



Exeter City Council

To the Chair and Members
of the Licensing Committee

Please ask for: Howard Bassett
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Email: howard.bassett@exeter.gov.uk
Our ref:
Your ref:

A meeting of the **LICENSING COMMITTEE** will be held in the Rennes Room, Civic Centre, Paris Street, Exeter on **TUESDAY 24 JULY 2012 at 5.30 pm** to consider the following business.

If you have an enquiry regarding any items on this agenda, please contact Howard Bassett, on **Exeter 265107**.

Pages

AGENDA

1 **MINUTES**

To sign the minutes of the meetings held on 12 June 2012.

2 **DECLARATIONS OF INTEREST**

Councillors are reminded of the need to declare personal and prejudicial interests, including the nature and extent of such interests, in relation to business on the agenda, before any discussion takes place on the item. Councillors requiring clarification should seek the advice of the Monitoring Officer prior to the day of the meeting.

3 **LOCAL GOVERNMENT (ACCESS TO INFORMATION) ACT 1985 -
EXCLUSION OF PRESS AND PUBLIC**

To pass the following resolution:-

RESOLVED that, under Section 100A (4) of the Local Government Act 1972, the press and public be excluded from the meeting for items 8 to 11 on the grounds that they involve the likely disclosure of exempt information as defined in paragraphs 1 and 2 of Part I of Schedule 12A of the Act.

Office of Corporate Manager (Democratic & Civic Support)

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10 **APPLICATION FOR THE ISSUE OF A HACKNEY CARRIAGE VEHICLE LICENCE (MR S.R.)** 59 - 94

To consider the report of the Assistant Director Environment.

(Report circulated to Members)

11 **APPLICATION FOR THE ISSUE OF A HACKNEY CARRIAGE VEHICLE LICENCE (MR S.B.)** 95 - 96

To consider the report of the Assistant Director Environment.

(Report circulated to Members)

Membership will be drawn from the following members of the Licensing Committee -
Councillors Macdonald (Chair), Owen (Deputy Chair), Choules, Clark, Dawson, D J Henson,
Leadbetter, Payne, Pearson, Robson, Ruffle, Shiel, Tippins and Winterbottom

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**EXETER CITY COUNCIL
LICENSING COMMITTEE
24 JULY 2012**

**GAMBLING ACT 2005
REVIEW OF GAMBLING POLICY: DRAFT POLICY TO BE USED AS
CONSULTATION DOCUMENT**

1. PURPOSE OF THE REPORT

- 1.1 The Gambling Act 2005 introduced significant changes to the Licensing Law in England and Wales. This report refers to one of the main provisions of the Act, the Gambling Policy Statement and the requirement to review it. The purpose of this report is to inform Members of the document that is being used as a consultation document to fulfil the obligation for a three yearly review.

2. BACKGROUND

- 2.1 Local Authorities were required to develop and adopt a Gambling Policy in consultation with the trade and local community and this must set out the authority's general approach to gambling licence applications. We are required to review the policy at least every three years. The time has now come for that review to take place.
- 2.2 A copy of the document to be circulated is attached at appendix 1 and is located at <http://www.exeter.gov.uk/CHttpHandler.ashx?id=16122&p=0> if required.
- 2.3 As there have been no changes to legislation relating to the Gambling Act it is felt that no changes to policy are necessary at this time. The policy has now been in place since 2005 and has not been challenged in any way nor been a cause of concern for the Assistant Director Environment in that time.
- 2.4 One minor change is being consulted upon at the time of writing but that consultation will not be completed in time for this to be included in the policy
- 2.5 The committee members are consultees for the purposes of this legislation and any comments they feel are appropriate can be fed back to the Assistant Director Environment through the website, via e-mail or by post.

3. OPTIONS

- 3.1 Approve the draft Policy proposals and instruct that a consultation be carried out as required. Any and all comments that are received in response to the consultation to be brought back to the Licensing committee as set out in the timescale below.

4. TIMETABLE

- End of July 2012 revised Policy circulated for consultation.
- October 2012 Consultation period ends.
- 27 November 2012, Gambling Policy (amended as necessary) to Licensing Committee with recommendation for approval to Full Council.
- 11 December 2012 Licensing Policy to Full Council for approval.

5. CONCLUSION

- 5.1 The Gambling Act 2005 requires the Council to have reviewed our Gambling Policy Statement and for it to be implemented by no later than 4 January 2013.
- 5.2 The revised Policy document (attached) will be used as a basis for consultation with Members of the Council, businesses and resident's representatives and others. It will be brought back to the Licensing Committee on 27 November 2012 to consider any representations that have been received and to enable a recommendation for the adoption of the final (reviewed) Policy to be made to Full Council on 11 December 2012.

6. RECOMMENDED

- 6.1 That the Committee resolves that the draft policy document at appendix 1 to be circulated and consulted upon as required with any responses being brought to the November Committee for consideration prior to the adoption of the policy.

Assistant Director Environment

Community and Environment
Local Government (Access to Information) Act 1985 (as amended)
Background papers used in compiling this report:
None



Exeter City Council

Statement of Principles

UNDER THE GAMBLING ACT 2005

For the period 4 January 2010 to 13 January 2013

Licensing Committee 28 July 2009
Consultation until 12 October 2009
Adopted by Council December 2009

STATEMENT OF PRINCIPLES
Gambling Act 2005
(Version 2)

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This Statement of Licensing Principles was approved by [Exeter City Council in December 2009

All references to the Guidance refer to the Gambling Commission's Guidance for Local Authorities, 3rd Edition, published April 2009.

PART A

1. The Licensing Objectives

In exercising most of their functions under the Gambling Act 2005, licensing authorities must have regard to the licensing objectives as set out in section 1 of the Act. The licensing objectives are:

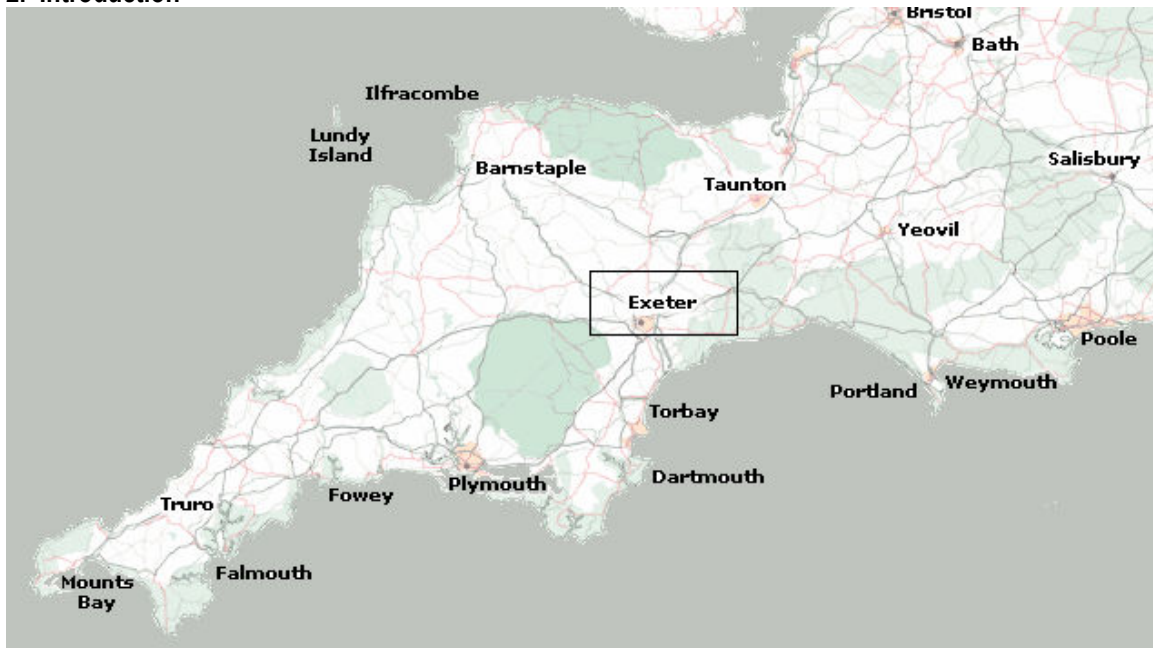
- Preventing gambling from being a source of crime or disorder, being associated with crime or disorder or being used to support crime
- Ensuring that gambling is conducted in a fair and open way
- Protecting children and other vulnerable persons from being harmed or exploited by gambling

It should be noted that the Gambling Commission has stated: "The requirement in relation to children is explicitly to protect them from being harmed or exploited by gambling".

