

To: Licensing and Gambling Acts Committee

Date: 12th October 2009 **Item No:** 5

Report of: Head of Environmental Development

Title of Report: Statement of Gambling Licensing Policy Consultation

Summary and Recommendations

Purpose of report: To inform Committee of the proposed changes to the Statement of Gambling Licensing Policy.

Report Approved by:

Finance: Anna Hedges

Legal: Daniel Smith

Policy Framework: Statement of Gambling Licensing Policy

Committee is Recommended to:

- (a) to comment on the proposed amendments to the Statement of Gambling Licensing Policy as set out in Appendix 1.
- (b) to authorise the Environmental Development and Legal and Democratic Services Business Managers to carry out textual alterations to the Policy in accordance with new Government Guidance.
- (c) to authorise the Environmental Development and Legal and Democratic Services Business Managers, in consultation with the Chair of the Committee, to finalise the draft.

1. The Committee is reminded that all licensing authorities have adopted a Gambling Licensing Policy Statement (GLPS). The GLPS sets out how the Licensing Authority intends to exercise its functions under the 2005 Act.
2. The Council is required to publish a "statement of gambling licensing policy" and review it at least every three years. The current GLPS

became effective on 31 January 2007 and will expire on 30 January 2010.

3. This statement must promote the three licensing objectives of the Gambling Act 2005 which are: -
 - Preventing gambling from being a source of crime and disorder;
 - Ensuring that gambling is conducted in a fair and open way and
 - Protecting children and other vulnerable persons from being harmed or exploited by gambling.

4. The 2005 Act gives Licensing Authorities the following functions:
 - Licensing premises where gambling activities are to take place by issuing Premises Licences,
 - Issuing Provisional Statements
 - Regulating members' clubs and miners' welfare institutes who wish to undertake certain gaming activities, by issuing Club Gaming Permits and/or Club Machine Permits
 - Issuing Club Machine Permits to Commercial Clubs
 - Granting permits for the use of certain low stake gaming machines at unlicensed Family Entertainment Centers
 - Receiving notifications of the use of two or fewer gaming machines, from premises licensed (under the 2003 Act) to sell/supply of alcohol (for consumption on the premises other than with a meal).
 - Issuing Licensing Premises Gaming Permits where more than two machines are required for premises licensed (under the 2003 Act) to sell/supply alcohol (for consumption on the premises other than with a meal).
 - Issuing Prize Gaming Permits
 - Receiving and endorsing Temporary Use Notices
 - Receiving Occasional Use Notices
 - Providing information to the Gambling Commission on details of licensed issued
 - Maintaining registers of permits and licences issued under these functions

5. In carrying out our functions the Licensing Authority must also have regard to the "Guidance issued under the Gambling Act 2005" by the Secretary of State for Culture, Media and Sport. These measures ensure clarity and consistency across all authorities in England and Wales. Revised guidance issued by the Gambling Commission came into force in May 2009.

6. Government Guidance prescribes what must be included in its content in the interest of national consistency. The Council does not have much scope to make significant changes to the Statement of Gambling Licensing Policy. However, if there are good reasons, the policy can depart from the Guidance in order to reflect local circumstances.

7. In drafting the previous policy considerable work was done by a team of officers from Oxfordshire districts on drafting a common 'core' GLPS that each district adapted for its own use. The Council has continued to work with other Licensing Authorities in Oxfordshire in reviewing this GLPS to ensure, as far as possible, that a consistent approach is taken to assist applicants for licences and those who may wish to make representations under the provisions of the 2005 Act.

Consultation on the Draft Revised Statement of Gambling Licensing Policy

8. The draft revised GLPS requires approval from the Committee prior to republication. Proposed amendments are included in the appendix to this report.
9. Before determining the revised GLPS, the Licensing Authority must consult with persons as listed below:

The Licensing Authority consulted with:-

- Members of the public;
- "Responsible Authorities" (Police, Fire and Rescue, Trading Standards, Planning, Environmental Protection, Child Protection, Health & Safety) and
- current licence holders and representatives of current licence holders.

