

**BRISTOL CITY COUNCIL
FULL COUNCIL
19 JANUARY 2010**

Report of : **The Cabinet**

Title: **Gambling Act 2005: Review of Gambling Policy**

Ward: **Citywide**

RECOMMENDATION

That Council adopts the draft Gambling Policy attached at Appendix B

Summary

On 10 December 2009 Cabinet approved the draft Gambling Policy attached at Appendix B following the completion of the statutory consultation process prescribed in the Gambling Act. The formulation of a Gambling Policy is part of the Council's policy framework and as such proposals emanate from Cabinet for adoption by Full Council.

The significant issues in the report are:

By virtue of section 349(1) of the Act, the Licensing Authority is required, before each successive period of three years, to prepare and publish a statement of the principles that it proposes to apply in exercising its' functions under the Gambling Act. The first policy under this legislation came into effect on 31 January 2007. Therefore the Licensing Authority is now required to prepare and publish its second policy to come into effect on 31 January 2010. In determining its' policy, the Licensing Authority must have regard to guidance issued by the Gambling Commission under Section 25 of the Act. There is a requirement to review the policy every three years but the Licensing Authority may review and revise it at any time. The existing policy has served the Licensing Authority well and has not been subject to any negative comments since its implementation. The revised policy is based on the original policy but has been updated to reflect further guidance issued by the Gambling Commission which generally

provides clarification on the original guidance featured in the first policy.

Section 349(3) of the Act sets out the consultation process that Licensing Authorities must follow when formulating their policy. These include the need to consult with:-

- (a) the chief constable
- (b) one or more persons who appear to the authority to represent the interests of persons carrying on gambling businesses in the authority's area, and
- (c) one or more persons who appear to the authority to represent the interests of persons who are likely to be affected by the exercise of the authority's functions under this Act.

Appendix A details persons consulted on the draft policy. In addition the draft policy was placed on the Council website.

Policy

1. The adoption of a responsible Gambling Policy will work towards the corporate aim of achieving balanced and sustainable communities by working with our partners to help reduce crime and disorder.

Consultation

2. A full list of persons specifically consulted on the policy is attached at Appendix A. Additionally the draft policy was placed on the city council web site. The consultation period ran from 1 September until 16 October 2009. A number of copies of the policy were downloaded from our website and requests were made for the policy to be posted. However no responses to the consultation have been received. Enquires made with neighbouring unitary authorities indicate a similar pattern of response to their consultation process. The response is not altogether surprising as gambling is a well regulated regime operated by both the Gambling Commission and the local authorities and no significant issues have arisen during the first period of the new legislation coming into force. The consultation on the first policy in 2007 generated ten responses.

Legal and Resource Implications:

Legal Implications

The legal position is set out in the main body of the report. The adoption of the gambling policy forms part of the Council's policy framework. As such the proposals have to be formulated and consulted upon by the Executive which then makes its proposals to the full council. The relevant regulations require the council to either adopt it as proposed; amend it or refer it to the Executive for further consideration. The policy must be published for at least four weeks before the 31 January 2010.

Legal advice given by: Pauline Powell
Senior Solicitor (environment and licensing)
For Head of Legal Services

Financial:

Revenue None

Capital None

Land N/A

Personnel N/A

Appendices: Appendix A: List of persons consulted
Appendix B: Draft Policy

ACCESS TO INFORMATION

Background Papers

None

Appendix A

List of persons consulted on the draft policy

Avon and Somerset Police
Holders of Bristol City Council Premises Licences
Association of British Bookmakers
British Casino Association
Bingo Association
Gam-anon
BACTA
Gamcare
Business West
Broadmead Board
Redland and Cotham Amenity Society
Kingsdown Conservation Group
Hotwells and Cliftonwood Community Association
Bishopston Society
St John Residents Association
Clifton and Hotwells Improvement Society
High Kingsdown Residents Association



DRAFT

BRISTOL CITY COUNCIL

**This is the Council's Statement of Principles
(Hereafter called "the Gambling Policy")
That the Council is required to prepare
Under Section 349(1) of the Gambling Act 2005**

GAMBLING POLICY

Gambling Act 2005

BRISTOL CITY COUNCIL

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INTRODUCTORY SECTION

1.1 Summary of matters dealt with in this Statement

This Gambling Policy is the Council's Statement of Principles that the authority is required to prepare under Section 349(1) of the Gambling Act 2005. This requires that the authority shall, before each successive period of three years, prepare a Statement of Principles that they propose to apply in exercising their functions under the Gambling Act and publish the Statement. The Statement must be reviewed from time to time and where it is considered necessary in the light of a review, revised and that revision published before it is given effect. The preparation or revision of the Statement is subject to a requirement to consult certain persons and the Secretary of State may make regulations about the form of statements, the procedure to be followed in relation to the preparation review or revision of the statements and their publication.

The Secretary of State has made regulations, which impose minimum statutory requirements on all licensing authorities when preparing, reviewing, revising and publishing their Statements of Principles. Subject to compliance with those minimum requirements, the form of the Policy is a matter for the authority itself. The Council recognises the policy objective in imposing minimum requirements which was one of providing transparency, and to some extent, consistency, for persons wishing to apply for a licence or permission under the Act, whilst minimising the imposition of unnecessary financial or administrative burdens on licensing authorities and the industry and enabling local circumstances to be reflected in licensing policy statements.

These minimum statutory requirements are set out in the Gambling Act 2005 (Licensing Authority Policy Statement) (England and Wales) Regulations 2006, which state that subject to compliance with Regulations 4, 5 and 6, the form of the statement or any revision is to be for the authority to determine.

This introductory section is included in accordance with Regulation 4 and as required by that provision it summarises the matters dealt with in the Council's Gambling Policy:

Section 1.2 contains a description of the geographical area in respect of which the authority exercises functions under the Act.

Section 1.3 is a list of the persons whom the Council has consulted in preparing its Gambling Policy.

Regulation 5 requires the Council to set out four specific matters in a separate section within its policy. This the Council does in Sections 2.1 to 2.4 inclusive of this Gambling Policy.

Section 2.1 details the principles which will be applied by the Council in exercising powers under Section 157(8) of the Act to designate, in writing, a body which is competent to advise the authority about the protection of children from harm. The section explains the job the Council needs to do in this respect, the guidance to which it must have regard when making its decision and the principles it will apply. In summary, those principles are directed towards ensuring the appointment of a body with appropriate expertise as well as the capacity and willingness to engage. The Council places a high priority on the achievement of all of the licensing objectives, including that of protecting children and vulnerable persons from harm. This commitment is reflected in its efforts to identify, through the consultation process, the body which best satisfies those principles.

Section 2.2 sets out the principles to be applied by the Council in exercising its powers, under Section 158 of the Act, to determine whether a person is an “Interested Party” in relation to a premises licence, or an application for or in respect of a premises licence. The section explains the job the Council needs to do in this respect, the guidance to which it must have regard when making such decisions and the principles it will apply. The principles detailed in the Section can fairly be summarised as ones which encourage maximum participation of local residents and businesses in the decision making process, paying due regard to the potential for the rights they enjoy under the European Convention on Human Rights to be engaged and ensuring that the Council meets its obligations to act compatibly with and afford due respect to those rights.

Section 2.3 details the principles which will be applied by the Council in exercising the functions under Sections 29 and 30 of the Act with respect to the exchange of information between it and the Gambling Commission, and the Council's functions under Section 350 of the Act with respect to the exchange of information between it and the other persons listed in Schedule 6 to the Act. The section explains the job the Council needs to do in this respect, the guidance to which it must have regard when exercising these functions and the principles it will apply when doing so. In summary these principles are directed towards using these powers to facilitate the achievement of the licensing objectives and ensuring a framework of information sharing which secures a transparent process whilst affording appropriate respect to the ability of individuals to exercise statutory rights and respecting any legitimate expectation of confidentiality. Underpinning this framework is the need to ensure legality and in particular meet the prohibition on breach of the Data Protection Acts when using the Acts' gateway provisions to information disclosure.

Section 2.4 details the principles to be applied by the authority in exercising the functions under Part 15 of the Act with respect to the inspection of premises; and the powers under Section 346 of the Act to institute criminal proceedings in respect of the offences specified in that Section. The section explains the job the Council needs to do in this respect, the guidance to which it must have regard when exercising these functions and the principles it will apply when doing so. In summary the principles are directed to the need to have due regard to the Council's enforcement policies, including any supplementary policies which may be developed from time to time which are specific to enforcement under the Gambling Act. As a matter of principle the Council, as with its other enforcement functions, will consider all relevant national guidance and protocols, not only that issued by the Gambling Commission under the Act but also the codes of practice for Crown Prosecutors and the Home Office Guidance on simple cautions etc. In principle the Council also seeks to develop protocols for enforcement with other relevant enforcement agencies. In accordance with the Council's firm commitment to the achievement of the licensing objective to protect children and other vulnerable persons from being harmed or exploited by gambling the Council sets out as a matter of principle that a particularly serious view should be taken by its enforcers of any offences where children and vulnerable persons are victims or harmed in some other way; this includes contravention of those specific offences (in Part 4 of the Act) which reflect the legislature's commitment to protect children and young persons from harm or exploitation.