This licensing authority is aware that, as per Section 153, in making decisions about premises licences and temporary use notices it should aim to permit the use of premises for gambling in so far as it thinks it:

- in accordance with any relevant code of practice issued by the Gambling Commission
- in accordance with any relevant guidance issued by the Gambling Commission
- reasonably consistent with the licensing objectives and
- in accordance with the authority's statement of licensing policy

2. Introduction

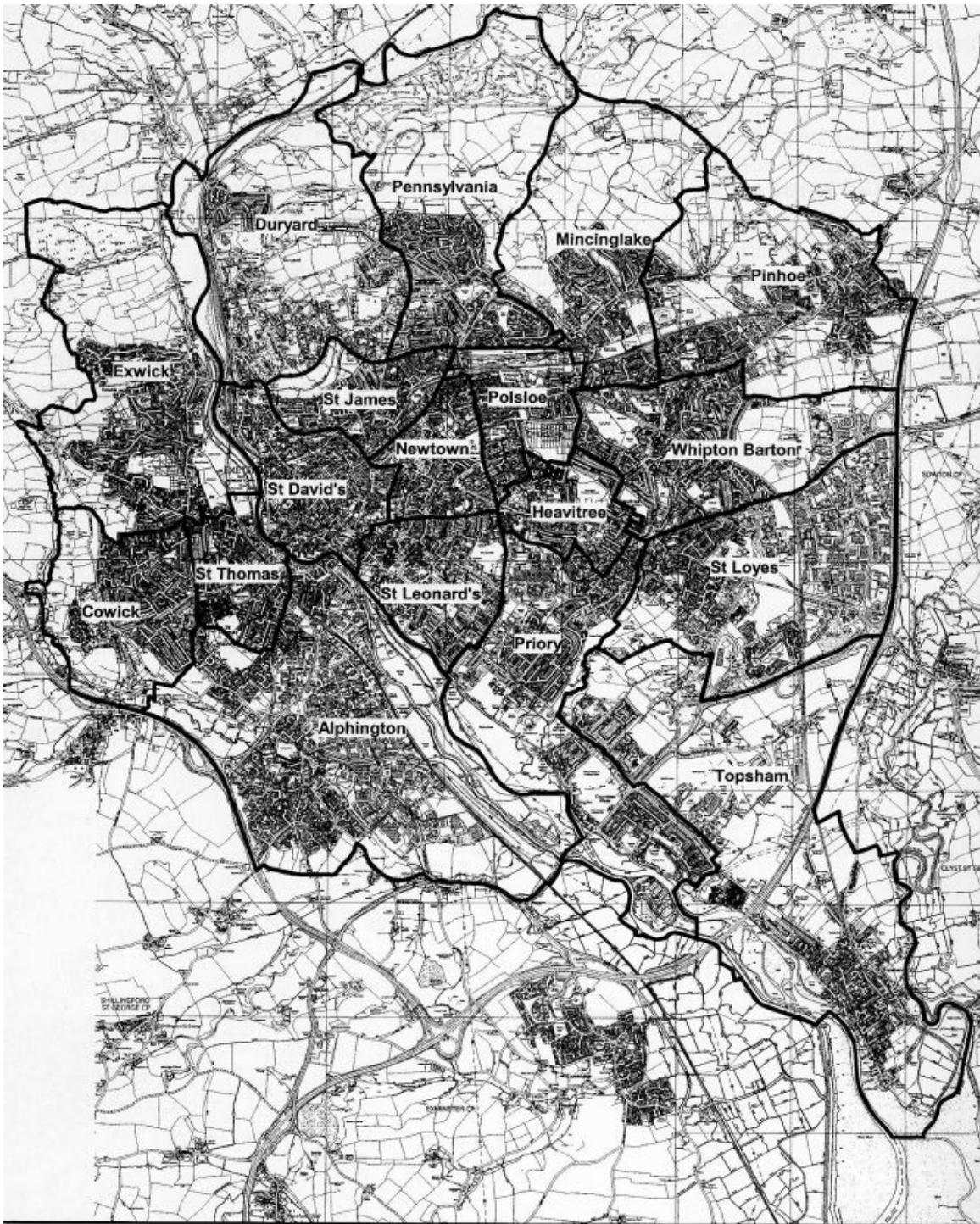


Exeter is a mainly urban Authority located towards the East of the County of Devon and bordered by the more rural Authorities of East Devon, Mid Devon and Teignbridge. Exeter is the regional capital of Devon comprising 4774 hectares. Long established as a cultural and visitor centre, it attracts large numbers of tourists and holiday makers as well as providing attractions to the surrounding towns and villages of east and mid Devon.

To the South and west of Exeter is Plymouth and Torbay; between them they have three casinos all granted prior to the gambling Act 2005 coming into force. Exeter lies at the end of the M5 corridor and has a well established airport as well as excellent rail and bus links to London and the rest of the Country. The current arrangements for night time travel in the City are poor. The question as to whether there are sufficient taxis

available during the evenings and at night is kept under constant review.

The Council area has a population of approximately 122,400 [Office national Statistics June 2007] this figure includes the student population.



Scale 1:45000
 Revised ward boundaries



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5 Feb 2004

Planning Services, Exeter City Council, Civic Centre, Paris Street, Exeter, EX1 1NN

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Exeter City Council

Licensing authorities are required by the Gambling Act 2005 to publish a statement of the principles which they propose to apply when exercising their functions. This statement must be published at least every three years. The statement must also be reviewed from "time to time" and any amended parts re-consulted upon. The statement must be then re-published.

Exeter City Council consulted widely upon this statement before finalising and publishing. A list of those persons consulted is provided below.

The Gambling Act requires that the following parties are consulted by Licensing Authorities:

- The Chief Officer of Police;
- One or more persons who appear to the authority to represent the interests of persons carrying on gambling businesses in the authority's area;
- 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 the Gambling Act 2005.

List of persons this authority consulted:

- Citizens Advice Bureau
- Crime and Disorder Reduction Partnership [CDRP]
- Devon and Cornwall Constabulary.
- Services Devon County Council Social services /Education dept
- Devon and Somerset fire and rescue service
- Environmental Health
- Gamblers Anonymous
- Gambling Commission
- Gamcare
- Local Business and their representatives
- Local residents and their representatives
- Mencap
- NSPCC
- Representatives of existing licence holders
- Voluntary and community organisations working with children

Our consultation took place between 29 July and 20 October and we followed the HM Government Code of Practice on Consultation (published July 2008), which is available at:

<http://www.berr.gov.uk/files/file47158.pdf>

The full list of comments made and the consideration by the Council of those comments is available by request to: Principle Licensing Officer 01392 265434 or the Council's website at: www.exeter.gov.uk/gambling

The policy was approved at a meeting of the Full Council on 7 December 2006 date and was published via our website on x date. Copies were placed in the public libraries and hard copies available from the Civic Centre Paris Street Exeter..

Should you have any comments as regards this policy statement please send them via e-mail or letter to the following contact:

Name: MR IAN LEY

Address: CIVIC CENTRE PARIS STREET EXETER EX1 1RQ

E-mail: ian.ley@exeter.gov.uk OR licensing@exeter.gov.uk

It should be noted that this policy statement will not override the right of any person to make an application, make representations about an application, or apply for a review of a licence, as each will be considered on its own merits and according to the statutory requirements of the Gambling Act 2005.

