LICENSING COMMITTEE (LICENSING ACT 2003 FUNCTIONS)	**Agenda Item 18** Brighton & Hove City Council

Subject:		**Gambling Act 2005 – revised Gambling policy**		
Date of Meeting:		**24 November 2016** **Full Council 15th December 2016**		
Report of:		**Director of Neighbourhoods, Communities and Housing**		
Contact Officer:	**Name:**	**Jim Whitelegg, Licensing Manager**	**Tel:**	**29-2438**
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Ward(s) affected:		**All**		

FOR GENERAL RELEASE

1. SUMMARY AND POLICY CONTEXT:

1.1 The Gambling Act 2005 requires Licensing Authorities to prepare, every three years, a statement (also known as a Policy) of the principles which they propose to apply when exercising their functions, and they must publish the statement following the procedure set out in the Act, including whom they should consult.

2. RECOMMENDATIONS:

2.1 That members agree to refer the final version of the Statement of Gambling Policy to Full Council for adoption. (Appendix 1)

2.2 That the final Statement of Gambling Policy is presented to Full Council.

3. RELEVANT BACKGROUND INFORMATION/CHRONOLOGY OF KEY EVENTS:

3.1 On 3 March 2016, Licensing Committee received a report and asked officers to initiate consultation regarding a review of the council's revised Gambling Policy. Officers have re-written the Policy in light of the changes to the Licensing Conditions and Code of Practice (LCCP) and Guidance for Local Authorities (GLA), to incorporate the new social responsibility requirements which came into force in April 2016.

4. CONSULTATION

4.1 Consultation commenced on 4 April 2016 and lasted 3 months, closing on the 3 July 2016. The revised Policy is a more comprehensive and detailed document and has been updated to include:·

- A section on Local Risk Assessment and Local Area profile (Part C para 13).
- Details and guidance for each type of premises licence issued, including a list of good practice control measures/conditions to promote licensing objectives (Part C).
- An updated enforcement section to reflect work done by the licensing team, including test purchasing.

The revised statement of gambling policy was sent to statutory consultees and was available on the council's website and consultation portal.

4.2 A total of 8 responses were received, 3 from local residents, 1 from Head of Children's Safeguarding BHCC, 1 from East Sussex Fire and Rescue Service and 3 from business/trade organisations. The responses were evaluated and a summary of comments can be found in Appendices 2 and 3. Respondents were generally in favour of the proposed changes. No changes have been made to the policy which was consulted on, other than amending minor typographical errors.

4.3 Before the revised "Statement of Gambling Policy", comes into effect the local authority is required to publish the Statement of policy on the Council's website, and make it available for inspection at one or more public libraries for a period of at least 4 weeks before the date on which it will come into effect. The authority must also publish a notice of its intention to publish a statement no later than the first day on which the statement is published. The notice must:

a) Specify the date on which the statement is to be published
b) Specify the date on which the statement will come into effect
c) Specify the internet address where the statement will be published and the address of the premises at which it may be inspected, and
d) Be published on the authority's website and in or on one or more of the following places:

- A local newspaper circulating in the area covered by the statement
- A local newsletter, circular or similar document circulating in the area covered by the statement
- A public notice board on or near the principal office of the authority's public notice board on the premises of public libraries in the area covered by the statement.

4.4 The timetable is as follows:

- Licensing Committee 24 November 2016
- Full Council 15 December 2016
- Advertised and published during December 2016
- January 2017 Revised Statement comes into effect

5. FINANCIAL & OTHER IMPLICATIONS:

Financial Implications:

5.1 There are no financial implications arising from the production of this statement, as licensing fees are set at a level that will be cost neutral to the licensing authority.

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Finance Officer Consulted: Michael Bentley Date: 18/10/16

Legal Implications:

5.2 Local authority responsibilities include: upholding licensing objectives, publishing a three year licensing policy, determining applications for premises licences and regulating members clubs – club gaming and machine permits. The Licensing Committee established under section 6 of the Licensing Act 2003 has authority to exercise functions under the Gambling Act 2005 with the exception of: a resolution not to issue casino licences, the three year licensing policy (full council) and setting fees.

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Lawyer Consulted: Rebecca Sidell Date: 19/10/16

Equalities Implications:

5.3 Protecting children and other vulnerable persons from being harmed or exploited by gambling is one of the licensing objectives. The Act does not seek to prohibit particular groups of adults from gambling in the same way that it prohibits children. "Vulnerable persons" will not be defined but for regulatory purposes the assumption is that this group includes people who gamble more than they want to, people who gamble beyond their means, and people who may not be able to make informed or balanced decisions about gambling due to a mental impairment, alcohol or drugs. Operators should encourage where appropriate, strategies for self help and provide information on organisations where advice and help can be sought.