Section 3 of the Policy has been developed having regard to the Gambling Commission's Guidance and seeks to set out the principles on which the Council will exercise the other functions it has in the Act. The section utilises the headings in the Commission's guidance and generally follows the same ordering for ease of reference.

In summary, the principles espoused in section 3:

- Reflect the Council's firm commitment to the achievement of the licensing objectives;
- Are informed by particular local circumstances;

- Seek to make clear those aspects of the Guidance which in the circumstances pertaining in Bristol the Council considers should be afforded considerable weight and/or where the Council considers circumstances may justify a departure from the Guidance in respect of which the reasons for doing so will be indicated.

Section 4 of the policy sets out the information required to be included in respect of any resolution made by the council under Section 166 of the Act (Resolution not to issue any casino licences).

Bristol's Gambling Policy should be understood in the context of the legislative framework within which the Council, in its capacity as the Licensing Authority for Bristol, is required to operate (a detailed summary of which is contained in Appendix A). Accordingly:-

- (a) The Licensing Authority recognises the centrality of the three licensing objectives to this new regulatory regime, namely:
 - (i) Preventing gambling from being a source of crime or disorder, being associated with crime or disorder, or being used to support crime;
 - (ii) Ensuring that gambling is conducted in a fair and open way; and
 - (iii) Protecting children and other vulnerable persons from being harmed or exploited by gambling.
- (b) In exercising its functions under Part 8 of the Act (Premises Licensing) the Council will aim to permit the use of premises for gambling insofar as the Council thinks that permitting the use of the premises for gambling is:-
 - (a) In accordance with any relevant code of practice under Section 24 of the Act,
 - (b) In accordance with any relevant guidance issued by the Commission under Section 25,
 - (c) Reasonably consistent with the licensing objectives (subject to paragraphs (a) and (b)), and
 - (d) In accordance with this gambling policy (subject to paragraphs (a) to (c))
- (c) In determining whether to grant a premises licence the Council will not have regard to the expected demand for the facilities which it is proposed to provide.
- (d) In exercising its functions under the Gambling Act and in particular the principles to be applied in exercising those functions the Council will have regard to guidance issued by the Gambling Commission in exercise of the commissions functions under section 25 of the Act.

1.2 **Description of the geographical area in respect of which Bristol exercises functions under the Gambling Act.**

The City and County of Bristol lies within the sub region that also includes the councils of Bath & North East Somerset, South Gloucestershire and North Somerset.

Bristol is strategically placed next to two major motorways and is the regional capital for the West of England. The local authority area is primarily urban and has a population of 393,000 (Office for National Statistics – 2004). Bristol benefits from a rich mix of cultural diversity and is attractive to tourists and persons wishing to relocate.

Bristol is a major regional entertainment centre, which offers a great variety of entertainment facilities within its city centre and local centres.

A map showing Bristol's geographical area can be found at Appendix D.

1.3 **List of the persons whom the Council has consulted in preparing its Gambling Policy.**

Avon and Somerset Police
Holders of Bristol City Council Premises Licences
Association of British Bookmakers
British Casino Association
Bingo Association
Gam-anon
BACTA
Gamcare
Business West
Broadmead Board
Redland and Cotham Amenity Society
Kingsdown Conservation Group
Hotwells and Cliftonwood Community Association
Bishopston Society
St John Residents Association
Clifton and Hotwells Improvement Society
High Kingsdown Residents Association

2. **Matters required to be set out in a separate Section within the Policy by virtue of Regulation 5 of the 2006 Regulations**

2.1 **The principles to be applied by the Council in exercising the powers under Section 157(h) of the Act to designate, in writing, a body which is competent to advise the authority about the protection of children from harm**

Part 8 of the Commission's guidance explains that responsible authorities are bodies that must be notified of applications and are entitled to make representations to the licensing authority in relation to applications for, and in relation to, premises licences. If those representations relate to the licensing objectives they are likely to be relevant representations. A number of specific bodies are identified in Section 157 of the Act as being responsible authorities. These include the licensing authority itself, the Gambling Commission, the Chief of Police, the Fire and Rescue Authority, the Local Planning Authority, the Council in its capacity as an authority which has functions in relation to pollution of the environment or harm to human health and Her Majesty's Revenue and Customs.

In addition Section 157 identifies that a body, designated in writing by the licensing authority as competent to advise it about the protection of children from harm, is also a responsible authority. In paragraph 8.8 of its guidance to licensing authorities the Gambling Commission says, "in many licensing authority areas, it is expected that the body recognised by the licensing authority to be competent in this regard will be the local safeguarding children board".

By virtue of Section 154(1) of the Act, the action of designating in writing the body concerned is delegated to the Council's Licensing Committee. Through this policy the full Council sets out the following principles to guide the Committee in deciding which body to appoint:-

- (a) the Council considers that the task of evaluating proposals against the important licensing objective of protecting children from harm and exploitation can give rise to the need for the decision maker to consider issues which are beyond the general knowledge of a lay person. As such, the availability of expert advice will be crucial in

appropriate cases in order to secure the achievement of this important objective. Accordingly, the Council considers the body designated must have demonstrable expertise in the field of protecting children from harm and exploitation generally and/or specifically in respect of harm from gambling.

- (b) the Council recognises that a high level of expertise alone is not going to prove sufficient to secure the proper protection of our children, since the structure of the decision making process requires responsible authorities, such as the designated body, to be able to consider all applications received in sufficient time to make their representations within the time frame laid down in the legislation. When designating a body under this power the Licensing Committee should enquire if the bodies under consideration have the capacity to undertake the task. Prospective bodies should also be asked to confirm their willingness and commitment to fully engage in this process to support the Council in fulfilling its policy aspiration to do the best job it can to protect children and vulnerable people from harm and exploitation from gambling.

Given the importance of this body in helping the council to achieve the proper protection of children the Council, as the licensing authority, expects its Licensing Committee to appoint a suitable body as soon as is reasonably practicable following this particular Section coming into force.

The Council notes that the Licensing Committee has appointed the Council's Children and Young People's Services Department to undertake this function. The Committee should keep this appointment under review to ensure that the expertise of the body best placed to undertake this function is available to the licensing authority to fulfil the principles outlined above.

2.2 **The principles to be applied by the Council in exercising its powers, under Section 158 of the Act, to determine whether a person is an "Interested Party" in relation to a premises licence, or an application for or in respect of a premises licence.**

Interested Parties are entitled to make representations in respect of certain matters related to premises licensing under Part 8 of the Act and to have those representations considered where they are relevant. Section 158 of the Act defines interested parties such that in order to qualify the Licensing Authority must be of the opinion that the person qualifies on one or more of three grounds:-

- (a) Lives sufficiently close to the premises to be likely to be affected by the authorised activities;
- (b) Has business interests that might be affected by the authorised activities;
- (c) Represents persons in either of these two groups.

Guidance on the basis upon which the Licensing Authority should reach its opinion can be found at paragraphs 8.14 to 8.18 of the Commission's guidance to licensing authorities. Among other things this identifies numerous factors which may be relevant (size of premises, nature, distance, impact etc) and expresses the view (in 8.15) that, in summary, competing businesses in other parts of the country are unlikely to satisfy the test in (b) above simply by virtue of their being a rival operator and reminds Authorities that demand is not relevant to the licensing objectives.

The Licensing Authority will not therefore seek to establish any fixed rule (for example by reference to a defined distance from premises) as to which persons qualify under (a) and (b) above. The Licensing Authority considers that each case must be considered on its own particular facts and judged on its merits.

Whilst proper regard will be had to the Commission's guidance the council's opinion must also be informed by conscious consideration of its obligations under the Human Rights Act,

the potential for convention rights to be engaged in respect of affected persons and the need to afford a hearing where the decision is determinative of civil rights and obligations. In a finely balanced case the benefit of the doubt should rest with the person who seeks to be heard.

Where persons claim a right to be heard by virtue of the ground in (c) above, they will be expected to identify those they represent so that the Authority can give appropriate weight to their representations should they be judged relevant to the matter under consideration. Specific evidence of appointment to a representative role will not usually be required from persons who regularly engage in advice and representation work before tribunals and council committees in circumstances where their conduct as such is already subject of adequate regulation. Examples of persons in this category would be Councillors, Members of Parliament and regulated lawyers (such as barristers, solicitors and legal executives).

Other persons claiming to represent persons in groups (a) and (b) may be asked to produce evidence of their engagement in this role on behalf of one or more affected persons, such as a letter of request from such a person or other evidence of appointment to a relevant representative role by such persons.