3. Declaration

In producing the final statement, this licensing authority declares that it has had regard to the licensing objectives of the Gambling Act 2005, the Guidance to Licensing Authorities issued by the Gambling Commission, and any responses from those consulted on the statement.

4. Responsible Authorities

The licensing authority is required by regulations to state the principles it will apply in exercising its 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. The principles are:

- the need for the body to be responsible for an area covering the whole of the licensing authority's area; and
- the need for the body to be answerable to democratically elected persons, rather than any particular vested interest group.

In accordance with the suggestion in the Gambling Commission's Guidance for local authorities, this authority designates the Local Safeguarding Children Board for this purpose.

The contact details of all the Responsible Authorities under the Gambling Act 2005 are available via the Council's website at: www.exeter.gov.uk/gambling

5. Interested parties

Interested parties can make representations about licence applications, or apply for a review of an existing licence. These parties are defined in the Gambling Act 2005 as follows:

"For the purposes of this Part a person is an interested party 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 applications is made, the person-

- 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, or
- c) represents persons who satisfy paragraph (a) or (b)"

The licensing authority is required by regulations to state the principles it will apply in exercising its powers under the Gambling Act 2005 to determine whether a person is an interested party. The principles are:

Each case will be decided upon its merits. This authority will not apply a rigid rule to its decision making. It will consider the examples of considerations provided in the Gambling Commission's Guidance to licensing authorities at 8.11 to 8.19 It will also consider the Gambling Commission's Guidance that "has business interests" should be given the widest possible interpretation and include partnerships, charities, faith groups and medical practices.

Interested parties can be persons who are democratically elected such as councillors and MP's. No specific evidence of being asked to represent an interested person will be required as long as the councillor / MP represent the ward likely to be affected. Likewise, parish councils likely to be affected will be considered to be interested parties. Other than these however, this authority will generally require written evidence that a person/body (e.g. an advocate / relative) 'represents' someone who either lives sufficiently close to the premises to be likely to be affected by the authorised activities and/or has business interests that might be affected by the authorised activities. A letter from one of these persons, requesting the representation is sufficient.

If individuals wish to approach councillors to ask them to represent their views then care should be taken that the councillors are not part of the Licensing Committee dealing with the licence application. If there are any doubts then please contact the licensing department (*insert contact details*).

6. Exchange of Information

Licensing authorities are required to include in their statements the principles to be applied by the authority 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 functions under section 350 of the Act with the respect to the exchange of information between it and the other persons listed in Schedule 6 to the Act.

The principle that this licensing authority applies is that it will act in accordance with the provisions of the Gambling Act 2005 in its exchange of information which includes the provision that the Data Protection Act 1998 will not be contravened. The licensing authority will also have regard to any Guidance issued by the Gambling Commission to licensing authorities on this matter, as well as any relevant regulations issued by the Secretary of State under the powers provided in the Gambling Act 2005.

Should any protocols be established as regards information exchange with other bodies then they will be made available.

Or:

Please contact the licensing department licensing@exeter.gov.uk for further information on our protocols.

7. Enforcement

Licensing authorities are required by regulation under the Gambling Act 2005 to state 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.

This licensing authority's principles are that:

It will be guided by the Gambling Commission's Guidance to licensing authorities and will endeavour to be:

- Proportionate: regulators should only intervene when necessary: remedies should be appropriate to the risk posed, and costs identified and minimised;
- Accountable: regulators must be able to justify decisions, and be subject to public scrutiny;
- Consistent: rules and standards must be joined up and implemented fairly;
- Transparent: regulators should be open, and keep regulations simple and user friendly; and
- Targeted: regulation should be focused on the problem, and minimise side effects.

As per the Gambling Commission's Guidance to licensing authorities this licensing authority will endeavour to avoid duplication with other regulatory regimes so far as possible.

This licensing authority has adopted and implemented a risk-based inspection programme, based on;

- The licensing objectives
- Relevant codes of practice
- Guidance issued by the Gambling Commission, in particular at Part 36
- The principles set out in this statement of licensing policy

The main enforcement and compliance role for this licensing authority in terms of the Gambling Act 2005 is to ensure compliance with the premises licences and other permissions which it authorises. The Gambling Commission is the enforcement body for the operating and personal licences. It is also worth noting that concerns about manufacture, supply or repair of gaming machines are not dealt with by the licensing authority but should be notified to the Gambling Commission.

This licensing authority also keeps itself informed of developments as regards the work of the Better Regulation Executive in its consideration of the regulatory functions of local authorities.

Bearing in mind the principle of transparency, this licensing authority's enforcement/compliance protocols/written agreements are available upon request to the licensing department (licensing@exeter.gov.uk). Our risk methodology is also available upon request.

8. Licensing Authority functions

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*
- Issue *Provisional Statements*
- Regulate *members' clubs* and *miners' 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 sell/supply alcohol for consumption on the licensed premises, under the Licensing Act 2003, where there are more than two 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 are not involved in licensing remote gambling at all, which is regulated by the Gambling Commission via operating licences.

PART B PREMISES LICENCES: CONSIDERATION OF APPLICATIONS

1. General Principles

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

This licensing authority is aware that in making decisions about premises licences it should aim to permit the use of premises for gambling in so far as it thinks it is:

- in accordance with any relevant code of practice issued by the Gambling Commission;
- in accordance with any relevant guidance issued by the Gambling Commission ;
- reasonably consistent with the licensing objectives; and
- in accordance with the authority's statement of licensing policy.

It is appreciated that as per the Gambling Commission's Guidance to licensing authorities "moral objections to gambling are not a valid reason to reject applications for premises licences" (except as regards any 'no casino resolution' - see section on Casinos - page 12) and also that unmet demand is not a criterion for a licensing authority.

(ii) 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."

This 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 names 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?

This 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 from the Gambling Commission Guidance,

Casinos

- The principal access entrance to the premises must be from a street (as defined at 7.23 of the Guidance)
- No entrance to a casino must be from premises that are used wholly or mainly by children and/or young persons
- No customer must be able to enter a casino directly from any other premises which holds a gambling premises licence

Adult Gaming Centre

- No customer must 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

- No customer should be able to access the premises directly from:
 - a casino
 - an adult gaming centre

Bingo Premises

- No customer must be able to access the premise directly from:
 - a casino
 - an adult gaming centre
 - a betting premises, other than a track

Family Entertainment Centre

- No customer must 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.

More detailed examples of the circumstances in which such a licence may be granted can be found at paragraphs 7.59 – 7.66 of the Guidance.

(iv) Location - This licensing authority is aware that demand issues cannot be considered with regard to the location of premises but that considerations in terms of the licensing objectives are relevant to its decision-making. As per the Gambling Commission's Guidance to licensing authorities, this authority will pay particular attention to the protection of children and vulnerable persons from being harmed or exploited by gambling, as well as issues of crime and disorder. Should any specific policy be decided upon as regards areas where gambling premises should not be located, this statement will be updated. It should be noted that any such policy does not preclude any application being made and each application will be decided on its merits, with the onus upon the applicant showing how potential concerns can be overcome.

(v) Planning:

The Gambling Commission Guidance to Licensing Authorities states:

7.59 – In determining applications the licensing authority has a duty to take into consideration all relevant matters and not to take into consideration any irrelevant matters, i.e. those not related to gambling and the licensing objectives. One example of an irrelevant matter would be the likelihood of the applicant obtaining planning permission or building regulations approval for their proposal.