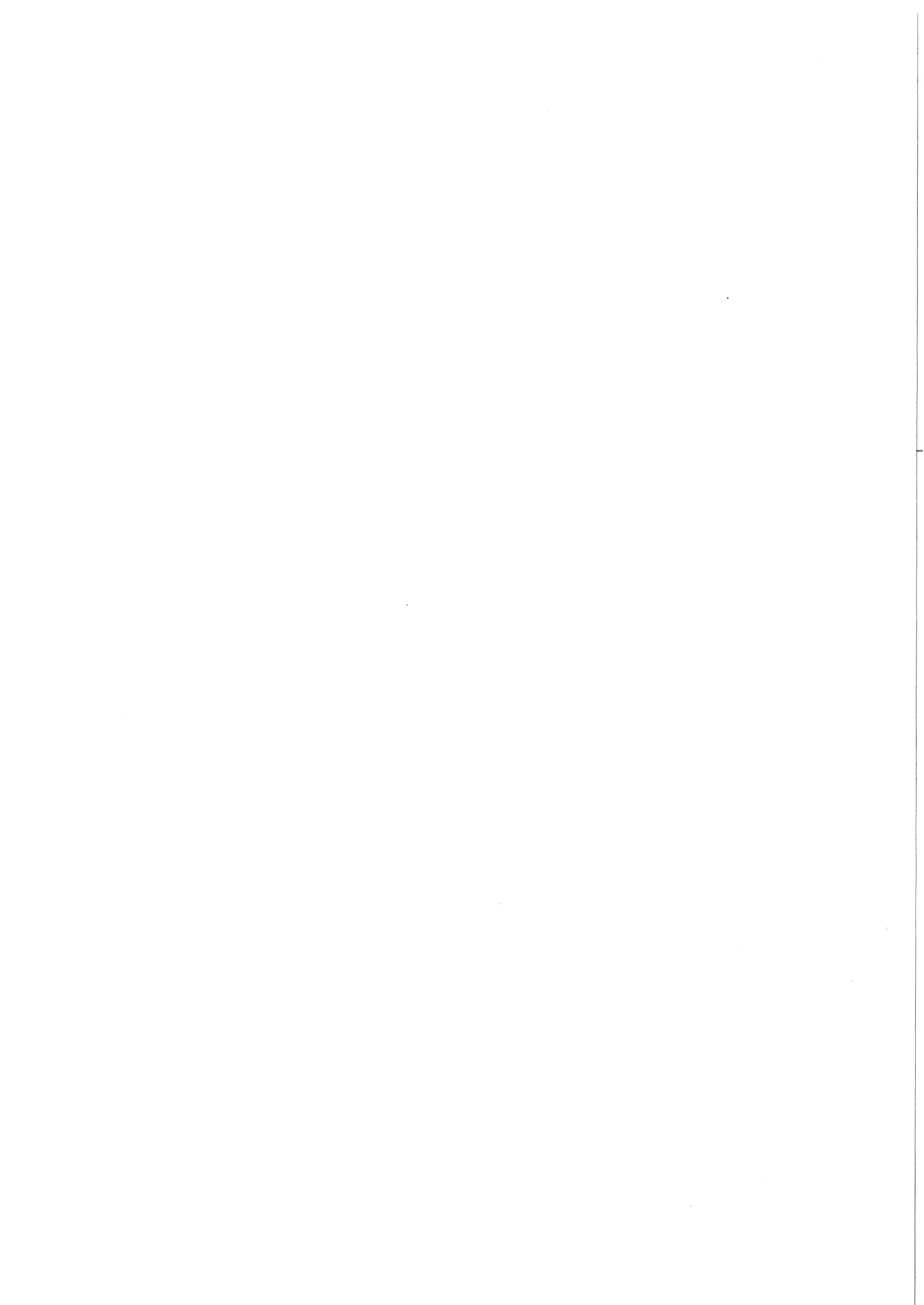
Consultation of the proposed changes took place between 13th July and 7th September 2009.

