

REPORT TO: East Lothian Licensing Board
MEETING DATE: 26 January 2017
SUBJECT: Statement of Principles – Gambling Act 2005

1 PURPOSE

- 1.1 To report to East Lothian Licensing Board on the results of the consultation exercise for the review of the Board's Statement of Licensing Principles;
- 1.2 To ask the Board to approve the attached Statement of Principles for 2016–2019.

2 RECOMMENDATIONS

- 2.1 That East Lothian Licensing Board notes the terms of this report and approves the Statement of Principles 2016–2019 (Appendix 1).

3 BACKGROUND

- 3.1 At the Board's meeting of 27 August 2015, it approved a report on the timetable and procedure for consultation for the review of the Board's Statement of Licensing Principles 2016–2019.
- 3.2 The requirement to review and publish a Statement of Principles for the three-year period is a statutory one, as is the obligation to consult certain specific consultees. The Statement of Principles sets out the Board's proposed approach to the exercise of its functions under the Gambling Act 2005 during the period 31 January 2016 – 30 January 2019.
- 3.3 The Clerk sent out a questionnaire to all required consultees. The questionnaire (Appendix 2) is attached. Only two responses were received.

4 POLICY IMPLICATIONS

- 4.1 Once approved, the Statement of Principles will be the policy of the Board.

5 EQUALITIES IMPACT ASSESSMENT

- 5.1 This Report is not applicable to the wellbeing of equalities groups and Equalities Impact Assessment is not required.

6 RESOURCE IMPLICATIONS

- 6.1 Financial - None
6.2 Personnel - None
6.3 Other - None

7 BACKGROUND PAPERS

- 7.1 Statement of Principles January 2013 – 2016

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GAMBLING ACT 2005
DRAFT STATEMENT OF PRINCIPLES
JANUARY 2016 -2019

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GAMBLING ACT 2005
STATEMENT OF PRINCIPLES
EAST LoTHIAN LICENSING BOARD

1 INTRODUCTION

This is the Statement of Principles (the Policy) that East Lothian Licensing Board (the Board) is required to publish in terms of Section 349(1) of the Gambling Act 2005 (the Act)

The Policy has been prepared having regard to the licensing objectives as detailed in Section 1 of the Act, the Guidance to Licensing Authorities 4th edition September 2012 ('the Guidance') issued by the Gambling Commission ('the Commission') the provisions of the Act itself and subsequent Regulations made under it.

The Policy will come into effect on 31 January 2016 and will remain in place for a maximum period of 3 years to 30 January 2019. The Policy will be reviewed, updated and modified as and when the Board considers it appropriate and at least every three years.

1.1 Declaration

In adopting the final Policy the Board has had regard to, the licensing objectives of the Act, the Commission's Guidance and responses from those persons consulted.

1.2 Geographical Area

Plan showing geographical extent of East Lothian.



East Lothian had an estimated population of 102,050¹ in 2014 in an area of 682 square kilometres². East Lothian shares borders with the City of Edinburgh, Midlothian and Scottish Borders.

Although the area's biggest town is Musselburgh which lies on the border with the City of Edinburgh, the administrative centre of East Lothian is in Haddington.

¹ The National Records of Scotland Statistics, 2014

² The Scottish Office, Scottish Environmental Statistics 1998

1.3 Scope – Licensing Functions

This Board will make decisions upon applications or notifications made for:

- premises licences
- temporary use notices
- occasional use notices
- permits as required under the Act and
- registrations as required under the Act

This Policy relates to all those licensable premises, notices, permits and registrations identified as falling within the provisions of the Act, namely:

- casinos
- bingo premises
- betting premises
- tracks
- adult gaming centres
- licensed family entertainment centres
- unlicensed family entertainment centres
- club gaming permits
- prize gaming and prize gaming permits
- occasional use notices
- temporary use notices
- registration of small society lotteries

The Board will not be involved in licensing remote gambling as defined in Section 4 (1) of the Act. Regulation of this function shall be the responsibility of the Commission.

1.4 The Licensing Objectives

In exercising its functions under the Act the Board must have regard to the licensing objectives set out in Section 1 of the Act. These are:

1.4.1 Preventing gambling from being a source of crime or disorder, being associated with crime or disorder or being used to support crime

The Board will, when determining applications, consider whether the grant of a premises licence will constitute a potential source of crime or disorder or result in an increase in crime and disorder. It will also consider whether the grant of a licence may be used to support crime.

The Board agrees with the Commission's distinction between disorder and nuisance in its Guidance, being: "disorder is intended to mean activity that is more serious and disruptive than mere nuisance. Factors to consider in determining whether a disturbance was serious enough to constitute disorder would include whether police assistance was required and how threatening the behaviour was to those who could see or hear it."

In considering premises licence applications, the Board shall take into account the following:

- The design and layout of the premises;
- Training given to staff in crime prevention measures appropriate to those premises;

- Physical security features installed in the premises. This may include matters such as the position of cash registers or the standard of CCTV that is installed; Where premises are subject to age-restrictions, the procedures in place to conduct age verification checks;
- The likelihood of any violence, public order or policing problem occurring if the licence is granted.

1.4.2 Ensuring that gambling is conducted in a fair and open way

The Board notes that the Commission has stated in its Guidance that it would not expect licensing authorities to become concerned with ensuring that gambling is conducted in a fair and open way as this will be a matter for either the management of the gambling business, and therefore subject to the Operating Licence, or will be in relation to the suitability and actions of an individual and therefore subject to the Personal Licence. Both of the foregoing are the responsibility of the Gambling Commission.

However, if the Board suspects that gambling is not being conducted in a fair and open way, the Board notes in particular the Commission's comments in its Guidance that the Board ought to bring this to the attention of the Commission. The Board shall endeavour to do so should said suspicion arise.

1.4.3 Protecting children and other vulnerable persons from being harmed or exploited by gambling.

In its Guidance, the Commission states that this objective relates to preventing children from taking part in gambling and for there to be restrictions on advertising so that gambling products are not aimed at children or advertised in a way that is particularly attractive to them.

