

**Sandwell Metropolitan Borough Council**

**Licensing Committee**

**18<sup>th</sup> May 2007**

**Gambling Act 2005**

**1. Summary Statement**

- 1.1 The Committee at its last meeting approved revised terms of reference for the Licensing Panels. Further guidance has now been received which necessitates amendment of those terms of reference.
- 1.2 The key implementation dates for the provisions of the 2005 Act are 21<sup>st</sup> May 2007, when the Council as the Licensing Authority will need to be in a position to start processing applications, and 1<sup>st</sup> September 2007 when the transition period ends, and new licences take effect.
- 1.3 Section 154 of the 2005 Act delegates certain matters to the Licensing Committee. The Licensing Committee may arrange for the discharge of certain of its functions by a Panel established by it, or by an officer of the Licensing Authority. The Licensing Committee has already established sub-committees, that is, Panels, consisting of three members of the Committee. The Licensing Committee is responsible for regulating the procedures of the Licensing Panels. The terms of reference for the Licensing Panels need to be revised to take into account the provisions of the 2005 Act. Proposed delegations from the Licensing Committee to the Licensing Panels are set out in Appendix 1 for the Committee's consideration. These have been amended since 23<sup>rd</sup> March 2007 following receipt of further guidance and the amendments are shown highlighted in the text.
- 1.4 It is also necessary to amend further the Council's scheme of delegation to officers to reflect the 2005 Act. Section 154 of the 2005 Act delegates certain matters to the Licensing Committee, which may in turn delegate to the Licensing Panels or an officer. Appendix 2 sets out, for the Committee's consideration, proposed delegations to the Head of Environmental Health and Trading Standards to allow officers to carry out their operational duties under the 2005 Act where the latest amendments are shown highlighted in the text.

1.5 The 2005 Act also provides that the Council as Licensing Authority is designated a “Responsible Authority”, with the right to object to the grant of licences, or to ask for a review. Section 154 of the 2005 Act provides that the Licensing Authority shall delegate this function to the Licensing Committee. It is usual to delegate such functions to appropriate officer/s. The Licensing Committee is asked to authorise the Head of Environmental Health and Trading Standards to carry out this function.

## 2. **Recommendations**

- 2.1 That the revised terms of reference for the Licensing Panels as set out in Appendix 1 to this report be approved;
- 2.2 That the scheme of delegations to officers set out in Part 3 of the Council’s Constitution (Responsibility for Functions) be amended as set out in Appendix 2 to this report;
- 2.3 That the Head of Environmental Health and Trading Standards be authorised to act in situations where the Licensing Authority is also acting as a “Responsible Authority”;
- 2.4 That the Head of Legal Services, in consultation with the Head of Governance Services, be authorised to make the necessary changes to the Council’s Constitution, in accordance with Article 15 of the Constitution, in order to reflect the decisions of the Council on recommendations 2.1, 2.2 and 2.3 above.

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## **Gambling Act 2005**

### **3. Strategic Resource Implications**

- 3.1 It is difficult for Licensing Authorities to develop a completely accurate cost prior to the new Act coming into force. However, it is anticipated that any resource costs are likely to be largely legal and administrative, but will include the cost of any inspection and enforcement costs being undertaken by the Licensing Team itself. The additional costs have been identified as approximately £ 45K.
- 3.2 The gambling licence income should, for the most part, offset these resource costs, although it may be necessary to bring a further report, should the enforcement element be greater than anticipated.

### **4. Legal and Statutory Implications**

- 4.1 Section 2 of the Act provides that the Council is a Licensing Authority. The Gambling Act 2005 places a duty on local authorities to undertake the licensing functions specified in the Act.
- 4.2 Section 154 of the 2005 Act provides that all decisions relating to premises licences are delegated to the Licensing Committee of the Authority that has been established under Section 6 of the Licensing Act 2003 except:
- Under section 166 of the 2005 Act, a resolution not to issue casino licences , which must be taken by the whole authority;
  - Under Section 349 of the 2005 Act, functions in relation to the three year Statement of Principles, which must be taken by the whole authority; and
  - Under Section 212 of the 2005 Act, setting fees. The Licensing Authority may delegate decisions to the Licensing Committee, but there is no automatic delegation.
- 4.3 Section 154(3) of the 2005 Act states that Section 10 of the Licensing Act 2003 shall apply in relation to a function delegated to a Licensing Committee as they apply in relation to a function delegated under that Act. Section 10 of the 2003 Act states that a Licensing Committee may arrange for the discharge of any functions exercisable by it by a sub-committee established by it, or subject to certain restrictions by an Officer of the Licensing Authority. This is clearly set out in the appendices.
- 4.4 The Licensing Committee established by Section 6 of the Licensing Act 2003 has established sub-committees that are referred to by this Council

as Licensing Panels. Subject to any regulations each Licensing Committee may regulate its own proceedings and that of sub-committees.