With limited exceptions, the intention of the Gambling Act is that children and young persons should not be permitted to gamble and should be prevented from entering those gambling premises which are adult-only environments.

Sustainability Implications:

5.4 None.

Crime & Disorder Implications:

5.5 Gambling Commission inspectors have the main enforcement/compliance role. The police and licensing authority officers have powers of entry and inspection.

Risk and Opportunity Management Implications:

5.6 Gambling licensing objectives are:

a) Preventing gambling from being a source of crime and disorder, being associated with crime and disorder, or being used to support crime
b) Ensuring gambling is conducted in a fair and open way
c) Protection children and other vulnerable persons from being harmed or exploited by gambling.

Corporate/Citywide Implications:

5.7 Licensing authorities licence all gambling premises in the city: casinos, bingo, betting, tracks, adult gaming centres, family entertainment centres as well as administering notices and granting gaming permits.

SUPPORTING DOCUMENTATION

Appendices:

1. Summary of consultation responses
2. Consultation responses received via letter, email and the council's consultation portal.

3. Proposed statement of Gambling policy

Documents in Members' Rooms

None

Background Documents

None

Appendix 1

Summary of responses

Gambling Policy Consultation 2016

- Total of 8 responses were received, 3 from local residents, 1 from Head of Children's safeguarding BHCC, 1 from ESFRS and 3 from business/trade organisations.
- Responses from residents- 2 were supportive of the policy, although 1 suggested an exec summary at front of policy. 1 response didn't comment on policy but wanted large gambling chains to be removed from the City.
- Responses from Head of Children's safeguarding and ESFRS commented only on typographical errors but no comments were made regarding the policy per se.
- Of the three responses from business, Corals were largely supportive of the policy but stated that a bespoke template for risk assessments would be difficult to implement but have agreed a form with Westminster which would capture the information we require. They also commented that they undertake test purchases via Serve Legal, a third party organisation again done in conjunction with LB Newham, their PA for age restricted sales.
- **Luxury Leisure comment that**:
- the policy should include a statement that the Authority is subject to and will comply with the Regulator's Code.
- They do not agree that it is appropriate to ask licensed operators to design their premises so as not to attract passers by (Para 12.8)
- Para 12.11 conflicts with Para 12.5 and fails to consider that there are gambling activities children can participate in and there is no law preventing children from being in close proximity to gambling. See also para 13.9 which may need to be revised in relation to residential areas.
- Para 13.6 should only refer to whether a proposed arrangement **would** be prohibited not whether it **should** be prohibited
- There is no guidance on how to use the Local Area Profile nor does it contain information on specific ethnic populations nor much detail about vulnerable groups. The requirement to consider other gambling premises in the LRA leans towards a requirement to consider demand when this is not relevant. The LAP is difficult to understand with lots of acronyms and little definition. Para 13.3
- Para 13.5 final bullet should it read gaming machines rather than gambling

- Para 13.25 contains a number of inappropriate potential conditions that might be sought by the council which are covered by the LCCP.
- It is inappropriate to require children to be accompanied by an adult
- Some paragraphs (14.2 and 15.5) set out 'appropriate measures' which are already mandatory conditions and therefore do not need to be included
- There appear to be some types of premises which have no additional measures outlined unlike others (para 16.1)
- Para 17.5 incorrectly mentions B2 gaming machines in Bingo premises when it should state betting premises
- Policy makes several references to Codes of Practice when the only relevant ones are set out in the LCCP
- Para 21.4 should be removed pending outcome of the Commissions consultation
- The policy does not recognise the use by operators of 3rd party test purchasing and should make it clear that the steps listed in para 31.3 are not mandatory
- **Gosschalks Solicitors on behalf of the Association of British Bookmakers commented that:**
- They recognise the importance of gambling policy statement in focussing on the local environment and welcomes the informed approach this will enable operators to take.
- Whilst it is important that the gambling policy statement fully reflects the local area, they are keen that statutory requirements on operators and the local authority are clear.
- Recognition should be given for the work they had done with the LGA regarding the betting partnership framework and the development of primary authority relationships.
- They recognise the importance of local area risk assessments but feel that a bespoke template as recommended in the guidance is not practical for national operators and that to impose a prescribed form would go against the principles of better regulation.
- Any changes in the licensing regime at a local level are implemented in a proportionate manner for example not asking for reviews of local risk assessments with unnecessary frequency when the LCCP states that they should only be redone when there is a significant local or premises change
- Additional conditions should only be imposed in exceptional circumstances when there are clear reasons for doing so and are evidence based
- Local area profile should be included in the body of the policy
- Heading in Part B is amended as currently it more clearly reflects the Licensing act 2003 not the Gambling Act 2005
- Para 13.13 needs to be amended to remove matters that do not and cannot pose risks to the licencing objectives eg ethnicity, areas of high unemployment etc

