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A meeting of **Alcohol and Entertainment Licensing Committee** will be held in Committee Room 1 - East Pallant House on **Wednesday 23 March 2016 at 9.30 am**

MEMBERS: Mr J Ridd (Chairman), Mr H Potter (Vice-Chairman), Mr G Barrett, Mr R Barrow, Mr P Budge, Mr J Connor, Mr J W Elliott, Mrs D Knightley, Mr L Macey, Mr G McAra, Mrs P Plant, Mr D Wakeham, Mrs S Westacott, Mr P Jarvis and Mr N Thomas

AGENDA

- 1 **Chairman's announcements**
Any apologies for absence that have been received will be noted at this point.
- 2 **Minutes**
To approve as a correct record the minutes of the Alcohol and Entertainment Licensing Committee meeting held on 20 May 2014
- 3 **Urgent items**
Chairman to announce any urgent items which due to special circumstances are to be dealt with under agenda item 7(b).
- 4 **Declarations of Interests**
Members and officers are reminded to make any declarations of disclosable pecuniary, personal and/or prejudicial interests they may have in respect of matters on the agenda for this meeting.
- 5 **Public Question Time**
Questions submitted by members of the public in writing by noon on the previous working day (for a period of up to 15 minutes).
- 6 **Gambling Act 2005 - The Council's Proposed Draft Statement of Policy 2016-2019** (Pages 1 - 39)
To introduce the Council's proposed Draft Statement of Policy under the Gambling Act 2005 for the period of 2016 – 2019 and seek approval for public consultation.
- 7 **Deregulation Act 2015 - Power to exempt the supply of late night refreshment from requirements of the Licensing Act 2003** (Pages 40 - 49)
The purpose of this report is for Members to be made aware of changes to the Licensing Act 2003 and their new power to exempt certain types of premises providing 'late night refreshment' from requiring a licence.

NOTES

1. The press and public may be excluded from the meeting during any item of

business whenever it is likely that there would be disclosure of exempt information as defined in section 100I of and Schedule 12A to the Local Government Act 1972

2. The press and public may view the agenda papers on Chichester District Council's website at [Chichester District Council - Minutes, agendas and reports.](#)
3. Subject to the provisions allowing the exclusion of the press and public, the photographing, filming or recording of this meeting from the public seating area is permitted. To assist with the management of the meeting, anyone wishing to do this is asked to inform the chairman of the meeting of his or her intentions before the meeting starts. The use of mobile devices for access to social media is permitted but these should be switched to silent for the duration of the meeting. Those undertaking such activities must do so discreetly and not disrupt the meeting, for example by oral commentary, excessive noise, distracting movement or flash photography. Filming of children, vulnerable adults or members of the audience who object should be avoided. [Standing Order 11.3 in the Constitution of Chichester District Council]

Chichester District Council

Alcohol and Entertainment Licensing Committee

23rd March 2016

Council

17th May 2016

Gambling Act 2005 - The Council's proposed Draft Statement of Policy 2016 - 2019

1. Contact(s)

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2. Executive Summary

To introduce the Council's proposed Draft Statement of Policy under the Gambling Act 2005 for the period of 2016 – 2019 and seek approval for public consultation.

3. Recommendation to Alcohol and Entertainment Licensing Committee

3.1 That the draft revised Statement of Policy for the period 2016 – 2019 for the Chichester district is approved for public consultation.

3.2 That authority be delegated to the Head of Housing and Environment Services to consider any representations arising from the consultation exercise and, provided the representations do not require significant amendments to the draft Policy, to recommend adoption to Council on 17 May 2016 (with minor amendments if considered appropriate) following consultation with the Cabinet Member for Environment.

3.3 In circumstances where significant amendments to the Policy are required that these are reported back to the Alcohol and Entertainment Licensing Committee for further consideration.

Recommendations to Council

3.4 That the Policy (as amended in accordance with 3.2 and/or 3.3 above) be approved and published.

4. Main Report

Background

- 4.1 Section 349 of the Gambling Act 2005 (the 'Act') requires this Licensing Authority (the 'Authority') to prepare and publish a statement of licensing principles that it proposes to apply in exercising its various functions under the Act, commonly known as a 'Statement of Policy' (the 'policy'). It is expected that a number of specific matters are considered and determined within a policy, with the overriding intention being that the provision of betting and gaming within the district is provided in a manner that promotes the following three statutory licensing objectives:

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

Once formally adopted by the Authority, the policy has effect for a period of three years, although naturally is kept under review during this period so as to ensure that it remains suitable and adequately addresses any new or emerging issues that arise.

- 4.2 The current policy has had effect since 21st June 2013 following approval by Council. It has not been the subject of legal challenge or complaint and appears to have been well received by the community, businesses and partner organisations and therefore achieved its intention.
- 4.3 The current policy is due to expire at the end of 20th June 2016 and it has been necessary to undertake a review. Whilst undertaking the review, officers have carefully considered the content of the current policy specifically against the 5th edition of the statutory guidance issued by the Gambling Commission in September 2015. The Act requires that Licensing Authorities must have regard to this guidance.

5. Outcomes to be achieved

- 5.1 Approval of a six week public consultation of the proposed revised policy for the Chichester district for the period 2016 – 2019.
- 5.2 Following public consultation, all responses received will be carefully considered and, where appropriate, further amendments may be made to the policy if felt necessary or appropriate. The date for approval and publication of the final policy is by no later than 20th June 2016 thus it is intended to be presented to Council for adoption on 17th May 2016.

6. Proposal

- 6.1 When drafting the revised policy, officers have carefully considered legislative changes, case law and as referred to above the updated statutory guidance. The majority of proposed changes are as a result of changes to the statutory guidance, however there have been some legislative amendments which relate to the general

operation of the Act, for example in 2014 legislation came into effect that increased the stakes and prizes for certain categories of gaming machines.

6.2 The intention of the policy is to clearly set out the framework the Authority will generally apply to promote the three licensing objectives when making decisions on applications made under the Act.

6.3 In view of the time that has passed since the policy was last published, officers have made various general housekeeping amendments to the policy, such as changes to names or addresses of Responsible Authorities etc. In addition, where extracts from the previous statutory guidance had been quoted, these have been updated so they are consistent with the current statutory guidance. The substantive changes to the policy, along with specific points of which members should be aware, are summarised below:

- Paragraphs 2.2-2.5 - Information has been included with regards to the South Downs National Park and specific reference to the South Downs National Park Authority being a Responsible Authority for all applications submitted in relation to premises located within the area of the park.
- Paragraph 2.9 – The number and different types of gambling authorisations in place have now been included. This will assist the Authority in monitoring locally the provision and type of gambling across the district.
- Paragraphs 2.10-2.11 – Officers have given due consideration to the suggestion by the Gambling Commission that Authorities may wish to complete their own assessment of the local environment as a means of ‘mapping out’ the key characteristics of the local area. Given a number of factors, it is not felt necessary at the current time to undertake such an exercise; however this position will be kept under review.
- Paragraph 4.2 – The Authority is required to formally designate a body responsible for advising it about the protection of children from harm. The Authority proposes to continue to designate the West Sussex Local Safeguarding Children Board for this purpose.
- Paragraphs 5.3 – For clarity, the definition of an ‘Interested Party’ has been amended.
- Paragraphs 6.4-6.6 – Reference has been included to the ‘Primary Authority’ scheme run by the Better Regulation Delivery Office. A firm commitment has been made by this Authority to support the scheme.
- Paragraph 13.1 – The Authority historically passed a ‘no casino’ resolution under Section 166(1) of the Act. Whilst the current resolution has had effect, no approach has been made to the Authority by operators wishing to open a casino within the Chichester district. The proposal is to maintain the current stance and to continue with the ‘no casino’ resolution.