This authority will not take into account irrelevant matters as per the above guidance. In addition this authority notes the following excerpt from the Guidance:

7.66 - When dealing with a premises licence application for finished buildings, the licensing authority should

not take into account whether those buildings have or comply with the necessary planning or building consents. Those matters should be dealt with under relevant planning control and building regulation powers, and not form part of the consideration for the premises licence. Section 210 of the 2005 Act prevents licensing authorities taking into account the likelihood of the proposal by the applicant obtaining planning or building consent when considering a premises licence application. Equally the grant of a gambling premises licence does not prejudice or prevent any action that may be appropriate under the law relating to planning or building.

(vi) Duplication with other regulatory regimes - This licensing authority seeks to avoid any duplication with other statutory / regulatory systems where possible, including planning. This authority will not consider whether a licence application is likely to be awarded planning permission or building regulations approval, in its consideration of it. It will though, listen to, and consider carefully, any concerns about conditions which are not able to be met by licensees due to planning restrictions, should such a situation arise.

When dealing with a premises licence application for finished buildings, this authority will not take into account whether those buildings have to comply with the necessary planning or buildings consents. Fire or health and safety risks will not be taken into account, as these matters are dealt with under relevant planning control, buildings and other regulations and must not form part of the consideration for the premises licence.

Licensing objectives - Premises licences granted must be reasonably consistent with the licensing objectives. With regard to these objectives, this licensing authority has considered the Gambling Commission's Guidance to licensing authorities and some comments are made below.

Preventing gambling from being a source of crime or disorder, being associated with crime or disorder or being used to support crime - This licensing authority is aware that the Gambling Commission takes a leading role in preventing gambling from being a source of crime. The Gambling Commission's Guidance does however envisage that licensing authorities should pay attention to the proposed location of gambling premises in terms of this licensing objective. Thus, where an area has known high levels of organised crime this authority will consider carefully whether gambling premises are suitable to be located there and whether conditions may be suitable such as the provision of door supervisors. This licensing authority is aware of the distinction between disorder and nuisance and will consider factors (for example whether police assistance was required and how threatening the behaviour was to those who could see it) so as to make that distinction.

Ensuring that gambling is conducted in a fair and open way - This licensing authority has noted that the Gambling Commission states that it generally does not expect licensing authorities to be concerned with ensuring that gambling is conducted in a fair and open way as this will be addressed via operating and personal licences. *For LA'S with tracks*: There is however, more of a role with regard to tracks which is explained in more detail in the 'tracks' section see page 14).

Protecting children and other vulnerable persons from being harmed or exploited by gambling - This licensing authority has noted the Gambling Commission's Guidance that this objective means preventing children from taking part in gambling (as well as restriction of advertising so that gambling products are not aimed at or are, particularly attractive to children). The licensing authority will therefore consider, as suggested in the Gambling Commission's Guidance, whether specific measures are required at particular premises, with regard to this licensing objective. Appropriate measures may include supervision of entrances / machines, segregation of areas etc.

This licensing authority is also aware of the Gambling Commission Codes of Practice as regards this licensing objective, in relation to specific premises.

As regards the term “vulnerable persons” it is noted that the Gambling Commission does not seek to offer a definition but states that “it will for regulatory purposes 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.” This licensing authority will consider this licensing objective on a case by case basis.

Conditions - Any conditions attached to licences will be proportionate and will be:

- relevant to the need to make the proposed building suitable as a gambling facility;
- directly related to the premises and the type of licence applied for;
- fairly and reasonably related to the scale and type of premises; and
- reasonable in all other respects.

Decisions upon individual conditions will be made on a case by case basis, although there will be a number of measures this licensing authority will consider utilising should there be a perceived need, such as the use of supervisors, appropriate signage for adult only areas etc. There are specific comments made in this regard under some of the licence types below. This licensing authority will also expect the licence applicant to offer his/her own suggestions as to the way in which the licensing objectives can be met effectively.

This licensing authority will also consider specific measures which may be required for buildings which are 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 Commission's Guidance.

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

- 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;
- only adults are admitted to the area where these machines are located;
- access to the area where the machines are located is supervised;
- the area where these machines are located is arranged so that it can be observed by the staff or the licence holder; and
- 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.

These considerations will apply to premises including buildings where multiple premises licences are applicable.

This licensing authority is aware that tracks may be subject to one or more than one premises licence, provided each licence relates to a specified area of the track. As per the Gambling Commission's Guidance, this licensing authority will consider the impact upon the third licensing objective and the need to ensure that entrances to each type of premises are distinct and that children are excluded from gambling areas where they are not permitted to enter.

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

- any condition on the premises licence which makes it impossible to comply with an operating licence condition;
- conditions relating to gaming machine categories, numbers, or method of operation;

- 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); and
- conditions in relation to stakes, fees, winning or prizes.

Door Supervisors - The Gambling Commission advises in its Guidance to Licensing Authorities that if a licensing authority is concerned that a premises may attract disorder or be subject to attempts at unauthorised access (for example by children and young persons) then it may require that the entrances to the premises are controlled by a door supervisor, and is entitled to impose a premises licence to this effect.

Where it is decided that supervision of entrances/machines is appropriate for particular cases, a consideration of whether these need to be SIA licensed or not will be necessary. It will not be automatically assumed that they need to be licensed, as the statutory requirements for different types of premises vary (as per the Guidance, Part 33).

2. Adult Gaming Centres

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.

This licensing authority may consider measures to meet the licensing objectives such as:

- Proof of age schemes
- CCTV
- Supervision of entrances / machine areas
- Physical separation of areas
- Location of entry
- Notices / signage
- Specific opening hours
- Self-exclusion schemes
- Provision of information leaflets / helpline numbers for organisations such as GamCare.

This list is not mandatory, nor exhaustive, and is merely indicative of example measures.

3. (Licensed) Family Entertainment Centres:

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, for example, that there will be sufficient measures to ensure that under 18 year olds do not have access to the adult only gaming machine areas.

This licensing authority may consider measures to meet the licensing objectives such as:

- CCTV
- Supervision of entrances / machine areas
- Physical separation of areas
- Location of entry
- Notices / signage
- Specific opening hours
- Self-exclusion schemes
- Provision of information leaflets / helpline numbers for organisations such as GamCare.

- Measures / training for staff on how to deal with suspected truant school children on the premises

This list is not mandatory, nor exhaustive, and is merely indicative of example measures.

This licensing authority will, as per the Gambling Commission's guidance, refer to the Commission's website to see any conditions that apply to operating licences covering the way in which the area containing the category C machines should be delineated. This licensing authority will also make itself aware of any mandatory or default conditions on these premises licences, when they have been published.

4. Casinos

No Casinos resolution - This licensing authority has not passed a 'no casino' resolution under Section 166 of the Gambling Act 2005, but is aware that it has the power to do so. Should this licensing authority decide in the future to pass such a resolution, it will update this policy statement with details of that resolution. Any such decision will be made by the Full Council.

5. Bingo premises

This licensing authority notes that the Gambling Commission's Guidance states:

Licensing authorities will need to satisfy themselves that bingo can be played in any bingo premises for which they issue a premises licence. This will be a relevant consideration where the operator of an existing bingo premises applies to vary their licence to exclude an area of the existing premises from its ambit and then applies for a new premises licence, or multiple licences, for that or those excluded areas.

This authority also notes the Guidance at paragraph 18.8 regarding the unusual circumstances in which the splitting of a pre-existing premises into two adjacent premises might be permitted, and in particular that it is not permissible to locate sixteen category B3 gaming machines in one of the resulting premises, as the gaming machine entitlement for that premises would be exceeded.

Children and young people are allowed into bingo premises, however they are not permitted to participate in the bingo and if category B or C machines are made available for use these must be separated from areas where children and young people are allowed.

6. Betting premises

Betting machines - This licensing authority will, as per the Gambling Commission's Guidance, 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 monitor the use of the machines by children and young persons (it is an offence for those under 18 to bet) or by vulnerable people, when considering the number/nature/circumstances of betting machines an operator wants to offer.