- The ABB welcomes the acknowledgement in para 13.21 that mandatory and default conditions and LCCP would usually negate the need for local authorities to impose additional conditions but would welcome clarification in the policy that additional conditions would only be imposed where there is evidence of a risk to the licensing objectives that are not met by mandatory and default conditions
- After para 18.2 the statement of licensing principles would be assisted if it were made clear that the licensing authority has the power to limit the number of betting machines but not the number of gaming machines.

Appendix2 – Consultation responses via letter, email and consultation portal
Responders R1-R3 Trade

From:	Response	*whether accommodated or reasons not*
Gosschalks Solicitors acting for the Association of British Bookmakers (ABB)	The ABB represents over 80% of the high street betting market. Its members include large national operators such as William Hill, Ladbrokes, Coral and Paddy Power, as well as almost 100 smaller independent bookmakers. This response will explain the ABB approach to partnership working with local authorities, it will detail its views on the implementation of the new LCCP requirements, from April 2016, relating to operators' local area risk assessments and their impact on the licensing regime and will then make specific comment with regard to any statement(s) of concern/that are welcomed in your draft policy. The ABB is concerned to ensure that any changes are not implemented in such a way as to fundamentally change the premises licence regime through undermining the "aim to permit" principle contained within s153 Gambling Act 2005. The current regime already adequately offers key protections for communities and already provides a clear process (including putting the public on notice) for representations/objections to premises licence applications. The recent planning law changes effective since April 2015 have also already increased the ability of local authorities to consider applications for new premises, as all new betting shops must now apply for planning permission. It is important that any consideration of the draft policy and its implementation at a local level is put into context. There has recently been press coverage suggesting that there has been a proliferation of betting offices and a rise in problem gambling rates. This is factually incorrect.	Support for current policy

	Over recent years betting shop numbers have been relatively stable at around 9,000 nationally, but more recently a trend of overall downwards decline can be seen. The latest Gambling Commission industry statistics show that numbers as at 31 Mar 2015 were 8,958 - a decline of 179 from the previous year, when there were 9,137 recorded as at 31 March 2014. As far as problem gambling is concerned, successive prevalence surveys and health surveys reveal that problem gambling rates in the UK are stable (0.6%) and possibly falling. **Working in partnership with local authorities** The ABB is fully committed to ensuring constructive working relationships exist between betting operators and licensing authorities, and that where problems may arise that they can be dealt with in partnership. The exchange of clear information between councils and betting operators is a key part of this and we welcome the opportunity to respond to this consultation. There are a number of examples of the ABB working closely and successfully in partnership with local authorities. **LGA – ABB Betting Partnership Framework** In January 2015 the ABB signed a partnership agreement with the Local Government Association (LGA). This was developed over a period of months by a specially formed Betting Commission consisting of councillors and betting shop firms and established a framework designed to encourage more joint working between councils and the industry. Launching the document Cllr Tony Page, LGA Licensing spokesman, said it	

	demonstrated the *"…desire on both sides to increase joint-working in order to try and use existing powers to tackle local concerns, whatever they might be."* The framework built on earlier examples of joint working between councils and the industry, for example the Ealing Southall Betwatch scheme and Medway Responsible Gambling Partnership. In Ealing, the Southall Betwatch was set up to address concerns about crime and disorder linked to betting shops in the borough. As a result, crime within gambling premises reduced by 50 per cent alongside falls in public order and criminal damage offences. In December last year, the Medway Responsible Gambling Partnership was launched by Medway Council and the ABB. The first of its kind in Britain, the voluntary agreement allows anyone who is concerned they are developing a problem with their gambling to exclude themselves from all betting shops in the area. The initiative also saw the industry working together with representatives of Kent Police and with the Medway Community Safety Partnership to develop a Reporting of Crime Protocol that is helpful in informing both the industry, police and other interested parties about levels of crime and the best way to deal with any crime in a way that is proportionate and effective. Lessons learnt from the initial self-exclusion trial in Medway have been incorporated into a second trial in Glasgow city centre, launched in July this year with the support of Glasgow City Council, which it is hoped will form the basis of a national scheme to be rolled out in time for the LCCP deadline for such a scheme by April 2016.	