2.3 **the principles which will be applied by the Council in exercising the functions under Sections 29 and 30 of the Act with respect to the exchange of information between it and the Gambling Commission, and the Council's functions under Section 350 of the Act with respect to the exchange of information between it and the other persons listed in Schedule 6 to the Act.**

The Licensing Authority will come into possession of a considerable amount of information under this regime and this will inevitably include confidential information and personal data (including sensitive personal data, for example concerning somebody's health) which is protected under the Data Protection Acts. Care needs to be taken not to engage in inappropriate or unlawful dissemination of information and not to undermine, by inappropriate disclosure, the ability of a committee to rule that certain matters shall not be heard in public (where the strict test for doing so is met a committee can conduct a hearing or part of a hearing in private, even to the exclusion of the applicant).

The Act establishes a framework for disclosure of information: to the public (via registers required to be maintained by the Licensing Authority); to the Commission and to bodies listed in schedule 6 to the Act (via gateway provisions enabling information disclosure for certain defined purposes).

Section 352 provides that "Nothing in this Act authorises a disclosure which contravenes the Data Protection Act 1998".

Premises licenses issued by the Authority may be inspected by the public at all reasonable times as notified on the licensing pages of the website. Regulations may also be made enabling other information to be disclosed to the public by means of its inclusion in the register.

In addition the Act makes provisions for disclosure to and from the Commission and the Responsible Authorities. This section of the policy sets out the principles the council will apply in exercising its functions under those gateway provisions.

Section 29 of the Act obliges the Licensing Authority to provide information to the Commission that is either part of a Gambling Act Register or is in the possession of the authority in connection with a provision of the Act (paragraph 13.3 of the Commission's guidance refers).

Section 30 of the Act is a gateway provision enabling the sharing of information for various purposes.

The Licensing Authority will provide to the Gambling Commission a contact name, telephone number, e-mail and premises address for their use under these provisions. The Council will strive to comply in a timely fashion with any lawful exercise of the Commission's power under section 29 and to co-operate with it in regard to the manner in which the information should be made available. The Council states its commitment to maximising the sharing of information with other regulators and in particular where it judges that to do so will assist in the prevention and detection of crime and/or will protect children and other vulnerable persons from being harmed or exploited by gambling.

Where it appears that disclosure may contravene the Data Protection Act the Council will consider the extent to which that Act affords discretion for disclosure and will have due regard to any relevant guidance issued by the Information Commissioner.

The same principles will inform the Council's exercise of its powers under section 50 of the Act which make provision for the exchange of information with other bodies engaged in the regime. In March 2007 the Commission published a paper setting out the protocols for how the exchange of information will be managed. The Council is willing to participate in establishing information sharing protocols with the other bodies and these protocols will be made available for public inspection.

2.4 The principles to be applied by the authority in exercising the functions under Part 15 of the Act with respect to the inspection of premises; and the powers under Section 346 of the Act to institute criminal proceedings in respect of the offences specified in that Section.

Part 15 of the Act provides the Gambling Commission, Councils and the Police with powers necessary to monitor compliance with the provisions of the Act. The Council can investigate allegations of breach and prosecute in appropriate cases.

The Commission guides that generally the body issuing the permit or licence will take the lead on compliance and enforcement and recommends light-touch enforcement in respect of those judged to be at the lower risk of offending with resources being targeted towards dealing with higher risk operators. Part 34 of the Commission's guidance sets out the underlying principles for compliance and enforcement of the regime and the regulatory sanctions available to duly authorised council officers. Guidance states that enforcement should be risk based.

The principles to be applied by the Authority in this regard sit well with the guidance issued by the Commission to date. The Council has adopted a Regulatory Services enforcement Policy which reflects the principles of:

- Proportionality: remedies appropriate to the risks posed;
- Accountability: the Council will be able to justify its decisions and be subject of scrutiny;
- Consistency: fair implementation of standards;
- Targeting: regulation focussed on the higher risk premises
- Transparency: the Council's relevant policies will be open to public inspection and scrutiny, either through information in published reports to decision makers, or through publication on the Council's web pages or on request.

Supplementary policies may be developed from time to time which are specific to considerations of enforcement under the Gambling Act. These should reflect the Council's firm commitment to do its utmost to maximise the achievement of the three licensing objectives set out in full in paragraph 1.1 above. A serious view should be taken by its enforcing officers of any conduct which amounts to a contravention of those offences which reflect the legislature's commitment to protect children and young persons from harm or

exploitation, such conduct being inconsistent with the achievement of both the first and the third of the objectives listed (that of prevention of crime and that of protection of children and other vulnerable persons). Those specific offences can be found in Part 4 of the Act. Whilst recognising that they are able to take part in some gambling, the Council considers young persons (i.e. young adults between the ages of 16 and 18) should usually be considered as vulnerable persons for the purpose of considering the achievement of the third licensing objective

The Council is engaged in the better regulation process which will continue to inform its regulatory enforcement work.

The Council notes that having regard to the Act and the guidance from the Commission its main enforcement role will relate to compliance with premises licences and other permissions which it administers. Where concerns relate to the conduct of operating licences or personal licences these will primarily be matters for attention by the Commission, as will issues such as concerns about the manufacture, supply or repair of gaming machines. However the council will expect its officers to pass information to the Commission to ensure it can investigate where appropriate.

The Authority will work closely with the Police in its compliance and enforcement activity under this legislation. It will seek to establish enforcement protocols with the Avon and Somerset constabulary and the Avon Fire and Rescue Services and any such protocols established will be made available for public inspection.

As a matter of principle the Council will consider and have regard to all relevant national guidance and protocols, including:

- Guidance issued by the Gambling Commission under the Act;
- codes of practice for Crown Prosecutors;
- Home Office Guidance on the issuing of simple cautions;
- The Council's own enforcement policy and relevant supplementary policy

3. Statement of Principles for the discharge of other functions not addressed in section 2 of this statement of Gambling Policy

3.1 Delegation of functions (Part 4)

The Act and relevant regulations make clear provision for the delegation of functions under the new regime.

The Guidance indicates that functions in relation to this gambling policy must be undertaken by the whole council. However amendments to regulations require this guidance to be clarified and this development reflects the correctness of the Commission's guidance (at paragraph 4.8) regarding the need to ensure familiarity with any changes made dealing with the allocation of responsibility for functions between the authority as a whole and its executive. The Guidance makes reference to these matters as being dealt with through the Local Authorities (Functions and Responsibilities) (England) Regulations. Bristol routinely tracks amendments to those regulations in order to ensure the legality of its decision making process.

The regulations designate the gambling policy functions as being "matters not to be the sole responsibility of an Authority's Executive". This means that where, as in Bristol, a Council operates Executive arrangements (in our case a Leader and cabinet form of Executive), formulation of proposals and consultation upon them are a matter for the council's leadership (i.e. its Executive), but that certain designated actions (such as adopting the policy, or

amending the proposals of the Executive, or asking the Executive to reconsider its proposals) must be carried out by the full council. *The decision making process underpinning the formulation and adoption of this Gambling policy was in line with the relevant regulation.*

There is provision under which some Authorities may in due course be permitted to set their own fees. This is a function the full council may delegate in accordance with section 101 of the Local Government Act 1972. At this stage the ability to effect its own fees is not permitted and the Council has not yet made provision for any such function as may come its way to be delegated.

The full council can decide to pass a resolution not to grant casino licences; this function cannot be delegated in any circumstances.

Under the legislation itself all other functions are delegated to the Council's Licensing Committee which is allowed to sub delegate certain functions to sub committees or officers. Sub committees can in turn delegate functions falling within their terms of reference to officers.

The Act contains a list of matters which cannot be decided by officers (see par 6.3.6 of Appendix A) which include various matters subject to representations which have not been withdrawn and a review of a premises licence under section 201. An officer cannot decide to give a counter notice on a temporary use notice.

The guidance makes it clear that the committee does not have to effect delegations at all. It states that "an important consideration in determining whether any particular decision should be delegated will be whether delegation may give rise to a risk of judicial review challenge (particularly on the basis of an appearance of bias). A licensing committee should consult the licensing authority lawyers where it considers that concerns of this nature may be raised"

It is not clear what circumstances the Commission considers may give rise to such concerns. However in contrast to the Licensing Act 2003, which also allows for the making of representations, the licensing authority itself can make representations on gambling premises applications. The function of making representations is, by virtue of section 154 of the Act, delegated to the licensing committee which must also adjudicate on those representations. This is sanctioned by Parliament and the legislation is certified as being compatible with the Human Rights Act obligations, including that relating to the right to a fair hearing, Therefore it is not considered that judicial review could lie against the council for an appearance of bias in this regard since the dual role of the licensing committee has clear statutory authority.

