

**Annual Council****on****21 May 2007**Report Title: **Implementation of the Gambling Act 2005**Report of: **The Acting Head of Legal Services and Monitoring Officer**Forward Plan ref. no. **N/A**Wards Affected: **All**Report: **for Decision by Full Council****1. Purpose**

1.1 To report to Members on arrangements to implement the Gambling Act 2005 and to recommend amendments to the terms of reference of full Council, the Licensing Committee and the Licensing Sub-Committees and additions to the scheme of delegation to officers.

**2. Recommendations**

- 2.1 That Members note the recommendations of the Licensing Committee on 20 February 2007 and the General Purposes Committee on 8 March and the resolution of the full Council on 19 March 2007 to approve in principle the recommendations below.
- 2.2 That Members resolve to amend the terms of reference of the full Council and the Licensing Committee as set out in Appendices 1 and 2 to this report.
- 2.3 That Members resolve to amend the terms of reference of the Licensing Sub-Committees and the Scheme of Delegation to Officers as set out in Appendices 3 and 4 to this report, subject to formal confirmation of these changes by the Licensing Committee on 24 May.

Report Authorised by:

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### **3. Acting Director of Finance Comments**

3.1 There are no specific financial implications.

### **4. Acting Head of Legal Services Comments**

4.1 The legal and constitutional implications are set out in the main report.

### **5. Executive Summary and Reasons for Change**

5.1 The Gambling Act 2005 comes fully into force by 1 September 2007. New statutory powers under the Act will be given to the Council and its Licensing bodies and so their terms of reference will need to be amended. Additions will also be needed to the scheme of delegation to officers. Full Council is empowered to amend its own terms of reference and those of the Licensing Committee. Full Council is recommended to approve the amendments to the terms of reference of the Licensing Sub-Committees and the scheme of delegation subject to these both being formally confirmed by the Licensing Committee on 24 May 2007.

### **6. Local Government (Access to Information) Act 1985**

6.1 The following background papers were used in the preparation of this report and can be inspected at the Alexandra House, 10 Station Road, Wood Green, London N22 7TR by contacting Terence Mitchison on 020 8489 5936:

- (i) the Council's Constitution
- (ii) Gambling Commission Guidance on the Gambling Act 2005

### **7. Introduction**

7.1 The Gambling Act 2005 ("the 2005 Act") will come into force at various dates this year and fully into force by 1 September 2007. The new statutory powers will require amendments to the terms of reference of the Full Council, the Licensing Committee and its Licensing Sub-Committees.

7.2 The Licensing Committee and its Sub-Committees are already empowered to make the important decisions under the Licensing Act 2003 ("the 2003 Act"). The functions under the 2005 Act will be allocated to the Council, the Committee, the Sub-Committees and officers in a manner similar to the arrangements under the 2003 Act. This will enable Members to carry out one of the most important new functions under the 2005 Act which will be hearing contested applications for premises licences where various forms of gambling will be permitted.

- 7.3 Members will recall that full Council at its meeting on 13 November 2006 adopted the Council's Statement of Gambling Policy ("SGP") which took effect from 15 January 2007. The SGP reflects the Guidance to all Councils from the Gambling Commission and now contains the Council's own policies to be applied in dealing with applications under the 2005 Act subject to the requirement that the facts of each individual case must be taken into account.
- 7.4 The SGP is based upon the three national licensing objectives for gambling which are: (i) to prevent gambling being a source of crime or disorder, (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.
- 7.5 A version of this report was considered by the Licensing Committee on 20 February 2007 and by the General Purposes Committee on 8 March. Members of those Committees approved and recommended to full Council the changes set out in Appendices 1, 2, 3 and 4 to this report.
- 7.6 As explained in paragraph 14.1 below, all the necessary statutory powers to make these changes are only fully in force on 21 May 2007, the date for Annual Council. The formal decision-making by full Council has therefore had to wait until Annual Council to be legally effective. However, a report on this matter from the General Purposes Committee was considered and approved in principle by the last full Council meeting on 19 March 2007.
- 7.7 Members should not regard the "approval in principle" in March as fettering their discretion to reach a decision at Annual Council having full regard to all the appropriate matters, as explained in this report.
- 7.8 Members will be aware that there is a separate report on this Annual Council agenda about the proposed revisions to the Council Constitution. The changes recommended in this report on the Gambling Act have already been incorporated into the text changes shown in the revised Constitution made available to Members. Obviously, the inclusion of these changes in the new Constitution is dependent upon Members agreeing the recommendations in this report on the Gambling Act.

## **8. The terms of reference of full Council**

- 8.1 The 2005 Act requires two functions to be performed by the full Council and not delegated. The first is the adoption of the SGP. This is being added to the list of Major service plans to be adopted by full Council which are set out in Part 2, Article 4.01 (a) (vii) and also in Part 3, Section B (the Budget & Policy Framework Schedule) at paragraph (b) (vii) of the revised Constitution. These changes are shown in Appendix 1 to this report.
- 8.2 The other new statutory function for full Council is the power to pass a resolution not to issue any casino premises licences in the Borough. Such a resolution, if passed, would prevent any casino from being licensed for the next three years. After the end of three years the resolution would lapse unless passed again. No

such resolution has been passed and there are no casinos in the Borough. However, the position might change and the new power should be added to the terms of reference of the full Council set out in Part 2, Article 4.02 (u) and also in Part 3, Section 3 of the revised Constitution as shown in Appendix 1 to this report.