1.4.3.1 Protecting Children

In accordance with its obligation under Section 157 (h) of the Act, the Board has designated the East & Midlothian Public Protection Committee as the body competent to advise the Board about the protection of children from harm.

The Board considers this the best body to fulfil this function because its principal function is to safeguard and promote the interests of children and young persons in East Lothian. This high level, multi-agency group has the responsibility for the strategic planning and monitoring of services for the protection of children and young people. It oversees strategic planning and gives strategic direction to support service planning and the allocation of resources to the protection of children and young people across East Lothian.

The Board will consult with the East & Midlothian Public Protection Committee on any application that indicates there may be concerns over access for children or young persons.

The Board will seek to limit the advertising for premises so that gambling products are not aimed at children or advertised in such a way that makes them particularly attractive to children.

1.4.3.2 Access to Licensed Premises

With limited exceptions, the intention of the Act is that children and young persons should not be permitted to gamble and should be prevented from entering those gambling premises which are adult only environments.

Significant weight will be given to all matters relating to the protection of children and young persons. An applicant for a premises licence must comply explicitly with the Act regarding the permitted access or exclusion of children and young persons. No children or young person must be permitted to have access to, close observation of, or an invitation to participate in any gambling activities. Where the Board determines that there may be a risk of harm to children in relation to particular premises, it may exclude or limit the access of children to the premises at specific times or when certain activities are taking place.

In pursuance of this licensing objective, the Board may consider appropriate conditions to attach to each premises licence on an individual basis. These may include one or more of the following from this non exhaustive list:

- The configuration of the premises;
- Supervision of entrances;
- The display of clear signage both externally and internally indicating that entrance to the premises is restricted to those aged 18 years and over;
- Clear segregation of gambling and non-gambling areas;
- Supervision of access to gambling areas;
- Supervision of gambling machines;

1.4.3.3 Vulnerable Persons

The Board notes that the term 'vulnerable persons' is not statutorily defined. However, it shall be assumed that this group includes the following:

- people who gamble more than they want to;
- people who gamble beyond their means; and
- people who may not be able to make an informed or balanced decision about gambling due to a mental impairment, excessive alcohol consumption or drug taking.

Applicants for premises licences, permits and authorisations will be expected to have an awareness that for some people gambling activities can present both potential and actual harm.

Applicants will also be required to comply with any Code of Practice and Guidance issued by the Commission in this regard.

The Board Will consult East & Midlothian Public Protection Committee on any application that indicates that there may be concerns for vulnerable persons.

The Board shall consider, on a case by case basis, whether any special considerations should apply in relation to particular premises to ensure the protection of vulnerable persons.

1.5 **Responsible Authorities**

For the purposes of Section 157 of the Act, the following are Responsible Authorities in relation to premises:

- The Gambling Commission
- The Chief Constable, Police Scotland
- The Chief Fire Officer, Scottish Fire and Rescue
- East Lothian Council
- The Planning Authority
- Environmental Health Authority
- East & Midlothian Public Protection Committee
- H.M. Revenue and Customs

1.6 Interested Parties

Interested Parties may make representations in writing about licence applications, or apply for a review of an existing licence. In terms of Section 158 of the Act, an Interested Party is a person who:

- 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)

In determining whether a person is an Interested Party in relation to a particular premise, the Board shall consider each case on its own merits. No uniform rule may attach to the Board's decision making in this regard. The Board also notes the examples in the Commission's Guidance with regards to who may constitute an Interested Party, such as people who are democratically elected, bodies such as trade unions and residents' and tenants' associations.

1.7 Consultation

In terms of section 349(3) of the Act the Board has consulted the following parties in the preparation of this Policy:

- East Lothian Council
- The Gambling Commission
- The Chief Constable, Police Scotland
- The Chief Fire Officer, Scottish Fire and Rescue Service
- All Community Councils in East Lothian
- East & Midlothian Public Protection Committee
- The Musselburgh Joint Racing Committee, Musselburgh Racecourse
- Ladbrokes/William Hill/Scotbet
- East Lothian Licensing Forum
- HMRC
- Mid/East Lothian Drugs & Alcohol Partnership (MELDAP)
- Gamblers Anonymous
- Area Partnerships
- Local M.P.
- Local M.S.P.
- Local Councillors

2 POLICIES

2.1 Relationship between planning permission, building regulations and granting of a premises licence.

In determining applications, the Board has a duty to take into consideration all relevant matters and not to take into consideration any irrelevant matters. Irrelevant matters are those not related to gambling and the licensing objectives.

The Board notes that, in accordance with Section 210 of the Act, one such irrelevant matter that it cannot have regard to in determining an application is whether or not a proposal by the applicant is likely to be permitted in accordance with building or planning law.

In accordance with the Commission's Guidance, the Board also notes that, when dealing with a premises licence application for finished buildings, it shall not take into account whether those buildings have complied with necessary planning or building consents. Fire or health and safety risks shall also not form part of the consideration for a premises licence as these issues fall under other statutory regimes.

The Board may, however, consider carefully the impact of planning and/or building control restrictions (if any) on a licence holder's ability to comply with any conditions that may attach to the licence.

2.2 Door Supervision

The Board may consider it appropriate to attach a condition to a premises licence requiring door supervision during opening hours or between specified opening hours.

The Board may also specify the level of door supervision required.

'Door supervision shall have the meaning ascribed to it in Section 178 of the Gambling Act 2005. As per paragraph 33 of the Commission's Guidance, the Board notes that door staff employed by the Operator who are employed at casino or bingo premises do not require to be licensed by the Security Industry Authority

In terms of Section 178 of the Act, the Board notes that if a door supervisor is required by the Private Security Industry Act 2001 to hold a licence under that Act authorising him or her to fulfil their functions under that Act, then that requirement shall be treated as if it were a condition of the premises licence by virtue of Section 178.