That said, this policy recommends that the licensing committee do whatever it can to ensure that, at an operational level, those who are responsible for determining applications which are the subject of representations (i.e. Councillors sitting in a licensing committee or one of its sub committees) are not themselves directly involved in the making of representations. This can be achieved by delegating to relevant officers the representation making responsibility and a recorded decision of the full committee that its members will not concern themselves in the day to day operation of this aspect of the process. This would bring the Licensing Authority representations in line with those made by the council in other capacities (for example as the Local Planning Authority). The committee has already proved in practice that it can act independently in respect of representations from Council officers and there is no reason to consider the same would not apply to representations from the licensing authority officers but measures which reassure the public in this regard are here encouraged.

The delegations effected by the Licensing Committee in respect of Licensing Act functions have worked well in practice and it is anticipated similar provision will be made for the Gambling Act functions.

3.2 Regulation of Licensing Committee's proceedings

By virtue of section 154(5) of the Act, section 9 of the Licensing Act 2003 apply to proceedings of the Licensing committee and its sub committees in the exercise of specified gambling functions. Section 9 enables the committee, subject to regulations issued by the secretary of state, to regulate its own procedure including in respect of matters such as notice of meetings and quorum. In other words the rules applying to other council committees do not automatically apply. The committee has adopted comprehensive rules which can be viewed on the Council's web pages (Part 4 – Licensing procedure rules). These rules have been amended where necessary to reflect the committee's responsibility for Gambling functions.

3.3 Conduct of Members

The conduct of elected councillors is governed by a code of conduct issued in accordance with the provisions of the Local Government Act 2000 which makes provision for independent scrutiny of councillors' conduct through the Standards Board for England which can impose significant sanctions where complaints are upheld. The guidance refers (at 4.22 – 4.24) to general principles underpinning the code and recommends training of Licensing Committee members and their officers on their roles and functions under the Act.

Bristol will continue to work through its Standards Committee to produce specific guidance for Councillors who serve on the Licensing committee and will continue to secure high quality training for all Licensing committee members with regard to their role and the functions under the legislation that they are required to deal with

3.4 Principles to be applied (Gambling Commission Guidance Par 5.1 to 5.5 and Par 5.25)

Context

Licensing Authorities are required under the Act to;

- * Be responsible for the licensing of premises where gambling activities are to take place by issuing *premises licences*
- * consider applications for *provisional statements* . These are applied for under section 204 of the Act and an application can be made where the applicant expects the premises concerned to be constructed, or altered; or application can be made in respect of premises he expects to acquire a right to occupy. In such cases the Authority can consider the applicant's proposals in much the same way as it would an application for a premises licence, however if minded to grant (with or without additional conditions) a provisional statement would be issued. If a provisional statement is issued, the applicant is protected in certain respects in respect of a future application for a premises licence. In particular the Act limits the representations which can be made, requiring the authority to disregard all but those matters that could not have been addressed in relation to the application for the provisional statement or that reflect a change in the applicant's circumstances. In other words this is a procedure which enables applicants to plan ahead and test their application before incurring expenditure, which may be substantial, in acquiring, constructing or altering premises.
- * Regulate *members' clubs* and *miner's welfare institutes* who wish to undertake certain gaming activities via issuing club gaming permits and/or club machine permits
- * Issue *club machine permits* to *commercial clubs*

- * Grant permits for the use of certain lower stake gaming machines at *unlicensed family entertainment centres*
- * Receive notifications from alcohol licensed premises (under the Licensing Act 2003) for the use of two or fewer gaming machines
- * Issue *licensed premises gaming machine permits* for premises licensed to sale/supply alcohol for consumption on the licensed premises, under the Licensing Act 2003, where there are more than two gaming machines
- * Register *small society lotteries* below prescribed thresholds
- * Issue *prize gaming permits*
- * Receive and endorse *temporary use notices*
- * Receive *occasional use notices*
- * Provide information to the Gambling Commission regarding details of licences issued (see section above on information exchange)
- * Maintain registers of the permits and licences that are issued under these functions

It should be noted that licensing authorities will not be involved in licensing remote gambling at all. This will fall to the Gambling Commission via operating licences.

3.4.1 Bristol will act in accordance with relevant legislation

Bristol's Gambling Policy should be understood in the context of the legislative framework within which the Council, in its capacity as the Licensing Authority for Bristol, is required to operate (a detailed summary of which is contained in Appendix A). Accordingly there are specific obligations laid down through the legislation which must apply in the Licensing Authority's gambling work:-

- (a) The Licensing Authority recognises the centrality of the three licensing objectives to this new regulatory regime, namely:
 - (i) Preventing gambling from being a source of crime or disorder, being associated with crime or disorder, or being used to support crime;
 - (ii) Ensuring that gambling is conducted in a fair and open way; and
 - (iii) Protecting children and other vulnerable persons from being harmed or exploited by gambling.
- (b) In exercising its functions under Part 8 of the Act (Premises Licensing) the Council must aim to permit the use of premises for gambling insofar as the Council thinks that permitting the use of the premises for gambling is:-
 - (a) in accordance with any relevant code of practice under Section 24 of the Act,
 - (b) in accordance with any relevant guidance issued by the Commission under Section 25,

- (c) reasonably consistent with the licensing objectives (subject to paragraphs (a) and (b)), and
- (d) in accordance with this gambling policy (subject to paragraphs (a) to (c))
- (e) In determining whether to grant a premises licence the Council will not have regard to the expected demand for the facilities which it is proposed to provide.
- (f) In exercising its functions under the Gambling Act and in particular the principles to be applied in exercising those functions the Council will have regard to guidance issued by the Gambling commission in exercise of the Commission's functions under section 25 of the Act.

In addition to the above Gambling Act specific matters there are a number of statutory provisions which apply to every action the council takes as a public authority, including the work it undertakes in its capacity as the Licensing Authority . These include:-

- (a) its duty to have due regard to the need to promote race equality and to the need to eliminate unlawful race discrimination;
- (b) its Human Rights Act obligations;
- (c) its duty to have regard to the interests of Bristol's council tax payers

It is expected that during the life of this policy further general duties will be imposed on the Council, for example obligations relating to disability and gender equality. As a matter of principle the Council is committed to fulfilling all of its statutory obligations when exercising Gambling Act functions. Should guidance or codes of practice be in conflict with any statutory obligation generally imposed on the Council then the statutory duties must take precedence, requiring the Council to depart from the guidance or deem it not relevant as appropriate.

3.4.2 **Bristol will take care to consider relevant factors**

The three licensing objectives are central to the administration of this regime and therefore factors which relate to those objectives will be relevant to the matter under consideration. The Act excludes from consideration in some cases particular factors which might otherwise have been judged relevant, namely:-

the expected demand for the facilities which it is proposed to provide;

whether or not a proposal by the applicant is likely to be permitted under planning law; and

whether or not a proposal by the applicant is likely to be permitted under building law

Therefore these factors must not be considered on an application for the grant of a premises licence.

The Act does not expressly exclude other factors from being relevant. However normal principles of public law would apply to decision making under this regime so that, for example, moral opposition to gambling in and of itself would not be relevant to the determination of applications. Among other things, allowing such considerations to intrude into the decision making process would be contrary to the duty to aim to permit gambling where the council thinks certain statutory tests (in section 153 as set out in 3.4.1 above) are met.

The choice of Responsible Authorities gives an indication of the sort of information Parliament had in contemplation as being of relevance to the decision maker in making

judgements on applications but clearly it is not possible to anticipate every factor which may be of relevance to one or more of the three licensing objectives.

In contrast with the Licensing Act 2003 specific objectives for the prevention of public nuisance and in respect of public safety have not been enacted. However it does not follow from this that factors concerning safety or nuisance cannot ever be relevant and of course Parliament has specifically engaged bodies which are expert in these matters to advise the decision maker through the representations and review process.

In as much as public nuisance is a crime which features common injury to the community as a whole or a significant section of it then, as with other examples of crime and disorder, the licensing authority must take it into account when determining whether or not to grant a licence in accordance with the first of the three licensing objectives. Public nuisance associated with any activity permitted by a public body has the potential to infringe the rights citizens enjoy under the European Convention on Human Rights, particularly under Article 8 of the Convention (the right to respect for private and family life). However public nuisance which is not caused by or associated with gambling would not be relevant to the first objective.

3.4.3 **Bristol will respect statutory rights of applicants and other parties**

Nothing in this policy will:-

1. Undermine the rights of any person to apply under the Act for a variety of permissions and have the application considered on its individual merits; OR
2. Override the right of any person to make representations on any application or seek a review of a licence or permit where they are permitted to do so under the Act.

Generally speaking a hearing must be held in respect of an application under Part 8 if an interested party or a responsible authority has made (and not withdrawn) representations about the application.

However determination can proceed without a hearing if the authority considers that the representations are vexatious and/or frivolous and/or will “certainly not influence the authority’s determination of the application”. The Licensing Committee or one of its sub-committees will make this judgement. However, deciding that interested citizens cannot be heard is a serious step to take, involving as it must judgements of the Council’s Human Rights obligations together with other considerations. Also the test of certainty is very high; clearly it will apply in the case of representations which only refer to factors which cannot be relevant to certain applications (see 3.4.2 above) and may well apply where the same issue has recently been determined by the authority and there has been no material change in circumstances. However in other cases very careful consideration of what is put forward will be required if the Authority is to be certain that the representation will not influence its determination. In finely balanced cases the maker of the representations should be given the benefit of the doubt and the matter proceed to a hearing following which the committee should be better placed to decide whether representations ought to be disregarded as irrelevant on these grounds.