7. Alternatives that have been considered

7.1 Other than procedural matters associated with the consultation exercise, no alternatives have been considered as the Authority is under a statutory duty to

prepare and publish a policy with respect to the exercise of its licensing functions under Section 349 of the Act.

8. Resource and legal implications

- 8.1 There are no resource and/or legal implications raised by this report other than those set out within the body of this report.

9. Consultation

- 9.1 When reviewing the Policy the Authority must consult those persons listed in Section 349(3) of the Act. These are:

- 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; and
- 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 Act.

A full list of all those to be consulted is shown at Appendix B of the policy.

- 9.2 In view of the proposed changes being made to the policy it is proposed to undertake a six week public consultation.

- 9.3 Following consultation (between 24th March 2016 and 4th May 2016) final approval of the policy will be necessary by Full Council. The policy will then be published and made available electronically via the Council's website.

10. Community impact and corporate risks

- 10.1 There are no community impact and/or corporate risks raised by this report.

11. Other Implications

- 11.1 The application of the Human Rights Act 1998 and its relevant Articles in particular, Article 6 (Right to a fair trial), Article 8 (Right to respect for private and family life) and Article 1 of the first protocol (Protection of property) will be considered by this Licensing Authority in the determination of applications. A determination on each application will be based on the Gambling Commission statutory guidance, the Act and any other matter governed by the Statement of Policy.

- 11.2 There are no equality issues raised by this report.

12. Appendices

Draft Statement of Policy 2016 – 2019

13. Background Papers

Gambling Commission Guidance to Licensing Authorities 5th Edition (September 2015)

Chichester District Council's Statement of Principles 2013 - 2016

CHICHESTER DISTRICT COUNCIL

GAMBLING ACT 2005

STATEMENT OF POLICY 2016-2019

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This Statement of Policy was approved by Chichester District Council on the *****.

Please note that all references within this Statement to 'Guidance', refers to the Gambling Commission's Guidance to Licensing Authorities, 5th Edition, published September 2015. This was the current version of the Guidance at the time when this Statement was prepared and published.

PART A

1. THE LICENSING OBJECTIVES

- 1.1 In exercising most of their functions under the Gambling Act 2005 (the 'Act'), Licensing Authorities (the '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; and
 - Protecting children and other vulnerable persons from being harmed or exploited by gambling.
- 1.2 This Licensing Authority (the 'Authority') is aware that, as required by Section 153 of the Act, in making decisions about Premises Licences, Temporary Use Notices and some Permits that 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 (the 'Commission') under Section 24 of the Act;
 - In accordance with any relevant Guidance issued by the Commission under Section 25 of the Act;
 - Reasonably consistent with the licensing objectives; and
 - In accordance with the Statement published by the Authority under Section 349 of the Act i.e. this Statement of Policy (the 'Statement').

2. INTRODUCTION

- 2.1 Chichester district is predominantly a rural area. It covers some 303 square miles and is the second largest district (in area) within Sussex. The Census conducted in 2011 reports a population of 113,794 in the district which is mainly concentrated in the cathedral city of Chichester, the towns of Midhurst, Petworth and Selsey together with the parishes of Tangmere and Southbourne.
- 2.2 The district includes a significant area which forms part of the South Downs National Park (SDNP). The SDNP came into being in 2010 and is England's most recently created National Park. The South Downs National Park Authority (SDNPA) is the sole Planning Authority for all premises located within the area of the National Park and became fully operational on the 1st April 2011. In addition it is responsible for keeping the South Downs a special place.
- 2.3 This Licensing Authority is aware of and fully recognises the special and clearly defined role of the SDNPA, this includes the following 'purposes' and 'duty' for which they have been established:

Purpose 1 - *'To conserve and enhance the natural beauty, wildlife and cultural heritage of the area'.*

Purpose 2 - *‘To promote opportunities for the understanding and enjoyment of the special qualities of the National Park by the public’.*

Duty - *‘To seek to foster the social and economic well-being of the local communities within the National Park in pursuit of our purposes’.*

Where there is a conflict between the purposes and/or duty, then Purpose 1 must have priority.

The Licensing Authority is aware of the requirement under the National Parks and Access to the Countryside Act 1949, currently supported by paragraphs 26-27 of the English National Parks and the Broads UK Government Vision and Circular 2010, to have regard to the above Purposes when undertaking its licensing functions. The Licensing Authority also recognises that the ‘Duty’ referred to above falls solely upon the SDNPA.

- 2.4 In view of the above and given the overriding duty to ensure the promotion of the licensing objectives, this Licensing Authority will actively encourage those currently or proposing to operate premises/events within the National Park to proactively engage with the SDNPA at the earliest opportunity. In respect of major events proposed to take place in the National Park, it is expected that applicants will give proper consideration to the content of any written or verbal guidance offered by the SDNPA. This is in relation to both the licensing application and any supporting documents e.g. an Event Management Plan.
- 2.5 The Licensing Authority will also, when undertaking its various licensing functions, remaining conscious of the effect that premises/events operating within the National Park can have, and will subsequently remain cognisant of the need to ensure that the special qualities and characteristics of the National Park are maintained and wherever possible, enhanced.
- 2.6 The district also contains the Chichester Harbour Area of Outstanding Natural Beauty, one of the south coast’s finest recreational areas as well as being an important natural habitat for birds, flora and fauna.
- 2.7 Tourism is crucial to this thriving district. In 2013 tourism generated some 10% of the employment. At that time tourism related expenditure translated to £308.5 million worth of income for local businesses through direct, indirect and induced effects. Overall, an estimated 1,220,000 staying trips were spent in Chichester district, of which around 1,146,800 were made by domestic visitors (94%) and 73,200 by overseas visitors (6%); this generated over £141.8 million. In addition approximately 5.4 million tourism day trips were made to Chichester district (lasting more than 3 hours and taken on an irregular basis) generating a further £166.7 million expenditure. Around a third (33%) of all staying or overnight trips to Chichester district were accommodated in commercial serviced accommodation, whilst 45% of all overnight trips involved staying in non-serviced accommodation such as self-catering and caravan/camping accommodation. Smaller volumes of overnight trips involved staying on boats, in hostels, on campus, in private lodgings and in more than one type of accommodation over the duration of the trip.

2.8 In June 2015 there were in excess of 3,167 commercial premises of which approximately 1,501 are registered food premises, over 100 accommodation establishments, hotels and B&B's, and one of the largest caravan and campsites in Europe located in Selsey. There are many historic and cultural attractions in the region including Goodwood, with its renowned horse and motor car racing, Fishbourne Roman Palace, the internationally recognised Chichester Festival Theatre, the Weald and Downland Museum and the award winning Pallant House Gallery.

2.9 In November 2015, current authorisations within the Chichester district under the Act include:

Bingo Premises Licence - 3
Betting Premises Licence – 9
Track Premises Licence – 1
Family Entertainment Centre Premises Licence - 1
Adult Gaming Centre Premises Licence – 2
Licensed Premises Gaming Machine Permit – 7
Unlicensed Family Entertainment Centre Gaming Machine Permit – 8
Club Gaming Permit -1
Club Machine Permit – 20
Registered Non-commercial Societies – 151
Notification of 2 or less gaming machines in licensed premises - 61

There are therefore 264 current authorisations for which the Licensing Authority is responsible for ensuring compliance with.

2.10 An Authority may find it useful to complete their own assessment of the local environment as a means of 'mapping out' the key characteristics of the local area. Such an assessment is referred to as a 'Local Area Profile'. There is however no statutory requirement on an Authority to undertake such an assessment.