3 Risk Assessments

3.1 General

The Board is entitled to request such information from operators as it requires to make effective licensing decisions. Whilst the 2005 Act requires that an application must be accompanied by a minimum level of information, the Board agrees with the Gambling Commission's view that this does not preclude reasonable requests from the Board for additional information to satisfy themselves that their licensing decision is reasonably consistent with the licensing objectives and the Commission's codes. That information may include, for example, a suitable business plan or the operator's own assessment of risk to the licensing objectives locally.

The Board welcomes the implementation, from 6 April 2016, of the Social Responsibility Code provision 10.1.1 (which must be followed and has the force of a licence condition) which will require licensees to assess the local risks to the licensing objectives posed by the provision of gambling facilities at each of their premises, and have policies, procedures and control measures to mitigate those risks. In undertaking their risk assessments, they must take into account relevant matters identified in the Board's Policy.

Licensees will be required to undertake these local risk assessments when applying for a new premises licence. Their risk assessment must also be updated:

- when applying for a variation of a premises licence
- to take account of significant changes in local circumstances, including those identified in the Board's policy statement
- when there are significant changes at a licensee's premises that may affect their mitigation of local risks.

The Board also welcomes the implementation, from 6 April 2016, of the Ordinary Code provision 10.1.2 which encourages licensees to share their risk assessment with the Board's when applying for a premises licence or applying for a variation to existing licensed premises, or otherwise at the request of Board. The Board will expect this provision to be followed unless equally effective alternative arrangements are in place.

3.2 Locality

This policy statement is the Board's mandate for managing local Gambling provision and sets out how the Board views the local risk environment and therefore its expectations in relation to operators with premises in the locality.

Whilst the Board does not currently have a Local Area Profile as referenced in the Gambling Commission's Guidance to Local Authorities, nonetheless its clear priority is to ensure that children and vulnerable persons are not harmed by gambling. To this end the licensing authority will expect applicants to research and understand the local environment in which they wish to operate and to demonstrate that they have effective and robust measures in place to promote this licensing objective and mitigate any risks related to it. The Board will not hesitate to take appropriate enforcement action where this does not appear to be the case.

Applicants should note that the Board may develop a Local Area Profile setting out the local issues, local data, local risks and the expectations that the Board has of operators who either currently offer gambling facilities or wish to do so in the future.

In the absence of a Local Area Profile when considering applications for premises licences, permits and other permissions, and when determining whether to review a licence, the Board will consider each application on its merits and relevant considerations are likely to include the type of gambling proposed and the proximity of gambling premises to schools and vulnerable adult centres, or to residential areas where there may be a high concentration of families with children.

An applicant for a premises licence will be expected to demonstrate how it proposes to overcome licensing objective concerns which the licensing authority will take that into account in its decision making.

4 DECISION MAKING

4.1 General Principles

- 4.1.1 Every application received shall be dealt with fairly and shall be seen to be dealt with fairly and shall be considered on its own merits.
- 4.1.2 In considering an application for a premises licence, no regard shall be had to the expected demand for the facilities proposed to be provided in the premises for which a premises licence is sought.
- 4.1.3 The Board is aware that considerations such as moral or ethical objections to gambling are not a valid reason to reject applications for premises licences. This is because such objections do not relate to the licensing objectives. A decision by the Board shall not be based on a dislike of gambling by any member, nor of a general notion that it is undesirable to allow gambling premises in an area. This notion may be subject to the invocation of a Section 166 Resolution.
- 4.1.4 In determining whether the location of proposed gambling premises is acceptable to the Board in light of the licensing objectives, the Board shall consider very carefully the proximity

of those proposed premises in relation to the following factors in the following non exhaustive list:

- a) a school or other educational facility;
- b) a centre for gambling addicts or other vulnerable persons;
- c) a centre for children and young persons and
- d) a residential area with a high concentration of families with children.

- 4.1.5 The Board shall aim to permit the use of premises for gambling in so far as the Board think it:
- a) is in accordance with any relevant Code of Practice issued by the Commission under Section 24 of the Act,
 - b) is in accordance with any relevant Guidance issued by the Commission under Section 25 of the Act,
 - c) is reasonably consistent with the licensing objectives (subject to paragraphs a) and b) above and d) is in accordance with this Policy.
- 4.1.6 Premises Licences shall be subject to the statutory requirements of the Act and associated Regulations, as well as mandatory conditions. The Board may exclude default conditions and attach additional conditions where appropriate.
- 4.1.7 Premises Licence holders shall comply with relevant Codes of Practice issued by the Commission and the Commission's Guidance where relevant. The following may also be of assistance: 'The Commission's 'Licence Conditions and Codes of Practice' ('LCCP') February 2015 for further information. This document may be found on the following link: www.gamblingcommission.gov.uk
- 4.1.8 The Board shall avoid so far as possible duplication with other regulatory and legislative regimes.
- 4.1.9 In the Act, 'premises' is defined as including 'any place'. Section 152 of the Act prevents more than one premises licence applying to any place. However, the Board notes that the Commission's Guidance indicates that the proper application of Section 152 means that different premises licences cannot apply in respect of single premises at different times. There is therefore no temporal element to a premises licence. Premises therefore cannot, for example, be licensed as a bingo club on week days and a betting shop at weekends.
- 4.1.10 The Board also notes that the Commission's Guidance indicates that there is no reason in principle why a single building cannot be subject to more than one premises licence, provided that those licences are for different parts of the building, and the different parts of the building can reasonably be regarded as being different premises. The Board shall also pay particular attention with regard to the sub-division of a single building or plot to ensure that mandatory conditions relating to access between these premises are adhered to.
- 4.1.11 The Board takes note of the Commission's Guidance that in most cases the expectation will be that a single building or plot will be the subject of an application for a licence. This does not, however, mean that the single building or plot cannot be the subject of separate premises licences for example for the basement and ground floor. However, the Board agrees with the Commission that areas of a building that are artificially or temporarily separated (for examples by ropes or moveable partitions) cannot properly be regarded as different premises.
- 4.1.12 The Board also agrees with the Commission that whilst different configurations may be appropriate under different circumstances in determining whether a single building may be regarded as different premises, the crux of the matter shall be whether the proposed

premises may be regarded as being genuinely separate premises that merit having their own licence and are not an artificially created part of what is readily identifiable as a single premises.