- 4.5 Section 157 of the 2005 Act, unlike the Licensing Act 2003, states that a Licensing Authority in whose area the premises are wholly or partly situated is one of a number of responsible authorities. Responsible authorities are public bodies that must be notified of applications and that are entitled to make representations to the Licensing Authority in relation to applications for, and in relation to, premises licences.
- 4.6 Part 15 of the 2005 Act allows an authorised officer to undertake activities for the purpose of assessing compliance with provisions made by or by virtue of the Act and whether an offence is being committed. Section 304 of the 2005 Act states an Officer of the Licensing Authority is an authorised person for a purpose relating to premises if the premises are wholly or partly situated in the Authority's area and the Officer is designated by an Authority as an authorised person for the purposes of Section 304.
- 4.7 Section 358 of the 2005 Act states that the provisions of the Act shall come into force in accordance with provisions made by the Secretary of State by order. Sections 166 and 349 came into force on 31 March 2006. Section 154(1) and 154 (2)(b), but only for the purpose of enabling a licensing authority to delegate their functions under section 212 of the Act, came into force on 13 November 2006. The Regulations enabling the Authority to set the fees have recently come into force. A number of provisions remain to come into force by order, however, the Gambling Act 2005 (Commencement No. 6 and Transitional Provisions) Order 2006 will bring into force the remaining provisions of section 154 and sections 157, 212 and 304 on 30 April 2007.

## 5. **Implications for the Council's Corporate Priorities**

- 5.1 The Gambling Act 2005 has three licensing objectives, which are highly pertinent to the Council's corporate priorities, these being:
  - a. Preventing gambling from being a source of crime or disorder, being associated with crime or disorder or being used to support crime;
  - b. Ensuring that gambling is conducted in a fair and open way;
  - c. Protecting children and other vulnerable persons from being harmed or exploited by gambling.
- 5.2 The proposals contained within the report would have implications on the following corporate priorities:-

- (i) Safer, Cleaner, Stronger Communities - The Licensing function under the Gambling Act 2005 is key to the partnership working with “responsible Authorities” such as the police, fire, child protection, planning, and other agencies dealing with issues of safety, crime or disorder, anti-social behaviour, protecting the young and vulnerable in the community, as relating to the licensable activities associated with gambling. Whilst the legislation and duties relate to the whole of Sandwell, members of all local communities will benefit from the additional controls that the Act will place on gambling activities associated with premises in the community.
- (ii) Strengthening the protection and support for vulnerable children - There is always the potential for children to gain access to gambling establishments, which this new legislation will help to control further.

## 6. **Background Details**

### **Decisions of the Council 6<sup>th</sup> March, 2007**

- 6.1 Further to the report submitted to this Committee on 23<sup>rd</sup> February, 2007, the Council at its meeting on 6<sup>th</sup> March, 2007 approved revised terms of reference for the Licensing Committee to give effect to Section 154 of the 2005 Act, which delegates functions relating to the issue of various licences, permits and notices for the use of premises for gambling activities to the Licensing Committee established under Section 6 of the Licensing Act, 2003.
- 6.2 The Committee is reminded that two functions are reserved to the Licensing Authority by Section 166 (Casino Resolution) and Section 349 (Statement of Principles).

### **Next Steps**

- 6.6 The following matters relating to the implementation of the 2005 Act remain outstanding and will be the subject of further reports to the Council or the Licensing Committee as appropriate:
  - The Council will need to consider consequential amendments to the terms of reference for the Licensing Miscellaneous Committee once the 2005 Act is fully in force, to avoid any duplication of functions with regard to matters now included in the 2005 Act.

## **Source Documents**

- A/ Gambling Act 2005
- B/ Guidance to Licensing Authorities April 2006 (Gambling Commission)
- C/ Report to Cabinet Member for Community Safety and Partnerships [22<sup>nd</sup> September 2006] “Gambling Act 2005 Implementation – Approval of Statement of Principles”

**Licensing Panel**

The Licensing Panel shall:-

1. exercise those functions of the Licensing Committee under the Licensing Act 2003 and any regulations made under that Act, together with any related functions, with the exception of:-
  - a) any function conferred on the Licensing Authority by Section 5 of the Licensing Act 2003 (Statement of Licensing Policy);
  - b) any function discharged under Section 7(5)(a) of that Act by a committee other than the Licensing Committee;
  - c) any function specifically reserved to the Licensing Committee;

and in particular, deal with the following matters in the circumstances indicated:-