2.11 This Authority has carefully considered whether it is appropriate to undertake an assessment of the Chichester district. At the current time, the Authority is not proposing to undertake an assessment for the following reasons, however naturally the matter will be kept under review and a suitable assessment undertaken if it becomes necessary:

- Since the Act came into effect, only a very small number of complaints/concerns regarding gambling matters have ever been received by the Authority. None of the subsequent investigations have necessitated the Authority to instigate formal action;
- No issues or concerns have ever been brought to the attention of this Authority by organisations (e.g. Citizens Advice Bureau) who represent children or other individuals who may be harmed or exploited by gambling; and
- Due to market forces, the number of premises benefitting from Premises Licences has remained fairly consistent without a particular area becoming saturated by licensed premises.

- 2.12 A plan showing the Chichester District Council area is shown at Appendix A.
- 2.13 Authorities are required under the Act 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, although can be reviewed and revised at any time following consultation with those bodies and persons set out in Section 349(3) of the Act.
- 2.14 Chichester District Council consulted widely upon this Statement before it was finalised and published. A list of those persons who were consulted is provided at Appendix B.
- 2.15 Section 349 of the Act requires that the following parties are specifically consulted:
- 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; and
 - 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 Act.
- 2.16 Our consultation took place between ***** and *****.
- 2.17 The full list of comments made and the consideration by the Authority of those comments is available by request to:
- Licensing Manager, Licensing Team, Housing & Environment Services, Chichester District Council, East Pallant House, 1 East Pallant, Chichester, West Sussex, PO19 1TY or Email: licensing@chichester.gov.uk or Tel: 01243 534740.
- 2.18 The Statement was approved at a meeting of Full Council on ***** and was published via our website on *****. The Statement has effect from the ***** until ***** inclusive.
- 2.19 Should you have any comments regarding this Statement, please send them via letter or email to the following:
- Licensing Manager, Licensing Team, Housing & Environment Services, Chichester District Council, East Pallant House, 1 East Pallant, Chichester, West Sussex, PO19 1TY or Email: licensing@chichester.gov.uk or Tel: 01243 534740.
- 2.20 It should be noted that this 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 Act.

3. DECLARATION

- 3.1 In producing the final Statement, this Licensing Authority declares that it has had regard to the licensing objectives, the Guidance issued to Authorities by the Commission, and any responses from those consulted on the draft Statement.

4. RESPONSIBLE AUTHORITIES

- 4.1 The 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.
- 4.2 This Authority formally designates the West Sussex Local Safeguarding Children Board as the body competent to advise it about the protection of children from harm.
- 4.3 The contact details of all the Responsible Authorities under the Gambling Act 2005 are available via the Council's website at:
<http://www.chichester.gov.uk/licensingfees#responsible> and are also shown at Appendix C.

5. INTERESTED PARTIES

- 5.1 Interested Parties can make representations about licence applications or apply for a review of an existing licence. These parties are defined in Section 158 of the Act as follows:

"For the purposes of this Part a person is an Interested Party in relation to a Premises Licence or in relation to an application for or in respect of a Premises Licence if, in the opinion of the Licensing Authority which issues the Licence or to which the application is made, the person -

- (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)."*

- 5.2 The Authority is required by regulations to state the principles it will apply in exercising its powers under the Act 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 Guidance at Paragraphs 8.12 to 8.17 inclusive. It will also consider Paragraph 6.21 of the Guidance that *"have business interests"* should be given the widest possible interpretation and include partnerships, charities, faith groups and medical practices.

- 5.3 For the purposes of Section 158(c) of the Act, Interested Parties includes persons who are democratically elected such as Councillors (District, County, Town and Parish Councillors) and MPs, as representing individuals who meet the criteria defined in Section 158(a) or Section 158(b) of the Act. Other representatives include bodies such

as trade associations and trade unions, along with residents' and tenants' associations. A school head or governor might also act in representing the interests of pupils or parents and a community group might represent vulnerable people living near to a proposed premises.

5.4 No specific evidence of being asked to represent an Interested Party will be required from a democratically elected person, however in all other cases this Licensing 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.

5.5 If individuals wish to approach Councillors to ask them to represent their views, then care should be taken to ensure that the Councillors are not part of the Licensing Committee dealing with the application. If there are any doubts then please contact:

Licensing Manager, Licensing Team, Housing & Environment Services, Chichester District Council, East Pallant House, East Pallant, Chichester, West Sussex, PO19 1TY
– Email: licensing@chichester.gov.uk or Tel: 01243 534740.

6. EXCHANGE OF INFORMATION

6.1 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 Commission, and the functions under Section 350 of the Act with respect to the exchange of information between it and the other persons listed in Schedule 6 to the Act.

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

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

6.4 Administered by the Better Regulation Delivery Office, the 'Primary Authority' scheme provides for a statutory partnership to be formed between a business and a single authority, e.g. a local authority. That single authority, the Primary Authority, can provide a national inspection strategy within which other local regulators can operate, to improve the effectiveness of visits by local regulators and enable better sharing of information between them. The Primary Authority scheme therefore aims to ensure that local regulation is consistent at a national level.

6.5 Since October 2013, the Primary Authority scheme was extended to include age-restricted sales of gambling, although does not apply to any other aspect of the Act. This means local authorities in England and Wales must follow any age restricted sales

of gambling national inspection plans and strategies that are published on the Primary Authority register when considering proactive age restricted sales (gambling) activity including testing. Primary Authority plans do not prohibit licensing authorities undertaking reactive test purchasing.

- 6.6 This Authority recognises the value and importance of the Primary Authority scheme and as is required, will engage with Primary Authorities where and when necessary.

7. ENFORCEMENT

- 7.1 Authorities are required by regulations under the Act 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.

- 7.2 This Authority's principles are that:

It will be guided by the Guidance 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.

- 7.3 When considering enforcement action, the Licensing Authority will consider each case on its own facts and merits and in accordance with its enforcement policy.

- 7.4 As the Guidance requires, this Authority will endeavour to avoid duplication with other regulatory regimes so far as possible.

- 7.5 This Authority has adopted and implemented a risk-based inspection programme, based on;

- The licensing objectives;
- Relevant Codes of Practice;
- Guidance issued by the Commission, in particular at Part 36; and
- The principles set out in this Statement.

- 7.6 The main enforcement and compliance role for this Authority in terms of the Act is to ensure compliance with the requirements of the Premises Licences and other permissions which it authorises. The 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 Authority but should be notified to the Commission.

- 7.7 This Authority also keeps itself informed of developments as regards the work of the Better Regulation Delivery Office in its consideration of the regulatory functions of Local Authorities.
- 7.8 Bearing in mind the principle of transparency, this Authority's enforcement/compliance protocols/written agreements and risk methodology is available upon request to:

Licensing Manager, Licensing Team, Housing & Environment Services, Chichester District Council, East Pallant House, East Pallant, Chichester, West Sussex, PO19 1TY
– Email: licensing@chichester.gov.uk or Tel: 01243 534740.

8. LICENSING AUTHORITY FUNCTIONS

8.1 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 any person(s) or entity that holds an appropriate Premises Licence granted under the Licensing Act 2003, in order that a maximum of two gaming machines may be made available. The Premises Licence must include the retail sale of alcohol as a licensable activity for consumption on the premises, there must be a bar at the premises from which the alcohol is served without a requirement that alcohol is served only with food;
- Issue *Licensed Premises Gaming Machine Permits* to any person(s) or entity that holds an appropriate Premises Licence granted under the Licensing Act 2003 in order that three or more gaming machines may be made available. Again, the Premises Licence must include the retail sale of alcohol as a licensable activity for consumption on the premises, there must be a bar at the premises from which the alcohol is served without a requirement that alcohol is served only with food;
- Register *Non-Commercial Societies* in order that they can operate Small Society Lotteries within prescribed thresholds;
- Issue *Prize Gaming Permits*;
- Receive and Endorse *Temporary Use Notices*;
- Receive *Occasional Use Notices*;
- Provide information to the Commission regarding details of Licences issued (see Section above on 'Information Exchange'); and
- Maintain registers of the Permits and Licences that are issued under these functions.