4.1.13 Consideration as to whether different parts of a building may be regarded as being different premises shall be one of fact and degree and the Board shall determine each case on an individual, case by case basis.

4.1.14 However, in determining whether two or more proposed premises may be regarded as truly separate, the Board may consider the following factors from the following non exhaustive list:

- a) the location of the premises;
- b) whether there is separate registration for business rates in place for the premises;
- c) whether each of the premises may be accessed from the street or a public passageway
- d) whether the premises may be only accessed from other gambling premises.
- e) whether the premises' neighbouring premises are owned by the same person or someone else.

4.1.15 In considering applications for multiple premises licences for a building and those relating to a discrete part of a building used for other non gambling purposes, the Board shall consider the following factors from the following non exhaustive list:

- a) the third licensing objective which seeks to protect children from being harmed by gambling. This means not only preventing children from taking part in gambling, but also preventing them from being in close proximity to gambling. Premises should therefore 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.
- b) 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.
- c) Customers ought to be able to participate in the activity named on the premises licence. In particular proprietors should not ban individuals solely because they have placed successful bets.

4.2 Scheme of Delegation

In terms of Section 155 of the Act, the Board may arrange for the discharge of some of its functions by a Committee of the Board, member or members of the Board, the Clerk to the Board or any person appointed to assist the Clerk.

The Board cannot delegate all of its functions. The scheme of delegation is attached in Appendix 3. The Board reserves the right, to determine all applications and relevant matters under the Act.

4.3 Licensing Reviews

Section 200 of the Act provides that the Board may review any matter connected to the use made of the premises if it has reason to suspect that a licensing condition is not being observed, or for any other reason which gives it cause to believe that a review may be appropriate.

The Board may carry out a review of a premises licence in accordance with Section 197 of the Act where it has received a formal application for review.

The Board may reject an application for a review under Section 198 if it thinks that the grounds on which the review is sought:

- a) do not raise an issue relevant to the principles to be applied in accordance with Section 153 of the Act;
- b) are frivolous;
- c) are vexatious;
- d) will certainly not cause the authority to wish to take action of a kind specified in Section 202 (1) of the Act;
- e) are substantially the same as the grounds specified in an earlier application under Section 197 of the Act in respect of the premises licence; or
- f) are substantially the same as representations made under Section 161 of the Act in relation to the application for the premises licence.

In terms of action following a review, the Board may:

- a) revoke the licence;
- b) suspend the licence for a specified period not exceeding three months;
- c) exclude a condition attached to the licence under Section 168 of the Act or remove or amend an exclusion;
- d) Add, remove or amend a condition under Section 169 of the Act.

4.4 Enforcement

In exercising its functions under Part 15 of the Act with regard to the inspection of premises, the Board shall be guided by the Commission's Guidance and its approach shall 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
- targeted – regulation should be focused on the problem, and minimise side effects.

The Board shall adopt a local risk based approach whereby the main determinant shall be the risk posed to the three licensing objectives by premises. A risk based inspection programme shall also be implemented whereby premises will be subject to a scheme of routine inspection, the frequency of which will be determined by the risk posed by the premises.

Those premises considered to pose a greater risk will be subject to more frequent inspections than those that are considered to pose a lower risk.

When determining risk, consideration will be given to:

- the nature of the gambling activities carried out on the premises
- the location of the premises in relation to schools, vulnerable adult centres or residential areas where there may be high concentrations of families with children.
- the number of complaints received (if any) in relation to particular premises
- the procedures put in place by management of the premises to ensure compliance with the licensing objectives

In determining whether to undertake an inspection of premises, the Board or delegated officer shall determine each case on its own merits.

The Board notes that its main enforcement and compliance role in terms of the Act is to ensure compliance with premises licences and associated conditions and other issues relating to the premises themselves. The Board in particular notes that the enforcement body for personal and operating licences is the Commission.

4.5 Exchange of Information

If so required by the Commission under Section 29 of the Act, the Board shall exchange any information it receives through the application process with the Commission and other regulatory bodies in accordance with its obligations and functions under the Act. The Board notes that said information must form part of its register and must be in its possession prior to disclosure. This obligation is also subject to data protection and freedom of information legislation.

The Board shall maintain a register of all premises licences and permits issued by it and shall ensure that this register is available for public inspection at all reasonable times.

4.6 Complaints against Licensed Premises

The Board may investigate complaints against licensed premises in relation to matters relating to the licensing objectives

Any complaints received in relation to particular premises or a class of premises may affect the general risk rating of those premises. Complaints received by the Board in relation to particular or a class of premises may also initiate the Board's right of review under Section 200 of the Act.

5 LICENSABLE PREMISES

5.1 Provisional Statements

In terms of Section 204 of the Act, a person may make an application for a provisional statement in respect of premises that:

- they expect to be constructed;
- they expect to be altered, or
- they expect to acquire a right to occupy.

The Board notes the Commission's Guidance which states that:

'Developers may wish to apply for provisional statements before they enter 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'

Whilst applicants for a premises licence must fulfil certain criteria, these restrictions do not apply to applicants for provisional statements. An applicant for a provisional statement does not require to hold an operating licence nor do they need to have acquired a right to occupy the premises to which the application relates.

If a provisional statement is granted by the Board, the Board is aware that it is constrained in the matters it may consider when an application for a premises licence is subsequently made in relation to the same premises. In terms of any representations made in relation to the application for the premises licence, the Board shall disregard said representations unless it thinks that those representations:

- address matters that could not have been addressed in representations in relation to the application for the provisional statement, or

- reflect a change in the applicant's circumstances.

In considering an application for a provisional statement, the Board shall not have regard to whether or not a proposal by the applicant is likely to be permitted in accordance with planning or building law.