Application for personal licence	If a police objection has been made
Application for personal licence with unspent convictions	All cases
Application for premises licence / club premises certificate	If a relevant representation is made
Application for provisional statement	If a relevant representation is made
Application to vary premises licence / club premises certificate	If a relevant representation is made
Application to vary designated premises supervisor	If a police objection has been made
Application for transfer of premises licence	If a police objection has been made
Applications for interim authorities	If a police objection has been made
Application to review premises licence / club premises certificate	All cases

Decision to object when local authority is a consultee and not the relevant authority considering the application

All cases

Determination of a police objection to a temporary event notice

All cases

(2) exercise those functions of the Licensing Committee under the Gambling Act 2005 and any regulations made under that Act, together with any related functions, with the exception of:-

- a) any function conferred on the Licensing Authority by Section 166 of the Licensing Act 2005 (Casino Resolution);
- b) any function conferred on the Licensing Authority by Section 212 of the Licensing Act 2005 (Fees);
- c) any function conferred on the Licensing Authority by Section 349 of the Licensing Act 2005 (Statement of Principles);
- d) any function specifically reserved to the Licensing Committee;

and in particular, deal with the following matters in the circumstances indicated:-

Application for premises licence

If a ~~relevant~~ representation is made **and/or where the Licensing Authority considers that a condition should be added to the Licence or a default condition should be excluded**

Application for a variation to a licence

If a ~~relevant~~ representation is made **and/or where the Licensing Authority considers that a condition should be added to the Licence or a default condition should be excluded**

Application for a transfer of a licence	If a <del>relevant</del> representation is made <b>and/or where the Licensing Authority considers that a condition should be added to the Licence or a default condition should be excluded</b>
Application for provisional statement	If a <del>relevant</del> representation is made <b>and/or where the Licensing Authority considers that a condition should be added to the Licence or a default condition should be excluded</b>
Cancellation of club gaming/club machine permits	<b>All Cases</b>
Review of premises licence	<b>All Cases</b>
Decision to give a counter notice to a temporary use notice	<b>All Cases</b>
Application for club gaming/club machine permits, <b>renewals and variations including those leading to a cancellation of permits under Schedule 12 paragraph 15</b>	<b>If objection is made or refusal of permit proposed on grounds listed in Schedule 12 paragraph 6(1)(a)-(d), or paragraph 10(3) as applicable</b>
Application for unlicensed family entertainment centre permits	<b>If representations from applicants</b>
Applications for prize gaming permit	<b>If representations from applicants</b>
Applications for licensed premises gaming machines permits	<b>If representations from applicants</b>
Cancellation or variation of licensed premises gaming machine permits or variation of the number and/or category of machines	<b>If representation made or the holder has requested a hearing</b>

Consideration of temporary  
use notice

If objection is made

**DELEGATION OF AUTHORITY AND FUNCTIONS TO THE HEAD  
OF ENVIRONMENTAL HEALTH AND TRADING STANDARDS  
BY THE LICENSING COMMITTEE**

**Delegation of functions under the Gambling Act 2005**

To authorise the Head of Environmental Health and Trading Standards to determine the following applications in the circumstances indicated:

<b>Nature of Application</b>	<b>Prevailing Circumstance.</b>
Application for premises licence	No representations received or where representations have been withdrawn.
Application for a variation to a licence	No representations received or where representations have been withdrawn.
Application for a transfer of a licence	<del>No representations received from the Gambling Commission</del> No representations received or where representations have been withdrawn.
Application for a provisional statement	No representations received or where representations have been withdrawn
Application for club gaming/club machine permits <b>renewals and variations including those leading to a cancellation of permits under Schedule 12 paragraph 15</b>	No objections made or where objections have been withdrawn <del>or if it is not to be refused or refusal not proposed</del>
Applications for other permits	<del>Grant or renewal only</del> <b>No representations from applicant</b>
Cancellation <del>or variation</del> of licensed premises gaming machine permits	No representations received and/or the holder has not requested a hearing

Consideration of temporary use notice	No objections made or where objections have been withdrawn
<b>Revoke a premises licence for non-payment of the annual fee in accordance with Section 193 of the Act</b>	<b>By officer after consultation with Chair (having sought prior legal advice)</b>
<b>To propose to attach a condition to a premises licence</b>	<b>All Cases</b>
<b>To propose the exclusion of a default condition from a premises licence</b>	<b>All Cases</b>
Determine that any representations received under Part 8 of the Act are vexatious, frivolous or certainly will not influence the Authority's determination of an application	By officer after consultation with Chair [having sought prior legal advice]
Reject all or part of any application for a review of a premises licence in accordance with Section 198 of the Act	By officer after consultation with Chair [having sought prior legal advice]
<b>To administer and carry out all other functions not specifically mentioned in the delegations to the panel or the Head of Service, which are capable of being delegated to an Officer as provided for in the Gambling Act 2005 and any regulations made under that Act, together with any related functions</b>	<b>All cases</b>