## **9. Fixing Fees for Applications**

9.1 The power to fix fees for applications under the 2005 Act may be exercised either by full Council or by the Licensing Committee. Legally, Members have a free choice about this arrangement. It is proposed that this is an appropriate function for the Committee. It is shown included in the new functions of the Licensing Committee at paragraph 6 (1) (e) in Appendix 2 to this report.

9.2 The discretion to set fees is limited by recent Regulations (S.I. 2007/479) which set maximum limits for fees for different categories of premises licence. In any event, Members will be under a statutory duty when fixing fees to ensure so far as possible that fee income equates to the cost of providing the relevant services.

9.3 There will be a separate report on this matter to the next meeting of the Licensing Committee on 24 May 2007 when Members will be asked to fix the fees for applications under the 2005 Act which are expected to begin arriving after 21 May.

## **10. The terms of reference of the Licensing Committee**

10.1 As is the case with the Licensing Act 2003 (“the 2003 Act”), most of the functions under the 2005 Act are referred to the Licensing Committee. The Guidance issued by the Gambling Commission recommends that decisions on individual contested applications should be delegated by the Licensing Committee to the three-Member Licensing Sub-Committees.

10.2 Under the 2003 Act, the main Committee has retained jurisdiction to hear the few cases where 500 persons or more would be present at an event. This threshold is to be retained so that contested applications under the 2005 Act involving 500 or more persons present at an event would be heard by the main Committee. The Chair also has power to refer any specially significant or difficult cases to the Committee and it is recommended that this power should apply to the 2005 Act.

10.3 The proposed terms of reference of the Committee would include the monitoring of gambling activities in the Borough and the right to receive reports on gambling matters. So far as is legally possible, the main Committee will co-ordinate the work of the Sub-Committees through reviewing the lessons of past decisions and by determining the Local Procedure Rules for hearings.

10.4 The terms of reference of the Licensing Committee being recommended to Members are shown in Appendix 2 to this report which will affect Part 3, Section C of the revised Constitution.

## **11. The terms of reference of the Licensing Sub-Committees**

11.01 If Members agree, then the Licensing Sub-Committees (“LSCs”) will be given powers under the 2005 Act in relation to gambling equivalent to those already exercised under the 2003 Act in relation to alcohol sales and entertainment licensing. The proposed terms of reference are shown in Appendix 3 to this report which will affect Part 3, Section C of the revised Constitution.

11.02 The main function will be hearing applications for a premises licence where relevant representations (i.e. objections) have been made. LSCs will also have the power to “review” premises licences for gambling where valid complaints have been made.

11.03 There are important differences between a premises licence under the 2003 Act and the 2005 Act. Under the 2005 Act the Gambling Commission will have the responsibility for granting personal licences and operating licences which must be obtained before the Council grants a premises licence to an applicant. In consequence, the LSCs will not be legitimately concerned with the suitability of an applicant or the operational details of the proposed gambling activities. The main role of the LSCs will be to consider whether any particular factors affecting the nature and location of the premises would justify refusal of the application or the imposition of special conditions in addition to the statutory conditions.

11.04 The differences in procedures between the 2003 Act and the 2005 Act are reflected in the proposed terms of reference in Appendix 3. For example, under the 2003 Act objections to the transfer of a premises licence would be made by the Police whereas under the 2005 Act objections to transfer would be made by the Gambling Commission (see sub-paragraphs 3.1 (j) and (s) in Appendix 3).

11.05 There are different procedures for Temporary Event Notices (“TENs”) under the 2003 Act as compared to Temporary Use Notices (“TUNs”) under the 2005 Act. Objections to a TEN can only be made by the Police whereas objections to a TUN would generally, but not always, be made by the Gambling Commission (see sub-paragraphs 3.1 (o) and (u) in Appendix 3).

11.06 Under the 2005 Act, unlike the 2003 Act, there is a procedure whereby a premises licence which has lapsed can be re-instated upon application. A licence will lapse if the holder dies, becomes bankrupt or goes into liquidation (companies). Either the original holder or a new applicant may apply within 6 months to take over the lapsed premises licence and this application for re-instatement would be heard by a LSC in the event of an objection.

11.07 There will be a new power for LSCs to hear applications for club gaming permits if there were objections from the Gambling Commission or the Police. Members would also hear officers’ proposals to cancel a club gaming permit (for example, where a category B4 or C gaming machine had been used by children) if the holder had requested a hearing before Members.