For authorities with tracks:

7. Tracks

This licensing authority is aware that tracks may be subject to one or more than one premises licence, provided each licence relates to a specified area of the track. As per the Gambling Commission's Guidance, this licensing authority will especially consider the impact upon the third licensing objective (i.e. the protection of children and vulnerable persons from being harmed or exploited by gambling) and the need to ensure that entrances to each type of premises are distinct and that children are excluded from gambling areas where they are not permitted to enter.

This authority will therefore expect the premises licence applicant to demonstrate suitable measures to ensure that children do not have access to adult only gaming facilities. It is noted that children and young persons will be permitted to enter track areas where facilities for betting are provided on days when dog-racing and/or horse racing takes place, but that they are still prevented from entering areas where gaming machines (other than category D machines) are provided.

This licensing authority may consider measures to meet the licensing objectives such as:

- Proof of age schemes
- CCTV
- Supervision of entrances / machine areas
- Physical separation of areas
- Location of entry
- Notices / signage
- Specific opening hours
- Self-exclusion schemes
- Provision of information leaflets / helpline numbers for organisations such as GamCare

This list is not mandatory, nor exhaustive, and is merely indicative of example measures.

Gaming machines - Where the applicant holds a pool betting operating licence and is going to use the entitlement to four gaming machines, machines (other than category D machines) should be located in areas from which children are excluded.

Betting machines - This licensing authority will, as per part 6 of the Gambling Commission's Guidance, take into account the size of the premises and the ability of staff to monitor the use of the machines by children and young persons (it is an offence for those under 18 to bet) or by vulnerable people, when considering the number/nature/circumstances of betting machines an operator proposes to offer.

Applications and plans

The Gambling Act (s51) requires applicants to submit plans of the premises with their application, in order to ensure that the licensing authority has the necessary information to make an informed judgement about whether the premises are fit for gambling. The plan will also be used for the licensing authority to plan future premises inspection activity. (See Guidance to Licensing Authorities, para 20.28).

Plans for tracks do not need to be in a particular scale, but should be drawn to scale and should be sufficiently detailed to include the information required by regulations. (See Guidance to Licensing Authorities, para 20.29).

Some tracks may be situated on agricultural land where the perimeter is not defined by virtue of an outer wall or fence, such as point-to-point racetracks. In such instances, where an entry fee is levied, track premises licence holders may erect temporary structures to restrict access to premises (See Guidance to Licensing Authorities, para 20.31).

In the rare cases where the outer perimeter cannot be defined, it is likely that the track in question will not be specifically designed for the frequent holding of sporting events or races. In such cases betting facilities may be better provided through occasional use notices where the boundary premises do not need to be defined. (See Guidance to Licensing Authorities, para 20.32).

This authority appreciates that it is sometimes difficult to define the precise location of betting areas on tracks. The precise location of where betting facilities are provided is not required to be shown on track plans, both by virtue of the fact that betting is permitted anywhere on the premises and because of the difficulties associated with pinpointing exact locations for some types of track. Applicants should provide sufficient information that this authority can satisfy itself that the plan indicates the main areas where betting might take place. For racecourses in particular, any betting areas subject to the "five times rule" (commonly known as betting rings) must be indicated on the plan. (See Guidance to Licensing Authorities, para 20.33).

8. Travelling Fairs

This licensing authority is responsible for deciding 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 applicant falls within the statutory definition of a travelling fair.

It is noted that the 27-day statutory maximum for the land being used as a fair applies on a per calendar year basis, 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.

9. Provisional Statements

Developers may wish to apply to this 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.

10. Reviews:

Requests for a review of a premises licence can be made by interested parties or responsible authorities; however, it is for the licensing authority to decide whether the review is to be carried-out. This will be on the basis of whether the request for the review is relevant to the matters listed below;

- in accordance with any relevant code of practice issued by the Gambling Commission;
- in accordance with any relevant guidance issued by the Gambling Commission;
- reasonably consistent with the licensing objectives; and
- in accordance with the authority's statement of principles.

The request for the review will also be subject to the consideration by the authority as to whether the request is frivolous, vexatious, or whether it will certainly not cause this authority to wish to alter/revoke/suspend the licence, or whether it is substantially the same as previous representations or requests for review.

The licensing authority can also initiate a review of a particular premises licence, or a particular class of premises licence on the basis of any reason which it thinks is appropriate.

Once a valid application for a review has been received by the licensing authority, representations can be made by responsible authorities and interested parties during a 28 day period. This period begins 7 days after the application was received by the licensing authority, who will publish notice of the application within 7 days of receipt.

The licensing authority must carry out the review as soon as possible after the 28 day period for making representations has passed.

The purpose of the review will be to determine whether the licensing authority should take any action in relation to the licence. If action is justified, the options open to the licensing authority are:-

- (a) add, remove or amend a licence condition imposed by the licensing authority;
- (b) exclude a default condition imposed by the Secretary of State (e.g. opening hours) or remove or amend such an exclusion;
- (c) suspend the premises licence for a period not exceeding three months; and
- (d) revoke the premises licence.

In determining what action, if any, should be taken following a review, the licensing authority must have regard to the principles set out in section 153 of the Act, as well as any relevant representations.

In particular, the licensing authority may also initiate a review of a premises licence on the grounds that a premises licence holder has not provided facilities for gambling at the premises. This is to prevent people from applying for licences in a speculative manner without intending to use them.

Once the review has been completed, the licensing authority must, as soon as possible, notify its decision to:

- the licence holder
- the applicant for review (if any)
- the Commission
- any person who made representations
- the chief officer of police or chief constable; and
- Her Majesty's Commissioners for Revenue and Customs

PART C

Permits / Temporary & Occasional Use Notice

1. Unlicensed Family Entertainment Centre gaming machine permits (Statement of Principles on Permits - Schedule 10 paragraph 7)

Where a premises does not hold a premises licence but wishes to provide gaming machines, it may apply 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 (Section 238).

The Gambling Act 2005 states that a licensing authority may prepare a *statement of principles* that they propose to consider in determining the suitability of an applicant for a permit and in preparing this statement, and/or considering applications, it need not (but may) have regard to the licensing objectives and shall have regard to any relevant guidance issued by the Commission under section 25. The Gambling Commission's Guidance to licensing authorities also states: "In their three year licensing policy statement, licensing authorities may include a statement of principles that they propose to apply when exercising their functions in considering applications for permits....., licensing authorities will want to give weight to child protection issues." (24.6)

Guidance also states: "...An application for a permit may be granted only if the licensing authority is satisfied that the premises will be used as an unlicensed FEC, and if the chief officer of police has been consulted on the application....Licensing authorities might wish to consider asking the applicant to demonstrate:

- a full understanding of the maximum stakes and prizes of the gambling that is permissible in unlicensed FECs;
- that the applicant has no relevant convictions (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. (24.7)

It should be noted that a licensing authority cannot attach conditions to this type of permit.

Statement of Principles = This licensing authority will expect the applicant to show that there are policies and procedures in place to protect children from harm. Harm in this context is not limited to harm from gambling but includes wider child protection considerations. The efficiency of such policies and procedures

will each be considered on their merits, however, they may include appropriate measures / training for staff as regards suspected truant school children on the premises, measures / training covering how staff would deal with unsupervised very young children being on the premises, or children causing perceived problems on / around the premises. This licensing authority will also expect, as per Gambling Commission Guidance, that applicants demonstrate a full understanding of the maximum stakes and prizes of the gambling that is permissible in unlicensed FECs; that the applicant has no relevant convictions (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.

2. (Alcohol) Licensed premises gaming machine permits - (Schedule 13 paragraph 4(1))

Automatic entitlement: 2 machines

There is provision in the Act for premises licensed to sell alcohol for consumption on the premises to automatically have 2 gaming machines, of categories C and/or D. The premises merely need to notify the licensing authority.