Response to the Consultation

10. A total of 118 letters were sent to licensed premises and 24 Responsible Authorities/Gaming Corporations were informed of the consultation process. A copy of the proposed changes to the policy were published on the City Council Website.
11. In response to consultation, only two responses were received. Neither response recommended any changes.
12. Due to the time constraints of publishing the revised policy which is unlikely to change before January 2010 (other than possible additional legislation amendments) the Licensing Authority is recommending Council adopt the revised policy with proposed changes in consultation with the Chair of the Licensing and Gambling Acts Committee.

**Name and contact details of author: Selina Pilgrim
(01865) 252067
spilgrim@oxford.gov.uk**

Background papers: Appendix 1



Amendments to Policy

Replace Page 8 (New Guidance)

Definition of “premises” – In the Act, "premises" is defined as including "any place". Section 152 therefore prevents more than one premises licence applying to any place. But a single building could be subject to more than one premises licence, provided they are for different parts of the building and the different parts of the building can be reasonably regarded as being different premises. This approach has been taken to allow large, multiple unit premises such as a pleasure park, pier, track or shopping mall to obtain discrete premises licences, where appropriate safeguards are in place. However, licensing authorities should pay particular attention if there are issues about sub-divisions of a single building or plot and should ensure that mandatory conditions relating to access between premises are observed.

The Gambling Commission states in the third edition of its Guidance to Licensing Authorities that: “In most cases the expectation is that a single building / plot will be the subject of an application for a licence, for example, 32 High Street. But, that does not mean 32 High Street cannot be the subject of separate premises licences for the basement and ground floor, if they are configured acceptably. Whether different parts of a building can properly be regarded as being separate premises will depend on the circumstances. The location of the premises will clearly be an important consideration and the suitability of the division is likely to be a matter for discussion between the operator and the licensing officer. However, the Commission does not consider that areas of a building that are artificially or temporarily separated, for example by ropes or moveable partitions, can properly be regarded as different premises.”

The licensing authority takes particular note of the Gambling Commission’s Guidance to Licensing 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 of the following:

- The third licensing objective seeks to protect children from being harmed by gambling. In practice that means not only preventing them from taking part in gambling, but also preventing them from being in close proximity to gambling. Therefore premises should be configured so that children are not invited to participate in, have accidental access to or closely observe gambling where they are prohibited from participating.
- Entrances to and exits from parts of a building covered by one or more premises licences should be separate and identifiable so that the separation of different premises 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.
- Customers should be able to participate in the activity named on the premises licence.

The Guidance also gives a list of factors which the licensing authority should be aware of, which may include:

- Do the premises have a separate registration for business rates
- Is the premises’ neighbouring premises owned by the same person or someone

else?

- Can each of the premises be accessed from the street or a public passageway?
- Can the premises only be accessed from any other gambling premises?

The authority will consider these and other relevant factors in making its decision, depending on all the circumstances of the case.

The Gambling Commission's relevant access provisions for each premises type are reproduced below:

Adult Gaming Centre

- Customers must not be able to access the premises directly from any other licensed gambling premises

Betting Shops

- Access must be from a street (as per para 7.23 Guidance to Licensing Authorities) or from another premises with a betting premises licence
- No direct access from a betting shop to another premises used for the retail sale of merchandise or services. In effect there cannot be an entrance to a betting shop from a shop of any kind and you could not have a betting shop at the back of a café – the whole area would have to be licensed.

Tracks

- Customers must not be able to access the premises directly from:
 - a casino
 - an adult gaming centre

Bingo Premises

- Customers must not be able to access the premise directly from:
 - a casino
 - an adult gaming centre
 - a betting premises, other than a track

Family Entertainment Centre

- Customers must not be able to access the premises directly from:
 - a casino
 - an adult gaming centre
 - a betting premises, other than a track

Part 7 of the Gambling Commission's Guidance to Licensing Authorities contains further guidance on this issue, which this authority will also take into account in its decision-making.

(iii) Premises "ready for gambling"

The Guidance states that a licence to use premises for gambling should only be issued in relation to premises that the licensing authority can be satisfied are going to be ready to be used for gambling in the reasonably near future, consistent with the scale of building or alterations required before the premises are brought into use.