- 8.2 It should be noted that Authorities are not involved in licensing remote gambling at all, as this is regulated by the Commission via Operating Licences.

- 8.3 Gambling Act 2005 decisions and functions are mostly delegated to the Licensing Committee of the Licensing Authority (as established under Section 6 of the Licensing Act 2003 by virtue of Section 154(1) with the exception detailed in Section 154(2)), or in appropriate cases to Officers of this Licensing Authority. As many of the decisions will be purely administrative in nature, the principle of delegation to Officers is adopted in the interests of speed, efficiency and cost effectiveness. The terms of delegation of function are set out below.

| Matter to be dealt with | Full Council | Sub-committee of licensing committee | Officers |
|---|---------------------|---|--|
| Final approval of the Licensing Authority Statement of Policy (Section 349) | X | | |
| Policy not to permit casinos (Section 166) | X | | |
| Fee setting (when appropriate) (Section 212) | | X To be made by the full Alcohol and Entertainment Licensing Committee | |
| Application for premises licences | | X Where representations have been received and not withdrawn | X Where no representations received/representations have been withdrawn |
| Application for a variation to a licence | | X Where representations have been received and not withdrawn | X Where no representations received/representations have been withdrawn |
| Application for a transfer of a licence | | X Where representations have been received from the Commission or responsible authority | X Where no representations received from the Commission or responsible authority |
| Application for a provisional statement | | X Where representations have been | X Where no representations received/representations |

| | | | |
|---|--|---|---|
| | | received and not withdrawn | have been withdrawn |
| Review of a premises licence | | X | |
| Application for club gaming/club machine permits | | X Where objections have been made (and not withdrawn) | X Where no objections made/objections have been withdrawn |
| Cancellation of club gaming/club machine permits | | X | |
| Applications for other permits | | | X |
| Cancellation of licensed premises gaming machine permits | | | X |
| Consideration of temporary use notice | | | X |
| Decision to give a counter notice to a temporary use notice | | X | |

9. HUMAN RIGHTS ACT 1998

9.1 In considering applications, and taking enforcement action, this Licensing Authority is subject to the Human Rights Act 1998 and in particular the following relevant provisions of the European Convention on Human Rights:

- Article 1, Protocol 1 - peaceful enjoyment of possessions;
- Article 6 - right to a fair hearing;
- Article 8 - respect for private and family life; and
- Article 10 – right to freedom of expression.

PART B

PREMISES LICENCES - CONSIDERATION OF APPLICATIONS

10. General Principles

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

(i) Decision-making

- 10.2 This 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:
- In accordance with any relevant Code of Practice issued by the Commission;
 - In accordance with any relevant Guidance issued by the Commission;
 - Reasonably consistent with the licensing objectives; and
 - In accordance with this Statement.
- 10.3 The Authority recognises that Paragraph 5.34 of the Guidance states that *"moral or ethical objections to gambling are not a valid reason to reject applications for Premises Licences (with the exception of the casino resolution powers)." - see Section 13 on Casinos – and that Paragraph 5.22 further states that "s.153 makes it clear that in deciding whether or not to grant a licence, a Licensing Authority must not have regard to the expected demand for gambling premises that are the subject of the application."*

(ii) Definition of "premises"

- 10.4 In Section 353(1) of the Act, *"premises"* is defined as including *"any place and in particular – (a) a vessel, and (b) a vehicle"*. Section 152 of the Act states that a Premises Licence *"may not be issued in respect of premises if a premises licence already has effect in relation to the premises"*. However, a single building could be subject to more than one Premises Licence, provided they are for different parts of the building and these parts 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. When considering applications, this Authority is aware of the need to pay particular attention regarding sub-division of a single building or plot so as to ensure that the mandatory conditions relating to access between premises are, or would be complied with.
- 10.5 The Guidance states at Paragraph 7.6 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 Authority.” Further paragraph 7.7 states that “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. If a premises is located within a wider venue, a Licensing Authority should request a plan of the venue on which the premises should be identified as a separate unit”.

10.6 This Authority takes particular note of Paragraph 7.23 the Guidance which states that:

“Licensing Authorities should take particular care 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. In particular they should be aware of the following:

- The third licensing objective seeks to protect children from being harmed by gambling. In practice this 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; and*
- Customers should be able to participate in the activity named on the premises licence.”*

10.7 At Paragraph 7.33 of the Guidance, factors which may assist the Authority in determining whether two premises are truly separate have been provided these include:

- Is a separate registration for business rates in place for the premises?*
- 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?*

10.8 This Authority will consider the above and any other relevant factors in making its decision, depending on all the circumstances of the case.

10.9 Paragraph 7.23 of the Guidance provides the relevant access provisions for each type of premises, this is reproduced below:

Casinos

- The principal entrance to the premises must be from a ‘street’ (as defined at Paragraph 7.21 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 defined at Paragraph 7.21 of the Guidance) or from other 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 unless that shop is itself a licensed betting premises.*

Tracks

- *No customer must be able to access the premises directly from a casino or adult gaming centre.*

Bingo Premises

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

Part 7 of the Guidance contains further advice on this issue, which this Authority will also carefully take into account in its decision-making.

(iii) Premises “ready for gambling”

10.10 The Guidance states at Paragraph 7.58 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.”*

10.11 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.

10.12 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 the following two stage consideration process in accordance with Paragraph 7.59 of the Guidance:

- Whether, as a matter of substance after applying the principles in Section 153 of the Act, the premises ought to be permitted to be used for gambling; and
- 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.

10.13 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.

10.14 More detailed examples of the circumstances in which such a licence may be granted can be found within the Guidance at Paragraphs 7.58-7.65 inclusive.

(iv) Location

10.15 This 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 suggested by the Guidance, 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

10.16 The Guidance states at Paragraph 7.58 that *“In determining applications, the Licensing Authority should not take into consideration matters that are not related to gambling and the licensing objectives. One example would be the likelihood of the applicant obtaining planning permission or building regulations approval for their proposal.”* This Authority will therefore only take into account matters that are relevant to gambling and the licensing objectives,

10.17 In addition, this Authority notes the Guidance at Paragraph 7.65 which states that *“When dealing with a premises licence application for finished buildings, the Licensing Authority should not take into account whether those buildings have to comply with the necessary planning or building consents. Nor should fire or health and safety risks be taken into account. Those matters should be dealt with under relevant planning control, building and other regulations, and must not form part of the consideration for the premises licence. Section 210 of the 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

- 10.18 This Authority seeks to avoid any duplication with other statutory/regulatory systems where possible, including planning. This Authority will therefore not consider whether a premises subject of a licence application is likely to be awarded planning permission or building regulations approval.
- 10.19 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

- 10.20 Premises Licences granted must be reasonably consistent with the licensing objectives. With regard to these objectives, this Authority has considered the Guidance 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

- 10.21 This Authority is aware that the Commission takes a leading role in preventing gambling from being a source of crime. The Guidance does however envisage that Authorities should pay attention to the proposed location of gambling premises in terms of this licensing objective. Thus, where an application is for a premises in an area noted for particular problems with disorder, organised criminal activity etc., then this Authority will consider very carefully whether gambling premises are suitable to be located there. Equally it will carefully consider whether control measures by way of conditions are appropriate to prevent the premises from being associated with or used to support crime. An example of a control measure is the provision of Door Supervisors. When considering attaching conditions, this Authority will also take into consideration the content of any risk assessments conducted by the operator.