The Board may refuse the premises licence application (or grant it on terms or conditions not included in the provisional statement), only by reference to matters:

- which could not have been addressed in representations at the provisional statement stage
- which, in the Board's opinion, reflect a change in the operator's circumstances
- where the premises has not been constructed in accordance with the plan and information submitted with the provisional statement application.

In determining whether premises have been constructed in accordance with the plan, the Board notes that the Commission in its Guidance advises that there must be a substantial change to the plan. In this regard, the Board will endeavour to discuss any concerns that it has with the applicant before making a decision.

5.2 Casino Premises

In terms of Section 166 of the Act, currently the Board has no resolution prohibiting the issue of casino licences in the Board's area. The Board reserves its right to review this at any time in the future and shall update this Policy as appropriate.

5.3 Bingo Premises

The Board notes that there is no statutory definition of 'bingo' in terms of the Act other than it means 'any version of the game irrespective of by what means it is described'. A bingo premises licence holder may generally be able to offer any type of bingo game, whether it be cash bingo or prize bingo.

The Board notes that it will need to satisfy itself that bingo can be played in any bingo premises for which it issues a premises licence. This shall 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.

The Board also notes the Commission's Guidance at paragraph 18.8 with regard to the unusual circumstance whereby an existing bingo premises covered by one premises licence applies to vary the licence to split the premises into one or more separate licensed premises. The Board notes the Commission's position that it is not permissible to locate 16 category B3 gaming machines in one of the resulting premise with none in the other one, as the maximum entitlement of eight gaming machines for that premises would be exceeded. A maximum of eight gaming machines in category B3 or B4 shall therefore be permitted in each resulting premise.

Children and young persons are permitted 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 permitted.

In accordance with the licensing objective 'protecting children and other vulnerable persons from being harmed or exploited by gambling', the Board may require an applicant to prove that sufficient measures are in place to prevent children, young persons and vulnerable persons from having access to Category B and C machines.

5.4 Betting Premises

The Act contains a single class of licence for betting premises. However, within this single class of licence there are different types of premises which require licensing. This part of the Policy alludes to betting that takes place other than at a track (previously known as a licensed betting office).

No children and young persons (those under 18 years of age) shall be allowed entry to premises with a betting premises licence at any time. Special rules apply to tracks.

5.5 Tracks

Tracks are premises which include horse racecourses, dog tracks or other tracks where sporting events may take place. The Act does not define what may constitute a sporting event or race and the Board notes the Commission's comment in its Guidance that the Board may determine what constitutes such on a case by case basis.

A track premises licence permits the premises to be used for the provision of facilities for betting. If the licence holder wishes to provide a casino, bingo or other type of gambling on the track, a separate premises licence will be required. Tracks may therefore be subject to more than one premises licence.

If the Operator wishes to use the premises temporarily for gambling and there is no premises licence in effect, the Board may issue a temporary use notice.

Where there is betting on a track on eight days or less in a calendar year, an occasional use notice may be issued by the Board to permit betting on the premises.

An applicant for a premises licence need not hold an operating licence as the betting that is provided on the track is provided by third party operators. Third party operators require to hold an operating licence issued by the Commission. However, each individual operator coming onto the track on race days does not require to hold a premises licence as they are covered by the premises licence held by the track premises licence holder.

As children and young persons are allowed to be present on a track whilst betting is taking place, the Board will consider carefully, before issuing additional premises licences for a track, any potential impact an accumulation of premises licences may have on the third licensing objective.

An applicant for a track premises licence requires to submit detailed plans of the premises to the Board. Whilst the Board agrees with the Commission in its Guidance that it is sometimes difficult to define the precise location of betting areas on tracks, the Board shall require the following from an applicant:

a detailed plan defining the site, any area to be used for temporary "oncourse" betting facilities and, in the case of dog tracks and horse racecourses, any mobile pool betting facilities as well as any other proposed gambling facilities.

In determining whether a track is fit for the provision of gambling facilities, the Board notes the general principles for consideration as per the Commission's Guidance. Whilst each application may be considered on a case by case basis, the Board shall require each applicant to demonstrate that they have measures in place to safeguard the achievement of all three licensing objectives.

5.6 Adult Gaming Centres

An Adult Gaming Centre premises licence authorises the licence holder to make available for use a number of category B gaming machines not exceeding 20% of the total number of gaming machines which are available for use on the premises and any number of category C or D machines.

Premises in existence before 13 July 2011 are entitled to make available four category B gaming machines, or 20% of the total number of gaming machines, whichever is the greater. The holder of an adult gaming centre premises licence granted on or after 13 July 2011 but before 1 April 2014 is entitled to make available a maximum of four category B gaming machines or 20% of the total number of gaming machines, whichever is the greater; from 1 April 2014 these premises will be entitled to 20% of the total number of gaming machines only. Regulations specify that the category B machines should be restricted to sub-category B3 and B4 machines.

For further information on categorisation of machines, see Appendix 2.

Where two separate Adult Gaming Centres have been created adjacent to each other by splitting pre-existing premises, it is not permissible to locate eight category B3 machines in one of the resulting premises with none in the other one as the gaming machine entitlement for that premises would be exceeded.

No persons under the age of 18 years shall be permitted to enter an Adult Gaming Centre. The Board shall have particular regard to the location of, and entry to, an Adult Gaming Centre to ensure that opportunities for children to have access are minimised. In this regard the Board will expect applicants to offer their own measures to promote, in particular, the third licensing objective.

Examples of appropriate measure or licence conditions that may be attached to protect children and young persons are;

- proof of age scheme;
- the provision of CCTV;
- supervision of entrances;
- physical security measures on the premises;
- physical separation of areas;
- self-exclusion schemes;
- the display of notices and signage
- members of staff appropriately trained;

5.7 Licensed Family Entertainment Centres

A Licensed Family Entertainment Centre is a premises for which a licence is granted to provide any number of category C and D gaming machines. Whilst persons under 18 years of age are permitted entry to the premises, no persons under 18 years of age may be permitted access to those areas of the premises where category C gaming machines are situated. The Board shall require that category C machines be situated in a separate area to ensure the segregation and supervision of machines that may only be played by those over 18 years of age. For categorisation of gaming machines, see Appendix 2.