The licensing authority can remove the automatic authorisation in respect of any particular premises if:

- provision of the machines is not reasonably consistent with the pursuit of the licensing objectives;
- 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);
- the premises are mainly used for gaming; or
- an offence under the Gambling Act has been committed on the premises.

Permit: 3 or more machines

If a premises wishes to have more than 2 machines, then it needs to apply 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 and will expect the applicant 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. Measures which will satisfy the authority that there will be no access may include the adult machines being in sight of the bar, or in the sight of staff who will monitor that the machines are not being used by those under 18. Notices and signage may also be helpful. As regards the protection of vulnerable persons, applicants may wish to consider the provision of information leaflets / helpline numbers for organisations such as GamCare.

It is recognised that some alcohol licensed premises may apply for a premises licence for 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 can decide to grant the application with a smaller number of machines and/or a different category of machines than that applied for. Conditions (other than these) cannot be attached.

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

3. Prize Gaming Permits

The Gambling Act 2005 states that a licensing authority may “prepare a statement of principles that they propose to apply in exercising their functions under this Schedule” which “may, in particular, specify matters that the licensing authority propose to consider in determining the suitability of the applicant for a permit”.

This licensing authority has prepared a Statement of Principles which is that the applicant should set out the types of gaming that he or she is intending to offer and that the applicant should be able 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;
- Clear policies that outline the steps to be taken to protect children from harm.

In making its decision on an application for this permit the licensing authority does not need to (but may) have regard to the licensing objectives but must have regard to any Gambling Commission guidance. (Gambling Act 2005, Schedule 14 paragraph 8(3))

It should be noted that there are conditions in the Gambling Act 2005 by which the permit holder must comply, but that the licensing authority cannot attach conditions. The conditions in the Act are:

- the limits on participation fees, as set out in regulations, must be complied with;
- 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;
- the prize for which the game is played must not exceed the amount set out in regulations (if a money prize), or the prescribed value (if non-monetary prize); and
- participation in the gaming must not entitle the player to take part in any other gambling.

4. Club Gaming and Club Machines Permits

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 categories 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 categories B, C or D).

Gambling Commission Guidance 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. The Secretary of State has made regulation and these cover bridge and whist clubs, which replicates the position under the Gameing 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."

The Commission Guidance also notes that "licensing authorities may only refuse an application on the grounds that:

- (a) 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;
- (b) the applicant’s premises are used wholly or mainly by children and/or young persons;
- (c) an offence under the Act or a breach of a permit has been committed by the applicant while providing gaming facilities;

- (d) a permit held by the applicant has been cancelled in the previous ten years; or
- (e) an objection has been lodged by the Commission or the police.

There is also a 'fast-track' procedure available under the Act for premises which hold a Club Premises Certificate under the Licensing Act 2003 (Schedule 12 paragraph 10). As the Gambling Commission's Guidance to licensing authorities 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.

5. Temporary Use Notices

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, according to the Gambling Commission, would include hotels, conference centres and sporting venues.

The licensing authority can only grant a temporary use notice to a person or company holding a relevant operating licence, i.e. a non-remote casino operating licence.

The Secretary of State has the power to determine what form of gambling can be authorised by temporary use notices, and at the time of writing this Statement the relevant regulations (SI no 3157: The Gambling Act 2005 (Temporary Use Notices) Regulations 2007) state that temporary use notices can only be used to permit the provision of facilities or equal chance gaming, where the gaming is intended to produce a single winner, which in practice means poker tournaments.

There are a number of statutory limits as regards temporary use notices. The meaning of "premises" in Part 8 of the Act is discussed in Part 7 of the Gambling Commission Guidance to Local Authorities. As with "premises", the definition of "a set of premises" will be a question of fact in the particular circumstances of each notice that is given. In the Act "premises" is defined as including "any place".

In considering whether a place falls within the definition of "a set of premises", the licensing authority needs to look at, amongst other things, the ownership/occupation and control of the premises.

This licensing authority expects to object to notices where it appears that their effect would be to permit regular gambling in a place that could be described as one set of premises, as recommended in the Gambling Commission's Guidance to Licensing Authorities.

6. Occasional Use Notices:

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 though consider the definition of a 'track' and whether the applicant is permitted to avail him/herself of the notice.

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EXETER CITY COUNCIL

LICENSING COMMITTEE 24 JULY 2012

POLICING AND CRIME ACT 2009 ADOPTION OF AMENDMENTS TO PART 2 SCHEDULE 3 LOCAL GOVERNMENT (MISCELLANEOUS PROVISIONS) ACT 1982

SEX ENTERTAINMENT VENUES & SEX ESTABLISHMENTS

1. PURPOSE OF REPORT

- 1.1 To resolve to adopt the amendments made to Schedule 3 Local Government (Miscellaneous Provisions) Act 1982 (“the 1982 Act”) by section 27 Policing and Crime Act 2009 (“the 2009 Act”) to allow the regulation of lap dancing and other sexual entertainment venues.
- 1.2 To adopt a policy in respect of the regulation of sex establishments, including sexual entertainment venues.

2. BACKGROUND

- 2.1 In September 2008, following a consultation with local authorities that highlighted concerns about the lack of control over where lap dancing clubs were established, the Government announced its intention to give local people a greater say over the number and location of lap dancing clubs in their area.
- 2.2 Section 27 of the 2009 Act followed creating “sexual entertainment venues” that covers venues for activities such as pole-dancing, table dancing and striptease to be regulated as sex establishments under Schedule 3 of the 1982 Act alongside sex cinemas and sex shops.
- 2.3 There are statutory restrictions on who may apply for a sex establishment licence. For example, any person whose application in relation to the same venue has been refused within the last 12 months is excluded.
- 2.4 There is statutory provision for objections to the grant, renewal or transfer of the one year sex establishment licence. Broadly, the applicant must not be unsuitable to hold a licence by reason of having committed an offence or for any other reason but there is also provision for objection having regard to the character of the relevant locality or the use to which premises in the vicinity are put.

3. LEGAL CONSIDERATIONS

- 3.1 These powers are not mandatory and will only apply where adopted by local authorities. Where adopted, these provisions will allow local authorities to refuse an application on potentially wider grounds than is permitted under the Licensing Act 2003 and will give local people a greater say over the regulation of lap dancing clubs and similar venues in their area.
- 3.2 Local authorities are encouraged to adopt these provisions and are required to undertake a statutory consultation if they choose not to do so.

- 3.3 It was the intention of the Licensing Committee of 2 February 2010 to adopt the amendments to Schedule 3 of the 1982 Act together with a policy for the regulation of sex entertainment venues. A resolution was made on that date however subsequent scrutiny of the enabling legislation reveals that the power to make that resolution had not arisen
- 3.4 Section 27 came in to force on 6 April 2010 and local authorities could resolve following this date to adopt Schedule 3 as amended by the 2009 Act so it had effect in their area.
- 3.5 The procedure for local authorities to adopt Schedule 3 as amended by section 27 is set out in section 2 of the 1982 Act. A local authority must pass a resolution specifying that the amendments to Schedule 3 made by section 27 shall apply to their area and the day on which they will come in to force in the area. The specified day must be more than one month after the day on which the resolution is passed. There is a requirement to publish a notice on two consecutive weeks in a local newspaper that is circulated in the area the first publication of which shall be not later than 28 days before the day specified.
- 3.6 There are transitional provisions that apply for a 12 month period beginning with the date that the local authority resolves that Schedule 3 as amended by the 2009 Act will come in to force. This is aimed at allowing existing operators time to comply with the new regime. Where operators have a Licensing Act 2003 licence and lawfully use premises as a sexual entertainment venue under that licence they may continue to do so for 12 months from legislation being adopted or determination of any application submitted before that time whichever is later. These provisions are aimed at ensuring applications are considered on their individual merit and not on a first come first served basis.
- 3.7 Upon resolving to adopt the sexual entertainment venue provisions of the 2009 Act, the Council must ensure that the licensing policy for sex establishments is up to date and reflect the changes introduced by section 27. The Council's existing Sex Establishment Policy is amended to reflect the new legislation.
- 3.8 A body of case law exists that informs policy making under Schedule 3 of the 1982 Act. The broad principles are:
- An authority can adopt any reasonable policy guidelines to help it determine applications. There is no duty to publish or consult on the policy but it must not prevent any individual application being heard on its own merits.
 - The policy may indicate how many sex establishments of each kind are appropriate in any particular locality.
 - The policy may include statements about what are appropriate or inappropriate locations for sex establishments. In deciding what a relevant locality is, an authority can either consider the whole of its administrative area and what its constituent localities are, or start with the applicants proposed sex establishment and then consider the locality in which it is situated. There is no requirement to draw boundaries on a map.
 - Indications are that it is not desirable to define the whole of an authority's administrative area as one locality as this may be too wide.
 - Members are entitled to change their views on the nature of a relevant locality. For example, before a renewal there may be a change in the nature of surrounding establishments which could reasonably lead to a refusal. There can