Ensuring that gambling is conducted in a fair and open way

- 10.22 This Authority has noted that the Commission states at Paragraph 5.11 that it generally *“would not expect Licensing Authorities to find themselves dealing with issues of fairness and openness frequently. Fairness and openness is likely to be a matter for either the way specific gambling products are provided 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”*. However, naturally if this Licensing Authority suspects that gambling is not being conducted in a fair an open way, it will liaise with the Commission appropriately.

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

- 10.23 This Authority considers, as suggested in the Guidance, whether staff will be able to adequately supervise gambling premises, as adequate staffing is a factor to consider regarding the prevention of underage gaming. This Authority will work together with operators to consider how any impediments to the supervision of premises might be most appropriately remedied. Supervision also applies to premises that are themselves not age-restricted (e.g. bingo and family entertainment centres) but which make gambling products and facilities available,
- 10.24 Where the Licensing Authority considers the structure or layout to be an inhibition or potential inhibition to satisfying the licensing objective, the Licensing Authority will expect the applicant/licensee to consider what changes are required to ensure the risk is mitigated. Changes might include the positioning of CCTV/staff, the use of floor-walkers and/or determining a suitable location for the staff counter so as to ensure direct line of sight.
- 10.25 As regards the term “*vulnerable persons*” it is noted that the Commission does not seek to offer a definition but states at Paragraph 5.17 that “*it does for regulatory purposes, assume that this group includes people who gamble more than they want to, people who gambling beyond their means and people who may not be able to make informed or balanced decisions about gambling due to, for example, mental health needs, a learning disability or substance misuse relating to alcohol or drugs*”. This Authority will consider this licensing objective on a case by case basis.

Conditions

- 10.26 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.
- 10.27 Decisions upon individual conditions will be made on a case by case basis, although there will be a number of measures this 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 Authority will also expect applicants for Premises Licences to offer their own suggestions as to ways in which the licensing objectives can be effectively met.
- 10.28 This 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 Guidance.

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

- 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 holder of the licence; 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.

10.30 These considerations will apply to premises including buildings where multiple Premises Licences are applicable.

10.31 This 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 Guidance, this 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.

10.32 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 Act 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

10.33 This Authority recognises Paragraph 33.1 of the Guidance where it states 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. The licensing authority is able to impose a condition on the premises licence to this effect.”*

10.34 Where it is decided that supervision of entrances/machines is appropriate for particular cases, a consideration of whether these need to be licensed by the Security Industry Authority 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. This is supported by the Guidance at Part 33.

11. Adult Gaming Centres

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

11.2 This 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; and
- 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.

12. (Licensed) Family Entertainment Centres

12.1 This 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.

12.2 This 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; and
- 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.

- 12.3 This Authority will seek to establish, so far as is reasonably possible, the extent to which any conditions attached to an Operating Licence controls the way in which the area containing the Category C gaming machines should be delineated.

13. Casinos

- 13.1 This Authority historically passed a 'no casino' resolution pursuant to Section 166(1) of the Gambling Act 2005, and therefore determined that it would not issue Casino Premises Licences for any premises in its District. There is no proposal to alter that position and it therefore remains the case that a no casino resolution continues to have effect for the duration of this policy.
- 13.2 Potential applicants should note that as a 'no-casino' resolution has been passed by this Authority, that no applications for Casino Premises Licences will therefore be considered. Any applications received will be duly returned with a notification that a 'no-casino' resolution is in place.

14. Bingo

- 14.1 This Authority notes the following Paragraphs of the Guidance:

Paragraph 18.5 – “Licensing Authorities need to satisfy themselves that bingo can be played in any bingo premises for which they issue a premises licence. An operator may choose to vary their licence to exclude a previously licensed area of that premises, and then apply for a new premises licence, or multiple new premises licences, with the aim of creating a separate premises in that area. Before issuing additional premises licences, licensing authorities need to consider whether bingo can be played at each of those new premises.”

Paragraph 18.7 – “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.”

15. Betting Premises

- 15.1 *Self-Service Betting Terminals (SSBTs)* – Section 181 contains an express power for Licensing Authorities to restrict the number of SSBTs, their nature and the circumstances in which they are made available by attaching a licence condition to a betting premises licence. In accordance with the Guidance at Paragraph 19.9, when considering the number/nature/circumstances of SSBTs an operator wants to offer, this Authority will take into account the size of the premises, the number of counter positions available for person-to-person transactions, and the ability of staff to monitor the use of the machines by children and young persons (it is an offence for persons under 18 to bet) or by vulnerable people.

16. Tracks

- 16.1 This Authority is aware that Tracks may be subject to one or more Premises Licences, provided each licence relates to a specified area of the track. This Authority notes that Guidance and confirms that it 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.
- 16.2 This Authority will therefore expect the applicant for a Track Premises Licence 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.
- 16.3 This 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; and
 - 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.

- 16.4 *Gaming machines* - Where the applicant holds a Pool Betting Operating Licence (this is granted by the Commission) and is going to use the entitlement to four gaming machines, machines (other than Category D) should be located in areas from which children are excluded.

Applications and plans

- 16.5 As part of an application for a Track Premises Licence, applicants are required to submit plans of the premises. As the Guidance states at Paragraph 20.43, *“This ensures that licensing authorities have the necessary information to make an informed judgement about whether the premises are fit for gambling. The plan also informs future premises inspection activity.”*

16.6 The Authority also notes Paragraphs 20.44 of the Guidance which states that:

“Plans for tracks need not be in a particular scale, but should be drawn to scale and should be sufficiently detailed to include the information required by regulations.”

16.7 This Authority shares the Commission’s appreciation at Paragraph 20.46 of the Guidance 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. Licensing Authorities should satisfy themselves that the plan provides sufficient information to enable them to assess an application.”*

17. Travelling Fairs

17.1 Without requiring any form of authorisation under the Act, travelling fairs may provide an unlimited number of Category D gaming machines and/or equal chance prize, provided that the facilities for gambling amount to no more than an ancillary amusement at the fair.

17.2 The Authority will consider whether the travelling fair falls within the statutory definition. The Act defines a travelling fair as *“wholly or principally”* providing amusements and they must be on a site that has been used for fairs for no more than 27 days per calendar year.

17.3 It is noted that the 27-day statutory maximum for 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. So far as is reasonably practicable, this Authority will monitor the use of land and will work with its neighbouring Authorities to ensure that land which crosses our boundaries is monitored so that the statutory limits are not exceeded.

18. Provisional Statements

18.1 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.

18.2 Section 204 of the Act provides for a person to make an application to the Authority for a Provisional Statement in respect of premises that they:

- (a) Expect to be constructed;
- (b) Expect to be altered; or
- (c) Expect to acquire a right to occupy.

- 18.3 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.
- 18.4 In contrast to the Premises Licence application, the applicant does not have to hold, or have applied for, an Operating Licence from the Commission and they do not have to have a right to occupy the premises in respect of which their application for a Provisional Statement is made.
- 18.5 The holder of a Provisional Statement may then apply for a Premises Licence once the premises are constructed, altered or acquired. The 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 Responsible 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.
- 18.6 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 way of representations 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 and information submitted with the Provisional Statement application. This must be a substantial change to the plan and this Authority would discuss any concerns it has with the applicant before making a decision.

19. Reviews

- 19.1 Requests for a review of a Premises Licence can be made by Responsible Authorities or Interested Parties; however, it is for the 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 Commission;
 - In accordance with any relevant Guidance issued by the Commission;
 - Reasonably consistent with the licensing objectives; and
 - In accordance with this Statement.
- 19.2 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.