3.5 **Objective 1 – Preventing Gambling from being a source of crime or disorder, being associated with crime or disorder or being used to support crime (Gambling Commission Guidance: Pars 5.6 to 5.14)**

The Council is under a general duty to work with the Police to prevent and detect crime (section 17 of the Crime and Disorder Act 1998). The Council’s close working relationship with the Police and its role in the Safer Bristol Partnership facilitates this area of its work. The Licensing Authority works closely with the Police and with the Safer Bristol Partnership

and will draw upon the expertise of the partnership to better inform decision making by or on behalf of the Committee in the context of this licensing objective. Under the Gambling Act the Licensing Authority itself can make representations on applications. Its close working relationship with the bodies forming the Safer Bristol Partnership will assist that aspect of its work, helping to ensure that representations which concern the crime prevention objective are fully informed and that relevant expertise is made available to the Members at hearings.

A high standard of control is expected to be exercised over licensed premises.

Where an area has known high levels of crime the Authority will consider carefully whether gambling premises are suitable to be located there and, if they are, whether conditions need to be imposed such as the provision of door supervisors.

Applicants are encouraged to discuss the crime prevention procedures in their premises with the Council's licensing officers and/or Avon and Somerset Constabulary before making a formal application.

In considering licence applications, the licensing authority will particularly take into account the following;

1. The location of the premises.
2. The design and layout of the premises.
3. The training given to staff in crime prevention measures appropriate to those premises.
4. Physical security features installed in the premises. This may include matters such as the position of the cash registers or the standard of CCTV that is installed.
5. Where premises are subject to age restrictions, the procedures in place to conduct age verification checks.
6. The likelihood of any violence, public nuisance, public order or other crimes and policing problems if the licence is granted.

3.6 Objective 2 – Ensuring that gambling is conducted in a fair and open way (Gambling Commission Guidance Pars 5.15 – 5.17)

Generally, the Gambling Commission would not expect licensing authorities to become concerned with ensuring that gambling is conducted in a fair and open way. This is because this will usually be concerned with either the management of the gambling business (and therefore subject to the operating licence), or the suitability and actions of an individual (and therefore subject to a personal licence). These permissions both fall within the remit of the Gambling Commission.

However the Authority is bound to consider factors relevant to any one or more of the three licensing objectives where they fall to be considered. There is no order of priority of objectives in the Act.

Applicants for premises licences will have to hold an operating licence issued by the Gambling Commission before a premises licence can be issued and therefore licensing authorities will rarely need to investigate the suitability of the applicant. The exception to this is occupiers of tracks who do not propose to offer gambling themselves. This means that there will be more of a role for licensing authorities with regard to tracks. This is explained in more detail in the tracks section of this document (paragraph 3.13 below).

3.7 Objective 3 – Protecting children and other vulnerable persons from being harmed or exploited by gambling (Gambling Commission Guidance: Pars 5.18 – 5.21)

The Act defines children as meaning an individual who is under 16 years old. (Persons under the age of eighteen are “young persons”). It will be observed that the objective here does not relate to generally protecting children (although the welfare of children is

paramount for local authorities under other legislation); it is specific to protecting them from being harmed or exploited by Gambling.

The Commission's guidance refers to the provisions in the Act which protect children. For example, those which prevent children and young persons entering gambling premises which are intended for adults only, which prevent them from taking part in gambling and which restrict advertising from targeting children or from making gambling appear attractive to them. The guidance gives some pointers to the sorts of conditions Licensing Authorities may wish to consider attaching to premises licences to protect children on particular categories of premises, such as supervision of entrances and segregation of areas.

The Council welcomes the measures suggested by the Commission to help achieve this licensing objective. The Licensing Authority will seek the advice of its specialist body to identify other measures which may assist in fulfilling this objective. It will draw upon the significant expertise it has developed in other areas of its work (for example in preventing the sale of age related products to children) in seeking to ensure that Bristol protects children from harm or exploitation from gambling. To the extent that the application process enables applicants themselves to put forward measures which achieve this objective applicants can expect the measures they propose to be subject of careful scrutiny by the Licensing Authority. Where those measures are considered inadequate the Licensing Authority itself should consider making representations which will ensure the issues can be explored at a hearing, usually to be held in public.

The Act does not define the term "vulnerable persons" and the Commission does not seek to do so either but states (paragraph 5.22 of its guidance) that for regulatory purposes it will assume 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.

The council considers that protection of such groups is within the scope of this licensing objective. The Council is keen to make plain that it does not consider that these examples comprise a comprehensive list of persons who fall within the scope of the objective. For example the council considers that, except where the law explicitly permits them to engage in gambling, young persons (i.e. individuals who are not children but who are less than eighteen years old) should generally be considered to be "vulnerable persons" for the purpose of considering consistency with this licensing objective. Therefore the Licensing Authority for Bristol will generally consider any representations, guidance or protocols which are directed towards the protection of young persons from harm or exploitation from gambling in the context of this objective.

The council does not exclude the possibility of other individuals or groups falling within the scope of this objective in addition to those mentioned above. Where the Council has before it cogent evidence that an identified group is particularly at risk of harm of any kind from gambling, and/or is especially open to temptation or persuasion, then for the purpose of considering this policy and consistency with the licensing objectives this will give rise to a presumption (which may be rebutted) that they fall within the scope of this objective.

The Licensing Authority's officers will maintain a dialogue with those bodies which represent persons who are vulnerable in this manner in order to facilitate the Licensing Authority's role as a body which can make representations, including bringing the experience of bodies such as Gamcare to bear in formulating conditions to be suggested for consideration by the Licensing Committee.

Bristol considers the achievement of this objective is crucial in ensuring that the gambling which takes place in its area is responsible gambling by consenting adults who are not themselves vulnerable persons. This will be reflected in the weight it gives to factors relevant to the objective when considering applications. Where persons are identified (for example through representations) as falling within the scope of this objective the authority will give anxious scrutiny to the application. The aim will be to endeavour to overcome any issues of

concern where possible (for example by the imposition of appropriate conditions) so as to permit gambling in a manner which is consistent with the achievement of this objective.

The Licensing Committee should ensure that where appropriate applicants show an awareness of referral procedures to the City Council Adult Community Care Department and the Licensing Committee should consider imposing conditions to facilitate this, for example requiring appropriate signage.

3.8 Location of Premises (Gambling Commission Guidance: Pars 6.11 to 6.13)

Section 153 of the Act states that in determining whether to grant a premises licence a licensing authority may not have regard to the expected demand for facilities which it is proposed to provide and the guidance states that gambling policies should reflect this and not comment on need for gambling premises in the area.

However the guidance makes it clear that this does not prevent proper consideration of location for reasons not connected with need. The guidance makes it clear that location can be relevant to the achievement of the licensing objectives. For example the guidance makes reference to the ability of a licensing authority to adopt a policy of careful consideration of applications for gambling premises near to certain premises, such as a school or a centre for gambling addicts.

Bristol will not have regard to representations concerning demand for facilities when considering whether to grant a premises licence; this will be so whether the issue is raised by an applicant or other party in support of an application or by an objector seeking to persuade the council to refuse it. Bristol has no discretion in this regard and such a representation will certainly not influence the authority's determination of an application.

As far as location is concerned, the council considers that locating gambling premises close to schools (or other premises frequented by children or other vulnerable persons) would rarely be consistent with the third licensing objective discussed in paragraph 3.7 above. Applications for new premises licences in the locality of, for example, schools, will not normally be granted. Applicants who seek to licence gambling establishments in the locality of vulnerable premises such as schools will be afforded every opportunity to explain the basis upon which they consider their application can be granted without undermining the purpose of this policy, which can be summarised as seeking to secure the protection of Bristol's children and other vulnerable persons in the context of the third objective.

3.9 Premises Licences (Gambling Commission Guidance: Part 7)

Premises are defined in the Act as "any place and in particular a vessel or a vehicle". The Act prevents more than one premises licence applying to any place. Only one premises licence may be issued for any particular premises at anyone time. However, it is possible for a single building to be subject to more than one premises licence, provided they are for different parts of the building and those different parts of a building can be reasonably regarded as being different premises. Whether different parts of a building can properly be regarded as being separate premises will always be a question of fact in the circumstances. However, the Gambling Commission does not consider that areas of a building that are artificially or temporarily separate can be properly regarded as different premises.