be no expectation that a licence where granted will be renewed continually if the area in question has changed in character.

- There will be a low level engagement of Articles 10 and 1 of the European Convention on Human Rights but in general it seems that an authority will be able to restrict both freedom of expression and enjoyment of possessions for the protection of the public.

- 3.9 These procedural steps were followed previously. The resolution to adopt the new legislation on 9 August 2010 was made on 2 February 2010 on the understanding that the new legislation had come in to force on 29 January 2010 in line with other significant amendments to the Licensing Act 2003 made by the 2009 Act.
- 3.10 Subsequent review of the enabling provisions reveals that the section 27 amendments did not come in to force until 6 April 2010 and that there was no power for the Licensing Committee to make the resolution before that time. While the Licensing Committee's intention was clear on 2 February 2010 and the relevant policy amendments were also adopted, this would not be robust enough to withstand a legal challenge and therefore the Licensing Committee is advised to begin the procedure for adoption of the amendments again.
- 3.11 The proposed date for the resolution bringing in to force Schedule 3 as amended by the 2009 Act is Monday 3 September 2012. This will become the "first appointed day" for the purposes of the transitional provisions.
- 3.12 The new legislation is aimed at empowering local communities specifically in relation to the numbers of sexual entertainment venues in any particular locality. The present circumstances have little impact on this power as only one application to licence a Sex Entertainment Venue has been received since February 2010. The licence was subsequently granted but had lapsed before renewal and before these circumstances were known about. That premises can continue to operate lawfully under an existing Licensing Act 2003 premises licence (with appropriate conditions) pending the adoption of Schedule 3 as amended by the 2009 Act.

4 RESOLUTION

- 4.1 The Licensing Committee resolve to adopt Schedule 3 of 1982 Act as amended on 3 September 2012 and resolve to adopt the Sex Establishment Policy as amended (Appendix I).

ASSISTANT DIRECTOR ENVIRONMENT

Local Government (Access to Information) Act 1985 (as amended)

Background papers used in compiling this report:

Home Office Guidance on Sexual Entertainment Venues March 2010

R v Birmingham City Council and others Ex p. Quietlynn Ltd (1985) 83 L.G.R. 461

R v Peterborough City Council and others Ex p. Quietlynn Ltd, The Times, July 28, 1986

Belfast City Council v. Miss Behavin' Ltd (Northern Ireland) [2007] UKHL 19

S:PA/LP/Reports/SEV Policy
13.7.12

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SEX ESTABLISHMENTS POLICY

1. POLICY FOR LICENSING SEX ESTABLISHMENTS

- 1.1 The Act defines a sex establishment as either a sex cinema, a sex shop or a sex entertainment venue.
- 1.2 Sex cinema means any premises, vehicle or stall used to a significant degree for the exhibition of moving pictures, by whatever means produced which:
- a) are concerned primarily with or intended to stimulate or encourage:
 - i) sexual activity; or
 - ii) acts of force or restraint which are associated with sexual activity
 - b) are concerned primarily with the portrayal of, or primarily deal with or relate to, genital organs or urinary or excretory functions.
- 1.3 Sex shop means any vehicle, vessel or stall used for a business which consists to a significant degree of selling, hiring, encouraging, lending displaying or demonstrating:
- a) sex articles
 - b) other things intended for use with, or for the purpose of stimulating or encouraging:
 - i) sexual activity; or
 - ii) acts of force or restraint associated with sexual activity.
- 1.4 Sex articles means anything used in connection with, or for the purposes of stimulating or encouraging sexual activity, or acts of force or restraint which are associated with sexual activity and applies to any article containing matter to be read or looked at, or any recording of vision or sound.
- 1.5 A “sexual entertainment venue” means:
- Any premises at which relevant entertainment is provided before a live audience for financial gain of an organiser. For the purposes of the Act it does not matter whether the financial gain arises directly or indirectly from the performance or display of nudity.”
- Relevant entertainment” means:
- a) any live performance; or
 - b) any live display of nudity;
- which is of such a nature that, ignoring financial gain, it must reasonably be assumed to be provided solely or principally for the purpose of sexually stimulating any member of the audience (whether by verbal or other means). An audience includes an audience of one.
- 1.6 A display of nudity means
- a) in the case of a woman, exposure of her nipples, pubic area, genitals or anus; and
 - b) in the case of a man, exposure of his pubic area, genitals or anus;

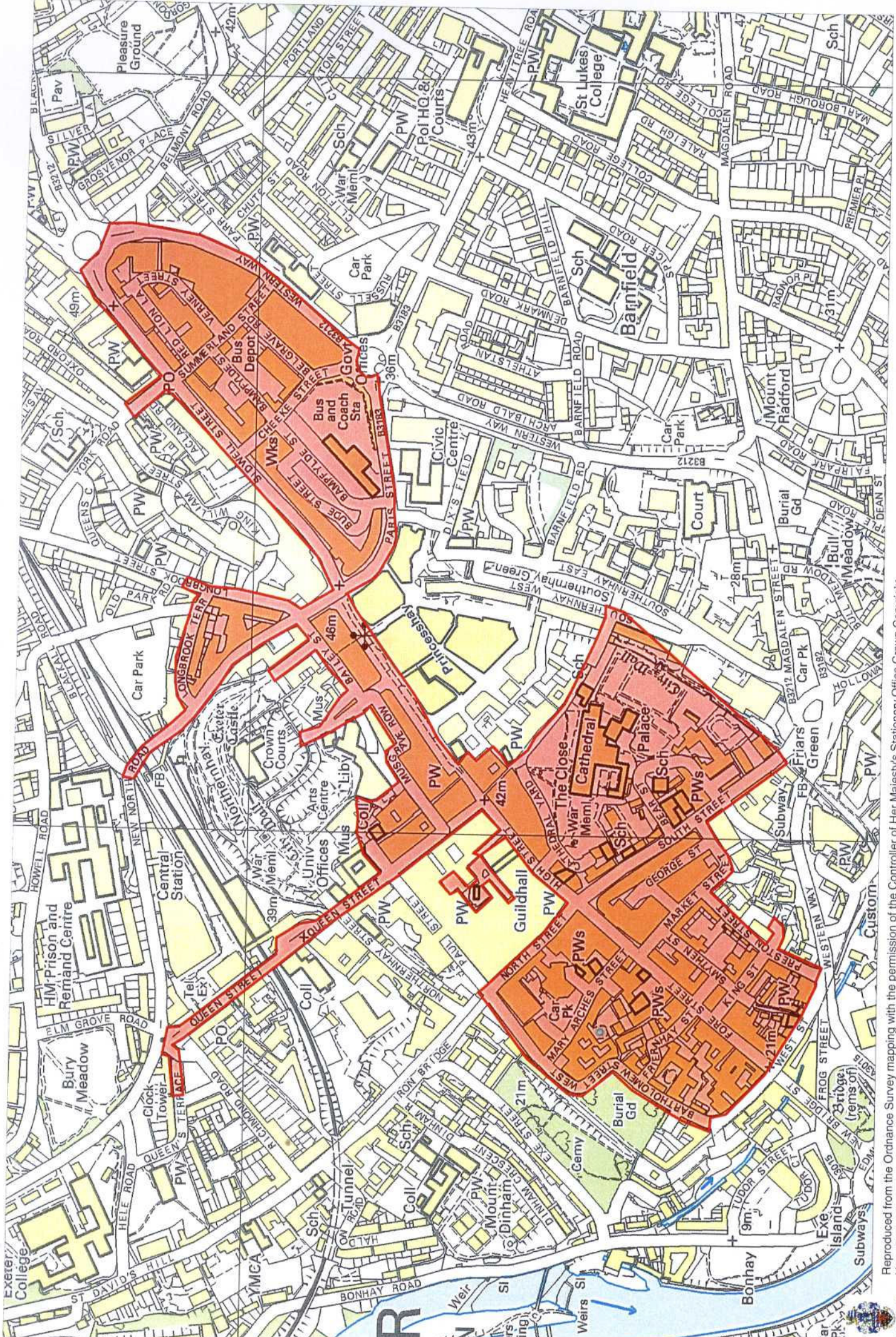
- 1.7 An organiser means any person who is responsible for the organisation or management of;
- a) the relevant entertainment; or
 - b) the premises;