- 19.3 The 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.
- 19.4 Once a valid application for a review has been received by the 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 Authority, who will publish notice of the application within 7 days of receipt.
- 19.5 The Authority must carry out the review as soon as possible after the 28 day period for making representations has passed.
- 19.6 The purpose of the review will be to determine whether the Authority should take any action in relation to the Licence. If action is justified, the options open to the Authority are:-
- (a) Add, remove or amend a Licence condition imposed by the Authority;
 - (b) Exclude a default condition imposed by the Secretary of State or Scottish Ministers (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.
- 19.7 In determining what action, if any, should be taken following a review, the Authority must have regard to the principles set out in Section 153 of the Act, as well as any relevant representations.
- 19.8 In particular, the Authority may also initiate a review of a Premises Licence on the grounds that a holder of a Premises Licence 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.
- 19.9 Once the review has been completed, the Authority must, as soon as possible, notify its decision to:
- The holder of the licence;
 - 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

20. Unlicensed Family Entertainment Centre Gaming Machine Permits (Statement of principles on Permits – Section 247 of the Act and Schedule 10 Paragraph 7)

- 20.1 Where a premises does not hold a Premises Licence but wishes to provide gaming machines, it may apply to the 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 in accordance with the requirements of Section 238 of the Act.
- 20.2 Schedule 10, Paragraph 7 of the Act states that an Authority may *“prepare a statement of principles that they propose to apply”* 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 of the Act. The Guidance also states at Paragraph 24.8 *“In its Statement of Policy, a Licensing Authority may include a statement of principles that it proposes to apply when exercising its functions in considering applications for Permits..... Licensing Authorities may wish to give weight to matters relating to protection of children from being harmed or exploited by gambling and to ensure that staff supervision adequately reflects the level of risk to this group.”*
- 20.3 Guidance also states at Paragraph 24.9 that *“An application for a Permit may be granted only if the Licensing Authority is satisfied that the premises will be used as an Unlicensed Family Entertainment Centre, and if the Chief Officer of Police has been consulted on the application....Licensing Authorities may also consider asking applicants to demonstrate:*
- *A full understanding of the maximum stakes and prizes of the gambling that is permissible in Unlicensed Family Entertainment Centres;*
 - *That the applicant has no relevant convictions (those that are set out in Schedule 7 of the Act); and*
 - *That employees are trained to have a full understanding of the maximum stakes and prizes.”*
- 20.4 It should be noted that an Authority cannot attach conditions to this type of Permit.
- 20.5 Statement of principles - This Authority will expect applicants 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 Authority will also expect, as suggested by the 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. This Authority also expects applicants to provide a plan in support of their application. The plan must clearly show the extent of the boundary or perimeter of the premises and the location at the premises in which the Category D gaming machines will be made available for use in reliance on the Permit.

21. (Alcohol) Licensed Premises Gaming Machine Permits & Automatic Entitlement (Section 283 of the Act and Schedule 13 Paragraph 4(1)) (Section 282 of the Act)

Permit: 3 or more gaming machines

- 21.1 Under Section 283 of the Act, the holder of an appropriate alcohol Premises Licence granted under the Licensing Act 2003 (the Premises Licence must include the retail sale of alcohol as a licensable activity for consumption on the premises, there must be a bar at the premises from which the alcohol is served without a requirement that alcohol is served only with food) may apply for a Permit if they wish to make available for use at the premises more than two gaming machines drawn from Category C and/or D. The Authority must consider any application for a Permit based upon the licensing objectives, any guidance issued by the Commission issued under Section 25 of the Act, and *“such matters as they think relevant”*.
- 21.2 This 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 harmed or being exploited by gambling and will expect applicants to satisfy the Authority that there will be sufficient measures to ensure that persons under 18 years 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 help. As regards the protection of vulnerable persons, applicants may wish to consider the provision of information leaflets / helpline numbers for organisations such as GamCare.
- 21.3 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.
- 21.4 It should be noted that the 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.
- 21.5 It should also be noted that the holder of a Permit must comply with any Code of Practice issued by the Commission about the location and operation of the machine.

Automatic entitlement: Maximum of 2 gaming machines

- 21.6 Under Section 282 of the Act, the holder of an appropriate alcohol Premises Licence granted under the Licensing Act 2003 (the Premises Licence must include the retail sale of alcohol as a licensable activity for consumption on the premises, there must be a bar at the premises from which the alcohol is served without a requirement that

alcohol is served only with food) may give notice to the Authority that they wish to take advantage of the automatic entitlement to provide at the premises a maximum of two gaming machines again drawn from either Category C and/or D. There is no application process, however the holder of the Premises Licence is required to formally notify the Authority prior to making gaming machines available for use.

21.7 However, the 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 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 the gaming machines;
- The premises are mainly used for gaming; or
- An offence under the Act has been committed on the premises.

22. Prize Gaming Permits

22.1 Schedule 14, Paragraph 8(1) of the Act states that an 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 proposes to consider in determining the suitability of the applicant for a Permit.*”

22.2 Statement of principles - This Authority will expect that applicants should set out the types of gaming that they are intending to offer and they should also be able to demonstrate:

- That they understand the limits to stakes and prizes that are set out in regulations;
- That the gaming offered is within the law; and
- Clear policies that outline the steps to be taken to protect children from harm.

22.3 In accordance with the provisions of Schedule 14, Paragraph 8(3) of the Act, the Authority, when making its decision on an application for a Permit, does not need to (but may) have regard to the licensing objectives but must have regard to any Guidance issued by the Commission.

22.4 It should be noted that there are conditions in the Act by which the holder of the Permit must comply, but that the 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.

23. Club Gaming and Club Machines Permits

23.1 Members Clubs and Miners' Welfare Institutes (but not Commercial Clubs) may apply for a Club Gaming Permit which authorises an establishment to provide gaming machines as well as equal chance gaming and games of chance as prescribed in regulations, namely pontoon and chemin de fer. Up to a maximum of three gaming machines drawn from categories B3A, B4, C or D may be provided, but only one B3A machine may be sited as part of this entitlement.

23.2 If a Club does not wish to have the full range of benefits permitted by a Club Gaming Permit or if they are a Commercial Club, then they may apply for a Club Machine Permit. This authorises gaming machines to be provided in accordance with the following requirements:

Members Clubs and Miners' Welfare Institutes - maximum of three gaming machines drawn from categories B3A, B4, C or D. Only one B3A machine may be sited as part of this entitlement.

Commercial Clubs - maximum of three gaming machines drawn from categories B4, C or D.

23.3 Guidance states at Paragraph 25.4 that *"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 restricted to that of a prescribed kind (currently bridge or whist). Members' clubs must be permanent in nature but there is no need for a club to have an alcohol licence."*

23.4 The Guidance also states at Paragraph 25.38 that *"Licensing Authorities may only refuse an application on the grounds that:*

- 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;*
- The applicant's premises are used wholly or mainly by children and/or young persons;*
- An offence under the Act or a breach of a Permit has been committed by the applicant while providing gaming facilities;*
- A Permit held by the applicant has been cancelled in the previous ten years; or*
- An objection has been lodged by the Commission or the Police."*

23.5 There is also a 'fast-track' procedure available under Schedule 12, Paragraph 10 of the Act in respect of premises which also benefit from a Club Premises Certificate granted under the Licensing Act 2003. As the Guidance states at Paragraphs 25.41 & 25.43, *"Under the fast-track procedure there is no opportunity for objections to be made by the Commission or the Police, and the grounds upon which an Authority can refuse a permit are reduced."* and *"The grounds on which an application under this process may be refused are that:*

- (a) *The Club is established primarily for gaming, other than gaming prescribed by Regulations under Section 266 of the Act;*
- (b) *In addition to the prescribed gaming, the applicant provides facilities for other gaming;*
- (c) *A Club Gaming Permit or Club Machine Permit issued to the applicant in the last ten years has been cancelled."*

23.6 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.

