined from time to time;
 - (d) it shall aim to ensure that the income from fees of that kind as nearly as possible equate to the costs of providing the service to which the fee relates (including a reasonable share of expenditure which is referable only partly or only indirectly to the provision of that service).
34. The issue to be determined at this stage is what is the appropriate level for the making of decisions regarding the setting of fees. The options are:
- (a) full Council;
 - (b) Licensing and Health and Safety Committee; or
 - (c) officers.
35. It is proposed that, in accordance with the setting of fees in other licensing regimes, the Licensing and Health and Safety Committee have the role of considering and advising upon the setting of fees, and the decision-making rest with the full Council.
36. Permit (and lottery) fees will be set by the Government and there is no discretion for local authorities.

Terms of Reference – Licensing and Health and Safety Committee

37. The terms of reference to this committee are to be expanded by virtue of the licensing functions under the Gambling Act 2005. It should be noted that these functions are specified in Schedule 1 of the Local Authorities (Functions and Responsibilities) (England) Regulations 2000 (“Schedule 1”) as functions which are not to be the responsibility of the Executive.
38. The existing terms of reference are, inter alia, to consider and advise the Council upon the setting of fees and charges in relation to the licensing and registration functions specified in Schedule 1. The functions under the Gambling Act 2005, being statutory functions of the Licensing and Health and Safety Committee, fall within the scope of Part B, paragraph 14 to Schedule 1.

Terms of Reference – Licensing Sub-Committee

39. As a formality, the functions which are delegated to the Licensing Sub-Committee must be delegated by the Licensing Committee – section 10 Licensing Act 2003. The sub-committee may then further delegate certain functions to an officer of the licensing authority. There has to be this “chain of delegation”.
40. Subject to the above, the Terms of Reference of the Licensing Sub-Committee will need to be amended as indicated in paragraph 2, Appendix 1 to this report.

Risk Assessment

41. Judicial review is a significant risk if the policy we adopt strays beyond the regulations provided under the authority of the Gambling Act 2005.
42. The validity of the decisions made may be called into question if the powers and process by which the decisions are made have not been properly drawn up and delegated under the Council’s constitution.

Consultation

43. Detailed consultation on the provisions of the draft Gambling Policy Statement was previously undertaken. This report primarily deals with the need to establish a system to determine licence applications.
44. In view of this consultation has been limited to discussions with the Divisional Team Manager (Commercial) – (Environmental Health), the Licensing Manager and the Head of Legal and Democratic Services.

Implications Assessment

45. The operation of the new gambling powers by the Authority will be closely monitored by the gambling trade, the public and by Central Government. It is therefore imperative that determinations follow closely the Statement of Licensing Policy and that likewise, Officers follow the detailed guidance included in The Gambling Act 2005 (Proceedings of Licensing Committees and Sub-Committees) (Premises Licences and Provisional Statements)(England and Wales) Regulations 2007.

Handling

46. In view of the need for the Sub-Committees terms of reference to be amended in time for the first meeting to be ready by the beginning of July 2007 and the need for the licensing authority to deal with applications from 21st May 2007, the recommendations of this Committee must be reported to the meeting of the Council to be held on the 26th April 2007.

Conclusion

47. The detailed nature of the Regulations will assist Officers and the Sub-Committee in processing the applications and determining the applications respectively.

Portfolio Holder’s Views

48. No comments received.

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Appendix 1

Applications under the following provisions of the Gambling Act 2005:

Matter to be dealt with and relevant provision		Circumstances under which a hearing is held
a.	Application for premises licence (section 162)	If representations made and not withdrawn
b.	Application for variation to a premises licence (section 187)	If representations made and not withdrawn
c.	Application for transfer of a premises licence (section 188)	If representations received from the Commission
d.	Application for a provisional statement (section 204)	If representations made and not withdrawn
e.	Review of a premises licence (section 201)	All cases
g.	Application for club gaming permit or club machine permit (sections 271-274 and Schedule 12)	If objections have been made and not withdrawn; or if intention to refuse the application
h.	Cancellation of club gaming permit or club machine permit (sections 271-274 and Schedule 12)	All cases
i.	Decision to give a counter notice to a temporary use notice (section 224)	All cases
j.	Application for licensed premises gaming machine permit (section 283)	If intention to refuse the application, either wholly or in part
k.	Cancellation or variation of a licensed premises gaming machine permit (section 284)	All cases
l.	Application for a Family Entertainment Centre Gaming Machine Permit (section 247)	If intention to refuse the application
m.	Application for a Prize Gaming Permit (section 289)	If intention to refuse the application

Appendix 2

Delegations to Head of Environmental Services

This is to be added as paragraph 11.7A in the Delegations at Part 3 Appendix 5 (page 201):

In accordance, where appropriate, with Council policy to determine any application for a licence, permit or notice under the Gambling Act 2005, to attach conditions or to state grounds for refusal, to receive notifications, to register and maintain appropriate registers, to exercise the powers conferred, to take any action considered necessary, to institute proceedings, to enforce the provisions of, to discharge the functions and duties imposed on the Council, under the Act or any regulations thereunder in respect of the following:

Matter to be dealt with	Circumstances in which decision may be made
Application for premises licences	Where no representations received or representations have been withdrawn
Application to vary a premises licence	Where no representations received or representations have been withdrawn
Application to transfer a premises licence	Where no representations received or representations have been withdrawn
Application for a provisional statement	Where no representations received or representations have been withdrawn
Application for a club gaming permit or club machine permit	Where no objections made or objections have been withdrawn
Application for other permits	All cases
Cancellation of licensed premises gaming machine permits	All cases
Application for temporary use notice	All cases

The granting of the above delegations is without prejudice to officers referring an application to a Sub-Committee or to a Sub-Committee referring an application to the full Committee, if considered appropriate by the Licensing Officer or Sub-Committee in the circumstances of any particular case and where permitted by legislation.