This licensing authority takes particular note of the Gambling Commission's Guidance for local authorities which states that:

- Licensing authorities should take particular care in considering applications for multiple licences for a building and those relating to a discrete part of a building used for other (non-gambling) purposes. In particular they should be aware that entrances to and exits from parts of a building covered by one or more premises licences is not compromised and people do not 'drift' into a gambling area. In this context it should

normally be possible to access the premises without going through another licensed premises or premises with a permit.

- Licensing authorities should pay particular attention to applications where access to the licensed premises is through other premises (which themselves may be licensed or unlicensed). Clearly, there will be specific issues that authorities should consider before granting such applications, for example, whether children can gain access; compatibility of the two establishments; and ability to comply with the requirements of the Act. But, in addition an overriding consideration should be whether, taken as a whole, the co-location of the licensed premises with other facilities has the effect of creating an arrangement that otherwise would, or should be prohibited under the Act.

It should also be noted that an applicant cannot obtain a full premises licence until the premises in which it is proposed to offer the gambling are constructed. The Gambling Commission has advised that references to “the premises” are to the premises in which gambling may now take place. Thus a licence to use premises for gambling will only be issued in relation to premises that are ready to be used for gambling. This authority agrees with the Gambling Commission that it is a question of fact and degree whether premises are finished to a degree that they can be considered for a premises licence. The Gambling Commission emphasises that requiring the building to be complete ensures that the authority can, if necessary, inspect it fully, as can other responsible authorities with inspection rights.

3.10 Conditions (Gambling Commission Guidance: Part 9)

Premises licences will be subject to the requirements set out in the Gambling Act 2005 and regulations, as well as specific mandatory and default conditions which will be detailed in regulations issued by the Secretary of State. Mandatory conditions always have to be imposed on appropriate licences. Licensing authorities are able to exclude default conditions and also impose others, where it is believed to be appropriate.

Any conditions attached to licences should be proportionate and relevant; decision makers should take account of the scale and type of premises and what facilities are proposed to be offered.

Each case should be decided on its own facts and merit. It is likely there will be a number of measures this licensing authority will consider utilising in appropriate cases such as the use of supervisors and appropriate signage for adult only areas etc.

Where it is considered that door supervision is required the Licensing Authority must be aware of the definition of door supervision in this context (as set out in section 178 of the Gambling Act) and any impact of the Private Security Industry Act 2001 (as amended), which among other things makes provision for the licensing of door supervisors. The Licensing Committee must be alive to the fact that in some circumstances an exemption from the requirement to be licensed may apply and should take appropriate legal advice on that issue. Where there is a requirement for a door supervisor to be licensed, section 178 of the Gambling Act takes effect and the requirement under the Private Security Industry Act shall be treated for the purposes of the Gambling Act as if it were a condition of the premises licence.”

This Licensing Authority will also consider what specific measures may be required in respect of those buildings/vessels which may be subject to multiple premises licences. Such measures may include the supervision of entrances, segregation of gambling from non-gambling areas frequented by children and the supervision of gaming machines in non-adult gambling specific premises in order to pursue the licensing objectives. These matters are in accordance with the Gambling Commissions Guidance.

This authority will also seek to ensure that where Category C machines or above are on offer in premises to which children are admitted:

1. All such machines are located in an area of the premises which is separated from the remainder of the premises by a physical barrier which is effective to prevent access other than through a designated entrance.
2. Only adults are admitted to the area where these machines are located.
3. Access to the area where the machines are located is supervised.
4. The area where these machines are located is arranged so that it can be observed by the staff or the licence holder.
5. At the entrance to and inside any such areas there are prominently displayed notices indicating that access to the area is prohibited to persons under 18.

Bristol has no permanent tracks at present but is aware that tracks may be subject to one, or more than one, premises licence, provided each licence relates to a specified area of track as reflected in the Gambling Commission's Guidance. In this regard the licensing authority should ensure it considers the impact upon the third licensing objective including the need to ensure that entrances to each type of premises are distinct and that children are excluded from those gambling areas which they are not permitted to enter.

It is noted that there are conditions which the licensing authority cannot attach to premises licences, namely:

1. Any condition on the premises licence which makes it impossible to comply with an operating licence condition;
2. Conditions relating to gaming machine categories, numbers or method of operation;
3. Conditions which provide that membership of a club or body be required. The Gambling Act 2005 specifically removes the membership requirement for casino and bingo clubs and this provision prevents it being reinstated.
4. Conditions in relation to stakes, fees, winning or prizes.

3.11 Gaming Machines (Gambling Commission Guidance: Part 16)

The Commission describes the categories of gaming machines and the permitted numbers in Part 16 of its guidance. Further guidance from the Gambling Commission is awaited as regards where such machines may be located on tracks and any special considerations that should apply in relation, for example, to supervision of the machines and preventing children from playing them. This licensing authority notes the Commission's Guidance that licensing authorities therefore need to consider the location of gaming machines at tracks, and applications for track premises licences will need to demonstrate that, where the applicant holds a pool betting operating licence and is going to use his entitlement to four gaming machines, these machines are located in areas from which children are excluded. Children and young persons are not prohibited from playing category D gaming machines on a track.

3.12 Betting machines

A machine is not a gaming machine if it is designed or adapted for use to bet on future real events. A machine which takes bets on virtual events is a gaming machine. Some betting premises may make available machines which can accept bets on live events; these are not

gaming machines and as such limits on numbers, stake or prize limits for gaming machines do not apply to them.

Section 181 of the Act empowers the Licensing authority to restrict the number of betting machines, their nature and the circumstances in which they are made available by condition attached to a betting premises licence or (where betting is allowed in a casino) a casino premises licence. Persons under the age of 18 cannot be admitted to either type of premises. In considering the exercise of this power the matters the Licensing Authority for Bristol should take into account include:

- the size of the premises;
- the number of counter positions available for person to person transactions; and
- the ability of staff to supervise the machines to ensure children and young persons (it is an offence for those under 18 to bet) do not play them;
- the ability of staff to monitor the machines to ensure that they are aware of any vulnerable persons playing them.

The Authority will consider in particular the power to restrict the number and location of such machines in respect of applications for track betting premises licences.

3.13 Premises licensing for tracks (Gambling Commission Guidance: Part 20)

The definition of tracks is not listed within the Act and is defined as ‘a horse racecourse, greyhound track or other premises on any part of which a race or other sporting event takes place or is intended to take place. The definition is wide and could include the provision of betting facilities at football grounds, golf courses and venues hosting darts, bowls or snooker tournaments. It is a mandatory condition of premises licences that clear and accessible information about the terms on which a bet may be placed must be displayed at betting premises, including tracks.

Regulations set out specific requirements applying to applications for premises licences.

The Council expects that plans submitted with an application make clear what is being sought for authorisation under the track betting premises licence and what, if any, other areas are to be subject to a separate application for a different type of premises licence.

This licensing authority also notes that in the Commission’s view, it would be preferable for all self-contained premises operated by off-course betting operators on track to be the subject of separate premises licences, to ensure that there is clarity between the respective responsibilities of the track operator and the off-course betting operator running a self-contained unit on the premises.

3.14 Adult Gaming Centres (Gambling Commission Guidance: Para 21.2)

This licensing authority will specifically have regard to the need to protect children and vulnerable persons from harm or being exploited by gambling and will expect the applicant to satisfy the authority that there will be sufficient measures to, for example, ensure that under 18 year olds do not have access to the premises.

It is anticipated that Applicants will be expected to put forward measures to ensure consistency with the licensing objectives; however, appropriate measures/licence conditions may include, among other appropriate measures, issues such as;

1. Proof of age schemes
2. CCTV
3. Supervision of entrances/machine areas
4. Physical separation of areas
5. Location of entry

6. Notices/signage
7. Specific opening hours
8. Self-barring schemes
9. Provision of information leaflets/helpline numbers for organisations such as GamCare.

GamCare is a registered charity that has a commitment to promote responsible attitudes to gambling and to work for the provision of proper care for those who have been harmed by gambling dependency. (www.gamcare.org.uk).

3.15 Licensed Family Entertainment Centres (Gambling Commission Guidance: Part 22)

The Act creates two classes of family entertainment centre (FEC). Licensed FEC's provide category C and D machines and require a premises licence. Unlicensed FEC's provide category D machines only and are regulated through FEC gaming machine permits.

Children and young persons are permitted to enter a FEC and may play on the category D machines. They are not permitted to play on the category C machines and there must be a clear segregation between the two types of machine, so that children do not have access to category C machines.

This licensing authority will specifically have regard to the need to protect children and vulnerable persons from harm or being exploited by gambling and will expect the applicant to satisfy the authority with regard to the sufficiency of measures directed at ensuring that under 18 year olds do not have access to the adult only gaming machine areas.

It is anticipated that Applicants will be expected to offer their own measures to meet the licensing objectives; however, appropriate measures/licence conditions may include, among other things, issues such as;

1. CCTV
2. Supervision of entrances/machine areas
3. Physical separation of areas
4. Location of entry
5. Notices/signage
6. Specific opening hours
7. Self-barring schemes
8. Provision of information leaflets/helpline numbers for organisations such as GamCare
9. Measures/training for staff on how to deal with suspected truant school children on the premises.