24. Temporary Use Notices

24.1 Temporary Use Notices allow the use of premises for gambling where there is no Premises Licence in effect, however the holder of an appropriate operating licence wishes to use a premises temporarily for providing facilities for gambling. At Paragraph 14.1 of the Guidance, the Commission have suggested that premises that might be suitable for a Temporary Use Notice would include hotels, conference centres and sporting venues. Temporary Use Notices are often, but not exclusively, used to run poker tournaments.

24.2 Secondary legislation, The Gambling Act 2005 (Temporary Use Notices) Regulations 2007 sets out the restrictions on the type of gambling to be offered under a Temporary Use Notice. These restrictions are:

- It can only be used to offer gambling of a form authorised by the operator's operating licence, and consideration should therefore be given as to whether the form of gambling being offered on the premises will be remote, non-remote, or both;
- Gambling under a Temporary Use Notice may only be made available on a maximum of 21 days in any 12 month period for any or all of a named set of premises;
- It can only be used to permit the provision of facilities for equal chance gaming, and where the gaming in each tournament is intended to produce a single overall winner;
- Gaming machines may not be made available under a Temporary Use Notice.

24.3 There are a number of statutory limits regarding Temporary Use Notices. The meaning of "premises" in Part 8 of the Act is discussed in Part 7 of the Guidance. 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*".

24.4 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.

24.5 This Authority is likely 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.

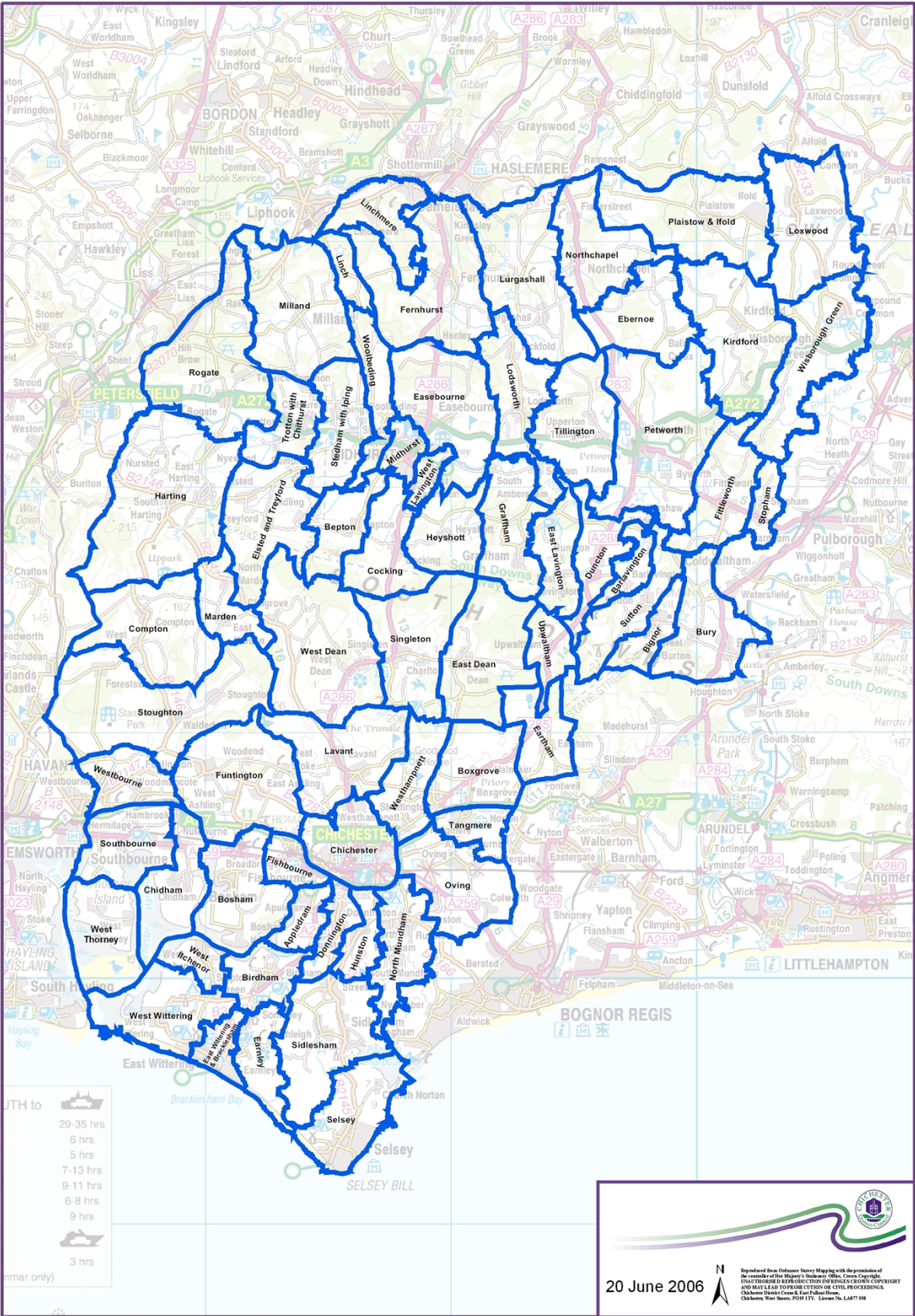
25. Occasional Use Notices:

25.1 The intention of Occasional Use Notices is to permit licensed betting operators with appropriate permission from the Commission, to use tracks for short periods for conducting betting, where the event upon which the betting is to take place is of a temporary, infrequent nature. The Occasional Use Notice must be served by a person who is responsible for administration of events on the track or by an occupier of a track.

25.2 The Authority has very little discretion as regards these notices, except for ensuring that the statutory limit of 8 days in a calendar year is not exceeded. This Authority will, however, consider the definition of a 'track' and whether the applicant is permitted to avail him/herself of the notice. A 'track' includes horse racecourses or dog tracks, but also any other premises on any part of which a race or other sporting event takes place, or is intended to take place. Land therefore which has a number of uses, one of which fulfils the definition of a track, can qualify for the Occasional Use Notice provisions (for example agricultural land upon which a point-to-point meeting takes place).

25.3 Betting operators cannot provide gaming machines at tracks by virtue of an Occasional Use Notice.

APPENDIX A – PLAN OF THE CHICHESTER DISTRICT COUNCIL AREA



APPENDIX B – CONSULTEES ON DRAFT STATEMENT

Mr Steve Carvell, Executive Director of Environment, Chichester District Council
Mr Paul Over, Executive Director of Support Services and the Economy, Chichester District Council
Mr John Ward, Head of Finance and Governance Services, Chichester District Council
Mr David Stewart, Legal Practice Manager
District Councillors of Chichester District Council
City, Town and Parish Councils within the Chichester district
Responsible Authorities as specified at Appendix C
Mr Andy Isaacs, Compliance Manager, Gambling Commission
Adults' Services, West Sussex County Council
Holders of existing permissions granted under the Gambling Act 2005
Community Safety Partnership (CSP)
Chichester Chamber of Commerce and Industry (CCCI)
British Amusement Catering Trade Association (BACTA)
Association of British Bookmakers (ABB)
Bingo Association
National Casino Forum
Hospice Lotteries Association
Lotteries Council
Remote Gambling Association (RGA)
The Racecourse Association Limited
British Horse Racing Authority (BHA)
British Beer and Pub Association (BBPA)
Responsible Gambling Trust
GamCare
Gamblers Anonymous
Citizens Advice Bureau
Churches Together in Sussex