11.08 A club gaming permit can be granted to a club having at least 25 members which has been established wholly or mainly for purposes other than gaming, for example, a bridge or whist club or a branch of the Royal British Legion. A permit would enable the club to provide certain games of chance and up to 3 gaming machines in categories B4, C or D. Where only the gaming machines were applied for, then a club machine permit could be issued.

## **12. Amendment of the Scheme of Delegation to Officers**

12.1 Under the 2005 Act, as under the 2003 Act, there are a large number of routine management and operational functions that need to be delegated to officers to ensure the effective working of the Licensing Service. This will be necessary to enable officers to complete the large volume of work anticipated in converting existing licences under the “old” legislation into new premises licences under the 2005 Act which will come into effect on 1 September.

12.2 The same principles of delegation are recommended to apply under the 2005 Act as apply now under the 2003 Act. Members will make the decisions in all cases that require a hearing because relevant representations or objections have been received against the application. Other cases that are not contentious will be decided by officers on the basis of the policies set out in the adopted SGP.

12.3 In relation to “reviews”, officers would act to rule out complaints that were clearly frivolous, vexatious or repetitious. Valid applications for review of a premises licence under the 2005 Act would be decided by Members of a LSC after hearing the evidence from the parties.

12.4 There will be several new statutory procedures for the grant of various types of permit under the 2005 Act. Most of these applications for permits must be notified to the Police and the Gambling Commission which may object but there is no provision for objections by local residents or others. Most of these permits would be routine matters which could be dealt with by officers within the policies in the SGP. However, the club gaming and club machine permits might be more significant and are therefore proposed for Members’ decision.

12.5 Officers would also be given delegated powers to enforce the 2005 Act, carry out registration and other routine operational duties and exercise procedural functions under the Regulations made under the Act. The recommended additional delegated powers are shown in Appendix 4 to this report as amendments to Part F.7, section 4 of the Constitution. They would be granted to the Director, Urban Environment, the Assistant Director Enforcement and the Licensing Manager.

## **13. Amendments to the Local Licensing Procedure Rules**

13.1 Hearings under the 2005 Act relating to gambling activities will be substantially similar to the hearings that have been regularly held into contested applications under the 2003 Act relating to alcohol sales and public entertainments. In both cases there will be a broad framework established by central Government through Regulations that

set out the “ground rules” for hearings and preliminary matters such as the notification requirements and time limits for hearings. The details of procedure are left to local discretion subject to the relevant Regulations and the legal rules of “Natural Justice” i.e. fairness to all parties.

13.2 The Council already has Local Licensing Procedure Rules that have operated successfully to regulate the numerous hearings of contested applications under the 2003 Act. The draft Regulations issued by central Government for hearings under the 2005 Act contain very similar ground rules. The course of action proposed is for the existing Local Licensing Procedure Rules to be extended so that they apply to hearings under the 2005 Act. The detailed changes needed to achieve this will be contained in a the report to be submitted to the Licensing Committee on 24 May

13.3 Under the revised Council Constitution the Local Licensing Procedure Rules are to be removed from the Constitution along with other procedures and protocols that only apply to individual Committees or Sub-Committees. If Members agree the changes proposed for the Constitution, then the amendments to the Local Licensing Procedure Rules are exclusively within the remit of the Licensing Committee and do not require the approval of full Council.

#### **14. Timing of the Changes**

14.1 Most of the statutory provisions in the 2005 Act relating to applications for premises licences and many other provisions will come into force after 30 April 2007. Some of the new statutory powers including those relating to the fixing of fees will only come into effect on 21 May. For this reason the making of formal decisions on the arrangements to implement the 2005 Act has had to await the meeting of Annual Council on 21 May.

14.2 After 21 May the holders of existing licences under the “old” legislation, and applicants for the new premises licences under the 2005 Act, can both start making applications to this Council. In the event of objections, there would be hearings before LSCs but such hearings would not have to be held at the earliest until late June 2007.

14.3 The holders of existing licences will only be able to claim “grand-father” rights, and avoid possible objections and hearings, if they submit their applications to convert their old licences by 31 July 2007.

14.4 The new premises licences under the 2005 Act will only come into effect on 1 September 2007. On that date the 2005 Act will be fully in force and the “old” legislation, such as the Gaming Act 1968 will be repealed.

#### **15. Comments of the Acting Head of Legal Services**

15.1 The legal and constitutional implications are set out in the main report.

#### **16. Comments of the Acting Director of Finance**

16.1 There are no specific financial implications.

## **17. Use of Appendices / Tables / Photographs**

17.1 Appendix 1 to this report sets out the proposed amendment to the terms of reference of the full Council in Part 2 Article 4, Part 3 Section B and Part 3 Section C of the revised Constitution.

17.2 Appendix 2 to this report sets out the proposed amendments to the terms of reference of the Licensing Committee in Part 3, Section C of the revised Constitution.

17.3 Appendix 3 to this report sets out the proposed amendments to the terms of reference of the Licensing Sub-Committees in Part 3, Section C of the revised Constitution.

17.4 Appendix 4 to this report shows the proposed amendments to section 4 of Part F.7 in Appendix E of the revised Constitution (Scheme of Delegation to Officers).