If the construction of a premises is not yet complete, or if they need alteration, or if the applicant does not yet have a right to occupy them, then an application for a provisional statement should be made instead.

In deciding whether a premises licence can be granted where there are outstanding construction or alteration works at a premises, this authority will determine applications on their merits, applying a two stage consideration process:-

- First, whether the premises ought to be permitted to be used for gambling
- Second, whether appropriate conditions can be put in place to cater for the situation that the premises are not yet in the state in which they ought to be before gambling takes place.

Applicants should note that this authority is entitled to decide that it is appropriate to grant a licence subject to conditions, but it is not obliged to grant such a licence.

Replace Page 18- Section 23 (New Guidance)

Provisional Statements

Developers may wish to apply to the authority for provisional statements before entering into a contract to buy or lease property or land to judge whether a development is worth taking forward in light of the need to obtain a premises licence. There is no need for the applicant to hold an operating licence in order to apply for a provisional statement.

S204 of the Gambling Act provides for a person to make an application to the licensing authority for a provisional statement in respect of premises that he or she:

- expects to be constructed;
- expects to be altered; or
- expects to acquire a right to occupy.

The process for considering an application for a provisional statement is the same as that for a premises licence application. The applicant is obliged to give notice of the application in the same way as applying for a premises licence. Responsible authorities and interested parties may make representations and there are rights of appeal.

In contrast to the premises licence application, the applicant does not have to hold or have applied for an operating licence from the Gambling Commission (except in the case of a track) and they do not have to have a right to occupy the premises in respect of which their provisional application is made.

The holder of a provisional statement may then apply for a premises licence once the premises are constructed, altered or acquired. The licensing authority will be constrained in the matters it can consider when determining the premises licence application, and in terms of representations about premises licence applications that follow the grant of a provisional statement, no further representations from relevant authorities or interested parties can be taken into account unless:

- they concern matters which could not have been addressed at the provisional statement stage, or
- they reflect a change in the applicant's circumstances.

In addition, the authority may refuse the premises licence (or grant it on terms different to those attached to the provisional statement) only by reference to matters:

- which could not have been raised by objectors at the provisional statement stage;
- which in the authority's opinion reflect a change in the operator's circumstances; or
- where the premises has not been constructed in accordance with the plan

submitted with the application. This must be a substantial change to the plan and this licensing authority notes that it can discuss any concerns it has with the applicant before making a decision.

Replace Page 27 Appendix 3 (New Guidance)

Category of Machine	Maximum Stake	Maximum Prize
A	Unlimited	Unlimited
B1	£2	£4,000
B2	£100 (in multiples of £10)	£500
B3A	£1	£500
B3	£1	£500
B4	£1	£250
C	£1	£70
D- non money prize (other than a crane grab machine)	30p	£8
D- non money prize (crane grab machine)	£1	£50
D (money prize)	10p	£5
D – combined money and non-money prize (other than a coin pusher or penny falls machine)	10p	£8 (of which no more than £5 may be a money prize)
D – combined money and non-money prize (coin pusher or penny falls machine)	10p	£15 (of which no more than £8 may be a money prize)

Replace Page 28 – Appendix 3 (New Guidance)

Premises type	Machine Category						
	B1	B2	B3	B4	C	D	
Betting premises and tracks occupied by pool betting		Maximum of 4 machines categories B2 to D					
Bingo premises			Maximum of 8 machines in category B3 or B4		No limit on category C OR D machines		
Adult gaming centre			Maximum of 4 machines in category B3 or B4		No limit on category C OR D machines		
Family entertainment centre (with premises licence)						No limit on category C or D machines	
Family entertainment centre (with permit)						No limit on category D machines	
Clubs or miners' welfare institute (with permits)					Maximum of 3 machines in categories B3A or B4 to D		
Qualifying alcohol-licensed premises					1 or 2 machines of category C or D automatic upon notification		
Qualifying alcohol-licensed premises (with gaming machine permit)					Number of category C-D machines as specified on permit		