6 PERMITS

The Act provides that a licensing authority may prepare a statement of principles that it proposes to apply when exercising its functions in considering applications for permits. In particular, this statement may specify matters that the licensing authority proposes to consider in determining the suitability of an applicant for a permit. This power is also mirrored in the Commission's Guidance.

Subject to the above considerations, the Board currently have not adopted any further statement of Principles. Should it do so at any time in the future, the Board shall update this Policy as appropriate.

6.1 **Unlicensed Family Entertainment Centre Gaming Machine Permits**

Where a premises does not hold a premises licence but wishes to provide gaming machines, it may apply to the Board for a Gaming Machine permit. The applicant must show that the premises will be wholly or mainly used for making gaming machines available for use.

Unlicensed Family Entertainment Centres are able to offer only category D machines in reliance on a gaming machine permit. Any number of category D machines can be made available with such a permit, subject to other considerations such as fire regulations and health and safety. Permits cannot be issued in respect of vessels or vehicles.

The Board may not refuse an application unless it has notified the applicant of the intention to refuse and the reasons for it, and given the applicant an opportunity to make representations orally or in writing or both.

The Board may also only grant an application for a permit if it is satisfied that the applicant intends to use the premises as an unlicensed family entertainment centre and the Board has consulted the Chief Constable on the application. The Board notes that it may grant or refuse a permit but cannot attach conditions.

The Board notes in particular the Commission's suggestion in its Guidance that, given that these premises may appeal to young persons and children in particular, the Board may wish to give weight to matters relating to child protection issues when determining the suitability of an applicant. In this regard, the Board may consider asking applicants to demonstrate:

- the suitability of the applicant;
- that s/he has no relevant offences as per Schedule 7 of the Act;
- the s/he has a full understanding of the maximum stakes and prizes permissible;
- evidence that employees are appropriately trained and have a full understanding of the maximum stakes and prizes permissible;
- evidence that there are appropriate policy and procedures in place to protect children and young persons from harm;

The Board will give significant weight to all issues relating to the protection of children and young persons in pursuance of the third licensing objective.

6.2. **Club Gaming Permit**

A Club Gaming Permit authorises Members' Clubs (but not Commercial Clubs as defined in the Act) to provide, subject to certain restrictions, no more than 3 gaming machines of categories B, C or D, equal chance gaming and other games of chance as prescribed in regulations (see Appendix 2 for machine categorisation).

The Club Gaming Permit also allows a Club to provide facilities for gambling provided the gambling meets a number of conditions. The Board may grant or refuse a permit. The Board may refuse an application for a permit only on one or more of the following statutory grounds:

- that the applicant is not, in the case of an application for a club gaming permit, a members' club or a miners' welfare institute, or
- that the applicant is not, in the case of an application for a club machine permit, a members' club, a commercial club or a miners' welfare institute;

- that the applicant's premises are used wholly or mainly by persons under the age of eighteen;
- that an offence or a breach of a condition of a permit has been committed in the course of gaming activities carried on by the applicant;
- that a permit held by the applicant has been cancelled in the last ten years ending with the date of the application; or
- an objection to the application has been made by the Gambling Commission and/or the Chief Constable.

Whilst the Board cannot attach any conditions to a Club Gaming Permit, The Code of Practice on Gaming Machine Permits (available from www.gamblingcommission.gov.uk) sets out conditions that attach to both gaming permits and club machine permits. This document also contains best practice guidelines that the Commission considers should be implemented by permit holders. The Board shall expect all permit holders to adhere to both the conditions specified in the Code of Practice and to follow the best practice guidelines in that document.

By virtue of Section 273 of the Act, a club gaming permit shall be subject to the condition that no child or young person may use a category B or C gaming machine on the club's or institute's premises and the holder shall comply with any relevant provision of a Code of Practice under Section 24 of the Act about the location and operation of a gaming machine.

6.3 Club Machine Permit

If a Members' Club does not wish to have the full range of facilities permitted by a club gaming permit or if they are a commercial club not permitted to provide non-machine gaming, they may apply to the Board for a club machine permit.

A club machine permit allows the holder to have up to 3 gaming machines of categories B3A, B4, C and D) (see Appendix 2 for machine categorisation). The Board may grant or refuse a permit, but it may not attach any conditions.

However, by virtue of Section 273 of the Act, a club machine permit shall be subject to the condition that no child or young person may use a category B or C gaming machine on the club's or institute's premises and the holder shall comply with any relevant provision of a Code of Practice under Section 24 of the Act about the location and operation of a gaming machine.

The Board shall expect all permit holders to adhere to both the conditions specified in the Code of Practice on Gaming Machine Permits (available from www.gamblingcommission.gov.uk) and to follow the best practice guidelines in that document.

The Board may only refuse an application on the same grounds as a club gaming permit (see paragraph 5.2 above).

6.4 Prize Gaming Permit

Section 288 defines gaming as prize gaming if the nature and size of the prize is not determined by the number of people playing or the amount paid for or raised by the gaming.

A prize gaming permit is a permit issued by the Board authorising a person to provide facilities for gaming with prizes on specified premises.

However, Section 293 of the Act sets out four conditions with which permit holders must comply to lawfully offer prize gaming. These are:

- the limits on participation fees, as set out in The Gambling Act 2005 (Limits on Prize Gaming) Regulations 2007
 - 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 The Gambling Act 2005 (Limits on Prize Gaming) Regulations 2007 (if a money prize), or the prescribed value (if a non-monetary prize)
 - participation in the gaming must not entitle the player to take part in any other gambling
- The Board may grant a permit only if it has consulted the Chief Constable about the application.

The Board may not refuse an application unless it has notified the applicant of the intention to refuse and the reasons for it, and given the applicant an opportunity to make representations orally or in writing or both.

