

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

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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 2005 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.