	Jane Chitty, Medway Council's Portfolio Holder for Planning, Economic Growth & Regulation, said: *"The Council has implemented measures that work at a local level but I am pleased to note that the joint work we are doing here in Medway is going to help the development of a national scheme."* Describing the project, Glasgow's City Treasurer and Chairman of a cross-party Sounding Board on gambling, Cllr Paul Rooney said: *"This project breaks new ground in terms of the industry sharing information, both between operators and, crucially, with their regulator."* **Primary Authority Partnerships in place between the ABB and local authorities** All major operators, and the ABB on behalf of independent members, have also established Primary Authority Partnerships with local authorities. These Partnerships help provide a consistent approach to regulation by local authorities, within the areas covered by the Partnership; such as age-verification or health and safety. We believe this level of consistency is beneficial both for local authorities and for operators. For instance, Primary Authority Partnerships between Milton Keynes Council and Reading Council and their respective partners, Ladbrokes and Paddy Power, led to the first Primary Authority inspection plans for gambling coming into effect in January 2015. By creating largely uniform plans, and requiring enforcing officers to inform the relevant Primary Authority before conducting a proactive test-purchase, and	

	provide feedback afterwards, the plans have been able to bring consistency to proactive test-purchasing whilst allowing the Primary Authorities to help the businesses prevent underage gambling on their premises. **Local area risk assessments** With effect from 6th April 2016, under new Gambling Commission LCCP provisions, operators are required to complete local area risk assessments identifying any risks posed to the licensing objectives and how these would be mitigated. Licensees must take into account relevant matters identified in the licensing authority's statement of licensing policy and local area profile in their risk assessment, and these must be reviewed where there are significant local changes or changes to the premises, or when applying for a variation to or a new premises licence. The ABB is concerned that overly onerous requirements on operators to review their local risk assessments with unnecessary frequency could be damaging. As set out in the LCCP a review should only be required in response to significant local or premises change. In the ABB's view this should be where evidence can be provided to demonstrate that the change could impact the premises' ability to uphold the three licensing objectives. Although ABB members will be implementing risk assessment at a local premises level, we do not believe that it is for the licensing authority to prescribe the form of that risk assessment. We believe that to do so would be against better regulation principles. Instead operators should be allowed to gear their risk assessments to their own operational processes informed by Statements of Principles and the local area profile.	Included in the policy

	The ABB supports the requirement as set out in the LCCP, as this will help sustain a transparent and open dialogue between operators and councils. The ABB is also committed to working pro-actively with local authorities to help drive the development of best practice in this area. **Local Area Profiles – Need for an evidence based approach** It is important that any risks identified in the local area profile are supported by substantive evidence. Where risks are unsubstantiated there is a danger that the regulatory burden will be disproportionate. This may be the case where local authorities include perceived rather than evidenced risks in their local area profiles. This would distort the "aim to permit" principle set out in the Gambling Act 2005 by moving the burden of proof onto operators. Under the Act, it is incumbent on licensing authorities to provide evidence as to any risks to the licensing objectives, and not on the operator to provide evidence as to how they may mitigate any potential risk. A reversal of this would represent a significant increase in the resource required for operators to be compliant whilst failing to offer a clear route by which improvements in protections against gambling related harm can be made. We would also request that where a local area profile is produced by the licensing authority that this be made clearly available within the body of the licensing policy statement, where it will be easily accessible by the operator and also available for consultation whenever the policy statement is reviewed. **Concerns around increases in the regulatory burden on operators**	

	Any increase in the regulatory burden would severely impact on our members at a time when overall shop numbers are in decline, and operators are continuing to respond to and absorb significant recent regulatory change. This includes the increase to 25% of MGD, changes to staking over £50 on gaming machines, and planning use class changes which require all new betting shops in England to apply for planning permission. Moving away from an evidence based approach would lead to substantial variation between licensing authorities and increase regulatory compliance costs for our members. This is of particular concern for smaller operators, who do not have the same resources to be able to put into monitoring differences across all licensing authorities and whose businesses are less able to absorb increases in costs, putting them at risk of closure. Such variation would in our opinion also weaken the overall standard of regulation at a local level by preventing the easy development of standard or best practice across different local authorities. **Employing additional licence conditions** The ABB believes that additional conditions should only be imposed in exceptional circumstances where there are clear reasons for doing so - in light of the fact that there are already mandatory and default conditions attached to any premises licence. The ABB is concerned that the imposition of additional licensing conditions could become commonplace if there are no clear requirements in the revised licensing policy statements as to the need for evidence. This would further increase variation across licensing authorities and create uncertainty amongst operators as to licensing requirements, over complicating the	Support for current policy