6.5 Alcohol Licensed Premises – Gaming Machine Permit

On written notification to the Board, premises licensed to sell alcohol for consumption on the premises have an automatic entitlement to 2 gaming machines of category C or D under Section 282 of the Act. (see appendix 2 for machine categorisation)

The Board has no discretion to consider the notification or refuse it. However, upon the giving of at least 21 days' notice to the licensee, the Board may remove this automatic entitlement if it thinks that:

- 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 Act – for example, the gaming machines have been made available in a way that does not comply with requirements on the location and operation of gaming machines
- the premises are mainly used for gaming
- an offence under the Gambling Act 2005 has been committed on the premises

An Alcohol Licensed Premises Gaming Machine Permit is required if more than 2 gaming machines are sought. The issue of such a permit will replace and not be in addition to the automatic entitlement to 2 gaming machines. The Board may issue licensed premises gaming machine permits for any number of category C or D machines.

The Board shall expect all permit holders to adhere to both the conditions specified in the Code of Practice on Gaming Machine Permits (available from www.gamblingcommission.gov.uk) and to follow the best practice guidelines in that document.

The Board will specify the form and manner in which an application must be made, and will specify the information and supporting documents required. These may include:

- a plan showing the location and category of gaming machine being sought; and
 - evidence of measures in place to prevent persons under the age of eighteen years from using any category of gaming machine
- The Board may decide to grant an application with a smaller number of machines and/or a different category of machine but cannot attach any other conditions.

7 **OCCASIONAL USE NOTICES**

Where there is betting on a track on eight days or less in a calendar year betting may be permitted by an occasional use notice without the need for a full premises licence. The calendar year will commence on 1 January.

In considering an application for an occasional use notice the Board will consider the definition of a 'track' and whether the applicant is permitted to avail him/herself of the notice. A notice must be given in writing to the Board and be copied to the Chief Constable. The notice must be given only by a person who is responsible for the administration of events on the track, or by an occupier of the track. The notice must specify the day on which it has effect, and may be given in relation to consecutive days providing the overall statutory limit of 8 days is not exceeded in a calendar year.

The Board shall maintain a record of the number of notices served in relation to each track in a calendar year to ensure that the statutory limit of 8 days is not exceeded.

8 **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 may be suitable for a temporary use notice could include hotels, conference centres and sporting venues.

A Temporary Use Notice may only be granted to a person or company holding a relevant operating licence.

A set of premises may not be the subject of a Temporary Use Notice for more than 21 days in a period of 12 months but may be the subject of several notices provided that the total does not exceed 21 days. In determining what may constitute a set of premises for the purposes of a Temporary Use Notice, the Board notes the Commission's Guidance that this will be a question of fact in the particular circumstances of each notice that is given. In considering whether a place falls within the definition of a set of premises, the Board shall look at, amongst other things, the ownership/occupation and control of the premises.

An application for a Temporary Use Notice must be submitted to the Board not less than 3 months and one day before the day on which the gambling event will begin.

In addition a copy of the notice must also be served on:

- The Gambling Commission
- The Chief Constable
- H M Revenue and Customs

The person who is giving the temporary use notice must ensure that the notice and the copies are with the recipients within seven days of the date of the notice. Each application for the grant of a Temporary Use Notice will be considered and determined on its individual merits.

9 **REGISTRATION OF SMALL SOCIETY LOTTERIES**

Small society lotteries are non-commercial societies which are established and conducted:

- for charitable purposes
- for the purpose of enabling or participation in, or supporting., sport, athletics or a cultural activity;
or
- for any other non-commercial purpose other than private gain.

Small Society Lotteries whose principal office is located within the East Lothian area require to register with the Board.

All applications for registration must be made in the form specified by Scottish Ministers, and accompanied by all necessary documents specified by Scottish Ministers or required by the Board.

When considering an application for registration the Board may request further information from an applicant such as:

- evidence that the application is on behalf of a bona fide non-commercial society (e.g.: a copy of the terms and conditions of the non-commercial society's constitution);
- evidence that all persons to be connected with the promotion of the lottery have no relevant convictions or cautions recorded against them;
- details of the purpose of the Society and the purpose of the fund raising;
- confirmation of the appointment of two members of the society who have the authority to sign and complete the required financial returns.

If the Board is intending to refuse an application to join the register the applicant will be notified in writing of the reasons why it is considering refusal, and the evidence on which it has based that preliminary conclusion. The applicant will then be given the opportunity to provide further evidence in support of the application or to make representations regarding these matters.

10 **TRAVELLING FAIRS**

Travelling Fairs wholly or principally provide amusements and must be on a site that has been used for fairs for no more than 27 days per calendar year. The Board will consider whether the applicant falls within the statutory definition of a travelling fair and that the facilities for gambling amount to no more than an ancillary amusement. The Board will monitor and keep a record of the number of days a piece of land is used as a fair to ensure the maximum statutory 27 days is not exceeded in a calendar year.

Appendix One – Responsible Authorities Contact Details.

- The Gambling Commission, Victoria Square House, Victoria Square, Birmingham, B2 4BP
- The Chief Constable, Police Scotland, Fettes Avenue, Edinburgh, EH4 1AQ
- The Chief Fire Officer, Scottish Fire and Rescue Service, Lauriston Place, Edinburgh, EH3 9DE
- East & Midlothian Public Protection Committee, East Lothian Council, F28-29 Brunton Hall, Ladywell Way, Musselburgh, EH21 6AP
- East Lothian Council as a council constituted under the Local Government etc (Scotland) Act 1994, John Muir House, Haddington, EH41 3HA
- East Lothian Council as Planning Authority, John Muir House, Haddington, EH41 3HA
- East Lothian Council as Environmental Health Authority, John Muir House, Haddington, EH41 3HA
- H.M. Revenue and Customs, National Registration Unit, Portcullis House, 21 India Street, Glasgow, G2 4PZ

Appendix Two – Categories of Gaming Machines

The Gambling Act 2005 introduces new classes of gaming machines, as shown in figure 1 below.