This licensing authority will keep under review any conditions that apply to operating licences covering the way in which the area containing the category C machines should be delineated in order to better inform its own work under the Act.

3.16 Casinos (Gambling Commission Guidance: Part 17)

Casinos and competitive bidding

Where a licensing authority area is enabled to grant a premises licence for a new style casino (i.e. where the Secretary of State has made such regulations under Section 175 of the Gambling Act 2005 applying to the particular authority) there are likely to be a number of operators who will seek the right to run the casino. In such situations the local authority will run a competition in line with the Act and regulations issued under it. This Licensing

Authority has not made a bid for a new style casino in its area. There are currently six licensed casinos operating within Bristol

The Secretary of State has made regulations setting out both mandatory and default conditions (conditions which the licensing authority can choose to exclude) for attaching to casino premises licences. These conditions cover the layout, access arrangements, number of player positions and requirements concerning the display of information. (Gambling Commission Guidance for local authorities – Part 17).

3.17 Bingo Premises (Gambling Commission Guidance: Part 18)

The Secretary of State has made regulations setting out mandatory conditions covering matters such as restricting persons under 18 years of age from entering areas where category B or C gaming machines are located and requiring various notices to be displayed setting out age restrictions, rules and charges.

3.18 Betting Premises (Gambling Commission Guidance: Part 19)

Betting premises are where off-course betting, that is betting that takes place other than at a track, takes place in what is currently known as a licensed betting office. Under the Act licensing authorities are responsible for issuing and monitoring premises licences for all betting premises. Children and young persons will not be able to enter premises with a betting premises licence, although special rules apply to tracks.

3.19 Betting Machines (Gambling Commission Guidance: Pars 19.178 – 19.19)

In line with the Gambling Commission's Guidance, the licensing authority will take into account the size of the premises, the number of counter positions available for person-to-person transactions and the ability of staff to supervise the use of the machines to ensure that children and young persons (it is an offence for those under 18 to bet) do not play them. Additionally staff will be expected to monitor the use of the machines if they are being played by vulnerable persons, when considering the number/nature/circumstances of betting machines an operator wants to offer.

3.20 PERMITS/TEMPORARY & OCCASIONAL USE NOTICES (Gambling Commission Guidance: Part 23)

3.20.1. Unlicensed Family Entertainment Centre Gaming Machine Permits (Gambling Commission Guidance: Part 24)

Where no premises licence is in effect in relation to premises at which there is a wish to provide gaming machines, application may be made to the licensing authority for this permit. It should be noted that the applicant must show that the premises will be wholly or mainly used for making gaming machines available for use.

An application for a permit may be granted only if the licensing authority is satisfied that the premises will be used as an unlicensed Family Entertainment Centre, and if the Chief Officer of Police has been consulted on the application.

Applicants will need to demonstrate to the licensing authority:

- A full understanding of the maximum stakes and prizes of the gambling that is permissible in unlicensed Family Entertainment Centres;
- That the applicant has no relevant convictions (relevant convictions are those that are set out in Schedule 7 of the Act); and

- That staff are trained to have a full understanding of the maximum stakes and prizes.

Licensing authorities cannot attach conditions to this type of permit.

With regard to renewals of these permits, a Licensing Authority may refuse an application for renewal of a permit only on the grounds that an authorised Local Authority officer has been refused access to the premises without reasonable excuse, or that renewal would not be reasonably consistent with pursuit of the licensing objectives.

Gaming Machines – Subject to the rights referred to in section 3.20.2 below, the Gambling Act does not allow gaming machine applications in respect of premises to which children have free access. In view of this, and in order to promote the licensing objectives, this licensing authority will therefore not accept any new gaming machine applications or renewal applications from existing gaming machine permit holders in relation to such places. This may include:

Accommodation agencies, art galleries, Assembly rooms, bus stations, railway stations, cafes, canteens, cinemas, theatres, schools, colleges, youth clubs, swimming pools, off licences, loan offices, church halls, banks, car hire premises, employment agencies, garden centres, hospitals, museums, nurseries, sales rooms, surgeries, hotels, registered homes, garage and service stations, retail shops and warehouses, video hire/sale premises, shopping arcades/centres, dance halls, discotheques, salons/hairdressing premises, snooker/billiards and pool halls, taxi and private hire offices and ranks, waiting rooms and reception areas, leisure/health,sports/community centres, restaurants, takeaway food premises.

This list is not exhaustive.

3.20.2. Licensed Premises Gaming Machine Permits (Alcohol) (Gambling Commission Guidance: Part 26)

Premises licensed to sell alcohol for consumption on the premises automatically qualify to have 2 gaming machines of Categories C and/or D. The premises merely need to notify this licensing authority, complete the relevant application form, pay the prescribed fee and comply with any relevant Code of Practice issued by the Gambling Commission (Section 282). The licensing authority can remove the automatic authorisation in respect of any particular premises if:

1. Provision of the machines is not reasonably consistent with the pursuit of the licensing objectives;
2. Gaming has taken place on the premises that breaches a condition of Section 282 of the Gambling Act (i.e. that written notice has been provided to the licensing authority, that a fee has been provided and that any relevant code of practice issued by the Gambling Commission about the location and operation of the machine has been complied with);
3. The premises are mainly used for gaming; or
4. An offence under the Gambling Act has been committed on the premises.

If more than two machines are wanted at premises then application must be made for a permit and the licensing authority must consider that application based upon the licensing objectives, any guidance issued by the Gambling Commission issued under Section 25 of the Gambling Act 2005 and such matters as they think relevant. This licensing authority considers that such matters will be decided on a case by case basis but generally there will be regard to the need to protect children and vulnerable persons from harm or being exploited by gambling so that applicants will be expected to satisfy the authority that there will be sufficient measures to ensure that under 18 year olds do not have access to the adult only gaming machines. Such measures may include ensuring the adult machine being in

sight of the bar, or in the sight of staff able to monitor the machines to ensure they are not being used by those under 18, appropriate notices and signage. As regards the protection of vulnerable persons, applicants may wish to consider amongst other suitable measures the provision of information leaflets and/or helpline numbers for organisations such as GamCare.

It is recognised that in respect of premises licensed for the supply of alcohol under the Licensing Act 2003 applicants may seek a premises licence in respect of their non-alcohol licensed areas. Any such application would most likely need to be applied for and dealt with as an Adult Gaming Centre premises licence.

It should be noted that the licensing authority could decide to grant the application with a smaller number of machines and/or a different category of machines than that applied for. The Licensing Authority may impose no other conditions.

It should be noted that the holder of a permit must comply with any Code of Practice issued by the Gambling Commission concerning the location and operation of the machine.

3.20.3 Prize Gaming and Prize Gaming Permits (Gambling Commission Guidance: Part 27)

A prize gaming permit is a permit issued by the licensing authority authorising the provision of facilities for gaming with prizes on specified premises.

As a matter of principle this Authority expects an applicant for a prize gaming permit to set out the types of gaming that he or she is intending to offer and to demonstrate;

- that they understand the limits to stakes and prizes that are set out in Regulations.
- and that the gaming offered is within the law.

In making its decision on an application for this type of permit the licensing authority does not need to consider consistency with the licensing objectives but must have regard to the Gambling Commission guidance.

It should be noted that there are conditions imposed under Gambling Act 2005 which must be observed, but the licensing authority itself cannot attach conditions. The conditions laid down in the Act are;

1. the limits on participation fees, as set out in regulations, must be complied with;
2. all chances to participate in the gaming must be allocated on the premises on which the gaming is taking place and on one day; the game must be played and completed on the day the chances are allocated; and the result of the game must be made public in the premises on the day that it is played;
3. the prize for which the game is played must not exceed the amount set out in regulations (if a non-monetary prize); and
4. participation in the gaming must not entitle the player to take part in any other gambling.

3.20.4. Club Gaming and Club Machine Permits (Gambling Commission Guidance: Part 25)

Members Clubs and Miners Welfare Institutes (but not Commercial Clubs) may apply for a Club Gaming Permit or a Clubs Gaming Machines Permit. The Club Gaming Permit will enable the premises to provide gaming machines (3 machines of Category B, C or D), equal chance gaming and games of chance as set out in forthcoming regulations. A Club Gaming

Machine Permit will enable the premises to provide gaming machines (3 machines of Category B, C or D).

The Gambling Commission Guidance for local authorities states; “Members clubs must have at least 25 members and be established and conducted “wholly or mainly” for purposes other than gaming, unless the gaming is permitted by separate regulations. It is anticipated that this will cover bridge and whist clubs, which will replicate the position under the Gaming Act 1968. A members club must be permanent in nature, not established to make commercial profit, and controlled by its members equally. Examples include working men’s clubs, branches of Royal British Legion and clubs with political affiliations”. (25.6)

Before granting this permit the Licensing Authority will need to be satisfied that the premises meet the requirements of a members club and may grant the permit if the majority of the members are over 18.