For the purposes of this policy relevant information is provided if, and only if, it is provided, or permitted to be provided on behalf of the organiser before and audience and involves partial or full nudity.

- 1.8 Exeter City Council being the Licensing Authority for the purposes of the Local Government (Miscellaneous Provisions) Act 1982 [the Act] have determined that the appropriate number of sex establishments for the following areas shall be as follows:
- 1. In the area co-terminus with the cumulative impact zone identified in the statement of Licensing Policy adopted by Council on the 15 December 2009 and attached at Appendix A no more than 2 sex shops and no more than one other sex establishment either a sex cinema or sex entertainment venue;
 - 2. In the remainder of the administrative area the number of sex establishments shall be nil.
- 1.9 No application under the provisions of this part of the Act will be refused unless and until the applicant has had opportunity to address the Licensing Committee and explain why he feels an exception to this policy should be made.
- 1.10 The Licensing Committee may determine and agree an application unconditionally or with reasonable conditions. Some conditions that may be appropriate are attached at Appendix B.

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POOL OF CONDITIONS

Sexual entertainment may only take place between the hours of 12 Noon and 12 Midnight on Mondays to Saturdays inclusive.

The permitted activities will only take place in designated areas approved by Exeter City Council. These areas will be in full view of the audience. No part of the premises accessible to the public shall be concealed from observation without written consent of the Council.

Dressing room(s) must be provided and shall not be accessible to members of the audience prior to, during or after the provision of the entertainment.

The entertainment shall be given only by the performers and no audience participation shall be allowed or permitted.

Activities involving one or more performers in close physical contact with either another performer or member(s) of the audience are not permitted, either in the designated area or any other location in the premises.

Whilst entertainment is taking place no person under the age of 18 years shall be in the licensed premises and a clear notice shall be displayed at each entrance to the premises in a prominent position so that it can be easily read by persons entering the premises on the following terms:

'NO PERSON UNDER THE AGE OF 18 YEARS WILL BE ADMITTED'

Entertainers that are not performing must not be in the licensed area in a state of undress.

Entertainers shall not be aged less than 18 years and shall only perform in designated areas or to seated customers.

There shall be no physical contact between entertainers and customers before, during or after the performance. Notices outlining this shall be clearly displayed at every table, at each entrance to the premises and each bar.

The designated premises supervisor [DPS] or a responsible person nominated in writing shall be present on the premises during the entertainment to ensure compliance with these conditions. In addition there shall be a nominated female present to oversee the activities of female performers, and likewise a nominated male present to oversee the activities of male performers.

A register shall be maintained and kept on the premises to clearly record the identity of the DPS or substitute on duty, the day and times of the start and finish of the duty and the records shall be retained for a period of not less than 12 months after the last entry in the register. The register shall be available at all times for inspection by the Police or Officers of the Licensing Authority.

The Organiser nor any other person shall allow or permit the display outside the premises, or visible to persons outside the premises, any photographs or other images which indicate or suggest that sexual entertainment takes place on the premises.

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EXETER CITY COUNCIL

LICENSING COMMITTEE 24 JULY 2012

COUNCIL 16 OCTOBER 2012

MINOR AMENDMENTS TO CONSTITUTION TO DELEGATE NEW FUNCTIONS UNDER THE LICENSING ACT 2003

1 PURPOSE OF REPORT

- 1.1 The purpose of this report is to ensure that following recent amendments to the Licensing Act 2003 the functions of the Council, as the Licensing Authority are delegated to the appropriate level and addressed in the Constitution.

2 BACKGROUND

- 2.1 On the 25th April 2012 the Police Reform and Social Responsibility Act 2011 amended the Licensing Act 2003 ('the Act') resulting in a requirement for minor amendments to be made to the Council's Constitution

- 2.2 The necessary changes to the Constitution are detailed below. The relevant paragraphs from Part 3 Responsibility for Functions of the Licensing Sub-Committee and Assistant Director Environment have been reproduced and the amendments are shown in *italics*;

(a) Licensing Sub-Committee

11. To determine whether to give a counter notice following a police *and/or local authority environmental health* objection to a *Standard* Temporary Event Notice

(b) Assistant Director Environment

- 4.34 Licensing Act 2003 (to the extent permitted by section 10). In particular to determine:

- *the giving of a counter notice for Late Temporary Event Notices*
- *whether to make representations as a Responsible Authority*
- *the issue of a notice of suspension of licence for non payment of the Annual Fee*

- 2.3 The reasons for these changes are:

(a) Licensing Sub-Committee

There are now two forms of Temporary Event Notices ('TENSs'), Standard and Late TENSs. Late TENSs are dealt with in paragraph (b) i) below. In the case of Standard TENSs the Local Authority exercising its environmental health functions ('Environmental Health') is now permitted to make representations in relation to

any of the Licensing Objectives. The Licensing Sub Committee should determine whether or not a counter notice should be in response to a Standard TEN where relevant representations are received by the Police or Environmental Health.

(b) Assistant Director Environment

- i) Late TENs can be given up to five working days but no earlier than nine working days before the event is scheduled. Where an objection is received from the Police or Environmental Health the event shall not go ahead and a counter notice must be given
- ii) The Licensing Authority is now a Responsible Authority for the purposes of the Licensing Act 2003. It is essential to achieve a separation of responsibilities within the Licensing Authority to ensure procedural fairness and eliminate conflicts of interest. Government guidance suggests delegating this function of Responsible Authority to the Assistant Director Environment who then allocates a Principal Licensing Officer within the authority to exercise the function of Responsible Authority. The Principal Licensing Officer will not be involved in the application process and will deal with the application on behalf of the Licensing Authority separately.
- iii) The Licensing Authority may suspend a premises licence or club premises certificate if the annual fee is not paid when it is due.

2.4 The Council has delegated its Licensing functions under the Licensing Act 2003 to the Licensing Committee and the Licensing Committee can exercise its powers to delegate some of these functions to the Licensing Sub-Committee or Officers in order to promote and maintain the efficient operation of the Licensing Authority.

3. RECOMMENDED

That the Council adopts the changes the Constitution to reflect the minor new delegations and minor amendments to the existing delegations to the Licensing Sub Committee and the Assistant Director Environment.

ASSITANT DIRECTOR ENVIRONMENT

Local Government (Access to Information) Act 1972 (as amended)
Background papers used in compiling this report: None

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