Fig.1

Machine category	Maximum stake (from June 2009)	Maximum prize (from June 2009)
A	Unlimited	Unlimited
B1	£2	£4,000
B2	£100 (in multiples of £10)	£500
B3	£1	£500
B3A	£1	£500
B4	£1	£250
C	£1	£70
D non-money prize (other than crane grab machine)	30p	£8
D non-money prize (crane grab machine)	£1	£50
D money prize	10p	£5
D combined money and non-money prize (other than coin pusher or penny falls machines)	10p	£8 (of which no more than £5 may be a money prize)
D combined money and non-money prize (coin pusher or penny falls machine)	10p	£15 (of which no more than £8 may be a money prize)

Number and Category of Gaming Machines Allowed

Premises Type	Permissions
Large Casino (table/machine ratio of 5-1 up to maximum)	Maximum of 150 machines. Any combination of machines in categories B to D , (except B3A machines) within the total limit of 150 (subject to table ratio)
Small Casino (table/machine ratio of 2-1 up to maximum)	Maximum of 80 machines. Any combination of machines in categories B to D , (except B3A machines) within the total limit of 80 (subject to table ratio)
Pre 2005 Act Casinos (no table/machine ratio)	Maximum of 20 machines, categories B to D or C or D (except B3A machines) machines instead
Betting premises and tracks occupied by Pool Betting	Maximum of 4 machines, categories B2 to D
Bingo Premises	Maximum of 20% of the total number of gaming machines which are available for use on the premises, categories B3 or B4 .** No limit on C or D machines
Adult Gaming Centre	Maximum of 20% of the total number of gaming machines which are available for use on the premises,, categories B3 or B4 .** No limit on C or D machines
Family Entertainment Centre (with premise licence)	No limit on category C or D machines
Family Entertainment Centre (with permit)	No limit on category D machines
Clubs or Miners' Institutes with permits	Maximum of 3 machines in categories B3A or B4 to D *
Qualifying Alcohol Licensed Premises	1 or 2 machines of category C or D automatic upon notification
Qualifying Alcohol Licensed Premises with Gaming Machine Permits	Number of category C-D machines are specified on permit.
Travelling Fair	No limit on category D Machines

*It should be noted that members' clubs and miners' welfare institutes are entitled to site a total of three machines in Categories B3A to D but only one B3A machine can be sited as part of this entitlement. Commercial clubs are entitled to a total of three machines in Categories B4 to D

** Adult gaming centre and bingo premises are entitled to make available a number category B gaming machines not exceeding 20% of the total number of gaming machines which are available for use on the premises . Premises in existence before 13 July 2011 are entitled to make available four (adult gaming centre) or eight (bingo premises) category B gaming machines or 20% of the total number of gaming machines, whichever is the greater. Adult gaming centre premises and bingo premises licences granted on or after 13 July 2011 but before 1 April 2014 are entitled to a maximum of four or eight category B gaming machines or 20% of the total number of gaming machines, whichever is the greater; from 1 April 2014 these premises will be entitled to 20% of the total number of gaming machines only.

APPENDIX 3

SCHEME OF DELEGATION

1.0 INTRODUCTION

- 1.1 This scheme of delegation sets out the powers under the Gambling Act 2005 delegated by East Lothian Licensing Board to the Clerk and Depute Clerk.
- 1.2 In any particular case where powers are delegated to an officer under this scheme of delegation, if it appears to them that it is appropriate for the power to be exercised by the Board itself then they shall be entitled to refer the case to the Board for the exercise of the power.

2.0 POWERS DELEGATED UNDER THE GAMBLING ACT 2005

- 2.1 The following powers are delegated to and exercisable by the Clerk or Depute Clerk:-
- Determining an application premises licence application where no objection or representation has been received.
 - Determining an application for the transfer of a premises licence where no objection or representation has been received.
 - Determining an application for a variation of a Premises Licence where no objection or representation has been received.
 - Determining an application for a Provisional Statement where no objection or representation has been received.
 - Decision as to whether or not a request for a review can be rejected in terms of the regulations.
 - Determining a Gaming Machine Permit in premises that hold an alcohol licence where no objection or representation has been received.
 - Determining a Family Entertainment Centre Gaming Machine Permit where no objection or representation has been received

EAST LoTHIAN LICENSING BOARD
Consultation on

Statement of Principles 2016 – 2019

(The Gambling Act 2005)

Consultation Questionnaire

Guidance:

The Board must revise a Statement of Principles every three years under the Gambling Act 2005. Enclosed is the draft Statement of Principles 2016-2019 along with a questionnaire if you wish to respond. In particular please have regard to section 3 Risk Assessments that is a new requirement.

When providing your responses and suggestions please provide reasons and justifications for your proposals along with any supporting information you might have.

It would be preferred if consultees would use an electronic copy of this Consultation Questionnaire to record their consultation response. An electronic copy of the Questionnaire can be accessed on East Lothian Council's consultation hub at: www.eastlothianconsultations.co.uk

If however you wish to submit your consultation response in paper form, please post it to:-

Kirstie MacNeill
Clerk
East Lothian Licensing Board
John Muir House
Haddington
EH41 3HA

Consultation responses should be submitted by **no later than 24th November 2015**

Q1. Crime or disorder

Are there any amendments or additions you consider the Board should make that would help to prevent and/or reduce gambling from being a source of crime or disorder, being associated with crime or disorder or being used to support crime ?

Response

Q2. Fairness and Openness

Are there any amendments or additions you consider that the Board should make that would help to ensure that gambling is conducted in a fair and open way ?

Response

Q3. Protection of children and other vulnerable persons

Are there any amendments or additions you consider the Board should make that would help to protect children and other vulnerable persons from being harmed or exploited by gambling?

Response

Q4. Nuisance associated with premises licensed under the Gambling Act

Are there any amendments or additions that might, in your opinion, limit or control nuisance?

Response

Q5. Are there any other amendments or additions that you would like to be included in the new Statement of Principles 2013 – 2016 under the Gambling Act 2005 ?

Response

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