The licensing authority recognises that it may only refuse an application on the grounds that;

1. the applicant does not fulfil the requirements for a members’ or commercial club or miners’ welfare institute, and therefore is not entitled to receive the type of permit for which it has applied;
2. the applicant’s premises are used wholly or mainly by children and/or young persons;
3. an offence under the Act or a breach of a permit has been committed by the applicant while providing gaming facilities;
4. a permit held by the applicant has been cancelled in the previous ten years; or
5. an objection has been lodged by the Commission or the Police.

There is also a “fast-track” procedure available under the Act for premises subject of a Club Premises Certificate under the Licensing Act 2003 (Schedule 12 paragraph 10). As the Gambling Commission’s Guidance states; “Under the fast-track procedure there is no opportunity for objections to be made by the Commission or the police, and the ground upon which an authority can refuse a permit are reduced” and “The grounds on which an application under the process may be refused are;

- a. that the club is established primarily for gaming, other than gaming prescribed under schedule 12;
- b. that in addition to the prescribed gaming, the applicant provides facilities for other gaming; or
- c. that a club gaming permit or club machine permit issued to the applicant in the last ten years has been cancelled.”

There are statutory conditions on club gaming permits that no child uses a Category B or C machine on the premises and that the holder complies with any relevant provision of a Code of Practice about the location and operation of gaming machines.

3.20.5. Temporary Use Notices (Gambling Commission Guidance: Part 14)

Temporary Use Notices allow the use of premises for gambling where there is no premises licence, but where a gambling operator wishes to use the premises temporarily for providing facilities for gambling. Premises that might be suitable for a temporary use notice could include hotels, conference centres and sporting venues.

The maximum period by which a “set of premises” may be the subject of a temporary use notice is 21 days within a period of 12 months. A set of premises may be the subject of more

than one temporary use notice in a period of twelve months provided the maximum aggregate for which the temporary use notices have effect does not exceed 21 days. The reference to a “set of premises” in the Act prevents large premises from having temporary use notices for more than 21 days in a twelve month period by giving notification in regard to different parts of the same premises. It is noted that it falls to the licensing authority to decide what constitutes a ‘set of premises’ where Temporary Use Notices are received relating to the same building/site. The type of factors that the licensing authority should consider will include, amongst other things, ownership, occupation and control of the premises. For example a large exhibition centre would be likely to fall within the definition as it is properly one set of premises and should not be granted a temporary use notice for 21 days in each of its exhibition halls. However other covered premises, such a shopping centres, may in fact represent different “sets of premises” given that they may be occupied and controlled by different people.

3.20.6. Occasional Use Notices (Gambling Commission Guidance: Part 15)

The licensing authority has very little discretion as regards these notices aside from ensuring that the statutory limit of 8 days in a calendar year is not exceeded. This licensing authority will need to consider the definition of a “Track” and whether the applicant is permitted to avail him/herself of the notice.

3.21 Travelling Fairs (Gambling Commission Guidance: Part 29)

It will fall to the licensing authority to decide whether, where Category D machines and/or equal chance prize gaming without a permit is to be made available for use at travelling fairs, the statutory requirement that the facilities for gambling amount to no more than an ancillary amusement at the fair is met.

The licensing authority will also consider whether the application falls within the statutory definition of a travelling fair.

It has been noted that the 27 day statutory maximum for the land being used as a fair is per calendar year, and that it applies to the piece of land on which the fairs are held, regardless of whether it is the same or different travelling fairs occupying the land. This licensing authority will work with its neighbouring authorities to ensure that land which crosses our boundaries is monitored so that the statutory limits are not exceeded.

4. Resolution under Section 166 of the Gambling Act

The Act enables the licensing of three types of casinos (see appendix A para 6.3.2) and the number of such licences which may be issued is limited. The Secretary of State will decide which authorities may issue the limited number of licences. Bristol has not applied to be considered for a licence for any type of casino; this will not affect the continued operation of casinos in Bristol which have the benefit of permissions under the existing regimes.

Licensing Authorities have the power to resolve not to issue casino licences. Only the full council may pass such a resolution; that is all of the councillors meeting together at a meeting of the full council. Accordingly such a resolution may not be passed by the cabinet or any other committee of the Authority’s executive, or by a Licensing committee or any other council committee and nor may the decision be made by an officer of the council. If such a resolution is passed then it will be published in this part of the Gambling Policy. As at the time this policy was drafted the Council had not passed such a resolution.

5. Further Information

Further information about the Gambling Act 2005, this Statement of Principles or the application process can be obtained from:

Bristol City Council

Licensing Office
Princess House
Princess Street
Bristol
BS3 4AG

Tel: 0117 914 2500
Fax: 0117 914 2515
E-mail: licensing@bristol.gov.uk

Information is also available from:

Gambling Commission

Victoria Square House
Victoria Square
Birmingham
B2 4BP

Tel: 0121 230 6500
Fax: 0121 233 1096
Email: info@gamblingcommission.gov.uk
Website: www.gamblingcommission.gov.uk

Department of Culture, Media and Sport

2-4 Cockspur Street
London
SW1Y 5DH

Tel: 020 7211 6200
E-mail: Enquiries@culture.gov.uk
Website: www.culture.gov.uk

Gamcare

Website: www.gamcare.org.uk

CONTACT DETAILS FOR RESPONSIBLE AUTHORITIES

RESPONSIBLE AUTHORITY	ADDRESS	TELEPHONE NUMBER
Bristol City Council in capacity of the Licensing Authority licensing@bristol.gov.uk	Bristol City Council Licensing Office Princess House Princess Street Bristol BS3 4AG	0117 914 2500
Avon and Somerset Constabulary liquorlicensing@avonandsomerset.pnn.police.uk	Liquor Licensing Bureau Kenneth Steele House Feeder Road Bristol BS2 0TQ (Hand Delivery) Liquor Licensing Bureau Avon and Somerset Constabulary PO Box 2781 Bristol BS2 2AS (Postal Delivery)	0117 9 455154
Avon Fire and Rescue Licensingact2003@avonfirebrigade.gov.uk	The Fire Safety Manager Temple Back Bristol BS1 6EU	0117 9 2620621
Bristol City Council – Pollution Control BRPLpollution@bristol.gov.uk	Pollution Control Unit Brunel House St Georges Road Bristol BS1 5UY	0117 922 3810
Bristol City Council – Children and Young People’s Services	Child Protection Register PO Box 57 The Council House College Green Bristol BS99 7EB	0117 9037774
Bristol City Council – Planning planning@bristol.gov.uk	Planning Services Brunel House St Georges Road Bristol BS1 5UY	0117 922 3097

Gambling Commission	Gambling Commission Victoria Square Hse Victoria Square Birmingham B2 4BP	0121 230 6500
HM Revenue and Customs	Portcullis House 21 India Street Glasgow G2 4PZ CF11 9SR	0141 555 3384 or 0141 555 3466

Glossary of Terms

Within this draft Policy, the following words and terms are defined as stated;

Act:	The Gambling Act 2005
Code of Practice:	Means any relevant code of practice under Section 24 of the Gambling Act 2005
Council:	Bristol City Council
DCMS:	Department of Culture, Media and Sport
Default Condition:	Means a specified condition provided by regulations to be attached to a licence, unless excluded by Bristol City Council
District:	The area administered by Bristol City Council.(Map at Appendix D)
Guidance:	Guidance issued to licensing authorities by the Gambling Commission (April 2006) as required by section 25 of the Gambling Act 2005.
Interested Party:	<p>For the purpose of this Act, a person is an interested party in relation to a Premises Licence or in relation to an application for or in respect of a Premises Licence if, in the opinion of the Licensing Authority which issues the licence or to which the application is made, the person;</p> <p>a) Lives sufficiently close to the premises to be likely to be affected by the authorised activities.</p> <p>b) Has business interests that might be affected by the authorised activities.</p> <p>c) Represents persons who satisfy a) or b) above.</p>
LACORS:	Local Authorities Co-ordinators of Regulatory Services
Licensing Objectives:	As defined in Section 3.5 – 3.7
Licences:	As defined in Section 3.9.
Mandatory Condition:	Means a specified condition provided by regulations to be attached to a licence
Notifications:	Means notification of Temporary and Occasional Use Notices
Premises:	Any place, including a vehicle, vessel or moveable structure
Regulations:	Regulations made under the Gambling Act 2005

Responsible Authority:

For the purposes of this Act, the following are responsible authorities in relation to premises;

1. The Licensing Authority in whose area the premises are situated (Bristol City Council)
2. The Gambling Commission
3. Avon and Somerset Constabulary
4. Avon Fire and Rescue Service
5. Development Control, Bristol City Council
6. Environmental Protection, Bristol City Council
7. Children and Young People's Services Dept, Bristol City Council
8. HM Customs and Excise