	licensing process both for operators and local authorities. **Specific Policy Comments** The ABB welcomes your light touch approach to the draft gambling policy and in particular, the acknowledgement that as far as betting offices are concerned, there is no evidence that betting offices have historically required door supervision and that there is no evidence that betting machines give rise to any concerns. The ABB also welcomes the acknowledgement within paragraph 4.2 that many betting offices are already located near schools. Operators already have policies and procedures to ensure that those under 18 cannot bet or indeed enter the premises and all staff are trained in this regard. As far as paragraph 2.17 is concerned, the policy would benefit from slight expansion to acknowledge that whilst the authority may limit the number of betting machines when there is evidence to do so, it cannot limit the number of gaming machines. **Conclusion** The industry fully supports the development of proportionate and evidenced based regulation, and is committed to minimising the harmful effects of gambling. The ABB is continuing to work closely with the Gambling Commission and the government to further evaluate and build on the measures put in place under the ABB Code for Responsible Gambling, which is mandatory for all our members. ABB and its members are committed to working closely with both the Gambling Commission and local authorities to continually drive up standards in regulatory compliance in support of the three licensing objectives: to keep crime out of gambling, ensure that gambling is conducted in a fair and open way, and to protect	

	the vulnerable. Indeed, as set out, we already do this successfully in partnership with local authorities now. This includes through the ABB Code for Responsible Gambling, which is mandatory for all our members, and the Safe Bet Alliance (SBA), which sets voluntary standards across the industry to make shops safer for customers and staff. We would encourage local authorities to engage with us as we continue to develop both these codes of practice which are in direct support of the licensing objectives.	
Elizabeth Speed for Luxury Leisure	On behalf of Luxury Leisure, I make the following comments in response to the above consultation draft (the "Draft"):- 1. As the Authority will appreciate, in matters of regulation under the Gambling Act 2005, it is subject to the Regulators' Code. That code imposes a number of obligations on the Authority, including one that it should carry out its activities in a way that supports those it regulates to comply and grow. Additionally, when designing and reviewing policies, the Authority must, among other things, understand and minimise the negative economic impact of its regulatory activities and regulate and minimise the costs of compliance of those it regulates. Further, the Authority should take an evidence-based approach in determining priority risks and recognise the compliance record of those it regulates. We suggest the Draft be amended to include an express statement that the Authority recognises that it is subject to and will comply with the Regulators' code in relation to matters of gambling licensing and enforcement. 2. The Draft acknowledges the existence of mandatory and default conditions which apply to each premises licence, which as the Authority will appreciate, should not be duplicated by conditions attached by the Authority. The Authority will also appreciate that it is fundamental that each	

	application is dealt with on its own merits. However, reference is made at Paragraph 9 to an Appendix of a "pool of model conditions", which we do not have and cannot find on the website. This conflicts with the principle of each application being dealt with on its merits and may conflict with or duplicate areas already covered by the LCCP or mandatory or default conditions. We cannot comment in detail as we have not seen them. We would however point out that section 169 of the 2005 Act does not suggest a pool of conditions should be referred to or adopted – it simply says that conditions may be attached. 3. Finally, as the Authority appreciates, children can take part in some gambling. As such, it is not appropriate to say, as is proposed at Paragraph 2.10, that children should not be in close proximity to gambling - plainly they are permitted to be so in relation to gambling they are permitted to participate in.	Agreed: children can be allowed in family entertainment centres
Via Council's consultation portal 13/05/2016 Deb Austin (Head of Children's Safeguarding 23/06/2016 Local resident	para 12.12; 13.25 & 22.4 - reference to CRB checks. This should be DBS Para 15.6 - reference to Independent Safeguarding Authority - not clear who/what this refers to? What Brighton needs is to get rid of the big gambling chains. They are ugly, poor service, lack atmosphere, unfriendly and not a nice night out. we need smaller private casinos with good restaurants and entertainment. A good night out. we	

	should encourage that!	
23/06/16 Local Resident	There needs to be a brief summary (one Page) with access to the full document for those who want to look at it.	
29/06/16 Local Resident	I agree with the gambling policy	