APPENDIX C – RESPONSIBLE AUTHORITY DETAILS

Development Management (*premises outside of the South Downs National Park*)

Head of Planning Services, Development Management, Chichester District Council, East Pallant House, 1 East Pallant, Chichester, West Sussex, PO19 1TY - Tel: 01243 534734 - Fax: 01243 534563 - Email: dcplanning@chichester.gov.uk - Website: www.chichester.gov.uk

South Downs National Park Authority (*premises inside the South Downs National Park*)

South Downs National Park Authority, c/o Head of Planning Services, Development Management, Chichester District Council, East Pallant House, 1 East Pallant, Chichester, West Sussex, PO19 1TY - Tel: 01243 534734 - Fax: 01243 534563 - Email: dcplanning@chichester.gov.uk - Website: www.chichester.gov.uk and <http://www.southdowns.gov.uk/>

Environmental Management Team

Environment Manager, Environmental Management Team, Housing & Environment Services, Chichester District Council, East Pallant House, 1 East Pallant, Chichester, West Sussex, PO19 1TY - Tel: 01243 785166 ext. 4598 - Fax: 01243 776766 - Email: environmentalmanagement@chichester.gov.uk - Website: www.chichester.gov.uk

Gambling Commission

Victoria Square House, Victoria Square, Birmingham, B2 4BP - Tel: 0121 230 6666 - Fax: 0121 230 6720 - Email: info@gamblingcommission.gov.uk - Website: www.gamblingcommission.gov.uk

Her Majesty's Commissioners of Customs and Excise

Betting and Gaming National Registration Unit, Portcullis House, 21 India Street, Glasgow, Scotland, G2 4PZ - Tel: 0141 555 3495 (Registration of Betting and Gaming) - Fax: 0141 555 3506 - Email: nrubetting&gaming@hmrc.gsi.gov.uk - Website: www.hmrc.gov.uk

Licensing Authority

Licensing Manager, Licensing Team, Environment & Housing Services, Chichester District Council, East Pallant House, 1 East Pallant, Chichester, West Sussex, PO19 1TY - Tel: 01243 785166 x 2267 - Fax: 01243 776766 - Email: licensing@chichester.gov.uk - Website: www.chichester.gov.uk

West Sussex Local Safeguarding Children Board

West Sussex Local Safeguarding Children Board, c/o Children's Safeguarding Unit, Room 24, Durban House, Bognor Regis, West Sussex, PO22 9RE - Tel: 03302 223337 - Email: cpu.team@westsussex.gcsx.gov.uk - Website: www.westsussex.gov.uk

Sussex Police

Chief Officer of Sussex Police, c/o Licensing Officer, Sussex Police, Centenary House, Durrington Lane, Worthing, West Sussex, BN13 2PQ - Tel: 0845 60 70 999 or 101 - Fax: 01243 843637 - Email: WS_Licensing_WOR@sussex.pnn.police.uk - Website: www.sussex.police.uk

West Sussex Fire and Rescue Service

Business Fire Safety, West Sussex Fire & Rescue Service, Centenary House, 1st Floor West Wing Rooms 236 & 245, Durrington Lane, Worthing, West Sussex, BN13 2QB - Tel: 0330 222 3333 - Email: businessfiresafety@westsussex.gov.uk - Website: www.westsussex.gov.uk

APPENDIX D – SUMMARY OF GAMING MACHINE CATEGORIES AND ENTITLEMENTS

| Category of machine | Maximum stake (from January 2014) | Maximum prize (from January 2014) |
|---|---|--|
| A | Unlimited – No category A gaming machines are currently permitted | |
| B1 | £5 | £10,000* |
| B2 | £100 | £500 |
| B3A | £2 | £500 |
| B3 | £2 | £500 |
| B4 | £2 | £400 |
| C | £1 | £100 |
| D - Non-money prize | 30p | £8 |
| D - Non-money prize (crane grab machines only) | £1 | £50 |
| D - Money prize | 10p | £5 |
| D - Combined money and non-money prize | 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 only) | 20p | £20 (of which no more than £10 may be a money prize) |

* With option of maximum £20,000 linked progressive jackpot on premises basis only

Agenda Item 7

Chichester District Council

ALCOHOL & ENTERTAINMENT LICENSING COMMITTEE

23 March 2016

Deregulation Act 2015 – Power to exempt the supply of late night refreshment from requirements of the Licensing Act 2003

1. Contacts

Report Author

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Cabinet Member

Roger Barrow, Cabinet Member for Environment
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2. Executive Summary

The purpose of this report is for Members to be made aware of changes to the Licensing Act 2003 and their new power to exempt certain types of premises providing 'late night refreshment' from requiring a licence.

3. Recommendation

- 3.1 That Members note amendments to the Licensing Act 2003 in terms of the provision of 'late night refreshment' and content of this report.**
- 3.2 Based on an officer recommendation of no deregulation, that Members determine whether to exempt, or not, certain premises from the requirement to obtain permission authorising 'late night refreshment'**

4. Background

- 4.1 Chichester District Council, as the Licensing Authority, is responsible for issuing licences to premises or individuals who wish to carry out licensable activities under the Licensing Act 2003 (the 'Act'). One of these activities is the provision of 'late night refreshment' which is the provision of hot food or drink between 23.00hrs and 05.00hrs.**

- 4.2 This report informs Members of the provisions of the Deregulation Act 2015 in so far as it amends the Act and in particular introduces new powers to Licensing Authorities allowing them to exempt the provision of 'late night refreshment' at designated locations, types of premises or at specified times.
- 4.3 The new powers allow the Licensing Authority to exempt the provision of 'late night refreshment' if it takes place:
- On or from premises which are wholly situated in a designated area;
 - On or from premises which are of a designated description; or
 - During a designated period (beginning no earlier than 23.00hrs and ending no later than 05.00hrs)
- 4.4 The types of premises that may be subject to exemption are defined in regulations, Licensing Act 2003 (Late Night Refreshment) Regulations 2015 which are;
- Motorway service areas
 - Petrol stations
 - Local Authority premises (except domestic premises) unless there is an event taking place at which more than 500 people are present
 - Schools (except domestic premises) unless there is an event taking place at which more than 500 people are present
 - Hospitals (except domestic premises)
 - Community premises (church, chapel, village, parish or community hall or other similar building) unless there is an event taking place at which more than 500 people are present
 - Licensed premises authorised to sell by retails alcohol for consumption on the premises between 23.00hrs and 05.00hrs.
- 4.5 The Home Office has released guidance to assist Licensing Authorities in determining whether or not to grant exemptions from the Act, which is attached to this report at **Appendix A**.
- 4.6 Members will note that the guidance is clear in that there is no statutory requirement for a Licensing Authority to use the new power and Authorities can continue to require all late night refreshment venues to be licensed. The guidance acknowledges that;
- '.....Decisions to exempt supplies of late night refreshment are best made with local knowledge. The powers therefore all Licensing Authorities to choose to apply an exemption specifically where they think it will be helpful to businesses and where there are no problems with antisocial behaviour or disorder associated with the night time economy.'* (Paragraph 3.2)
- 4.7 When choosing to designate a particular area as exempt, as specified at 4.3 (a) above, the Licensing Authority must define the location, which can be of any size. Therefore this exemption need *not* apply to the whole district. However, any exemption granted in respect of 'premises of a designated description', 4.3 (b) above, or between particular times, 4.3 (c), must apply to the *whole* district.
- 4.8 The Authority may use more than one type of exemption at the same time, for example by changing the times across the district during which licensing requirements will apply and also exempting premises by type across the whole

district. However, it cannot use different forms of exemption in conjunction with one-another for example, an Authority would not be permitted to change the times in one geographical area only.

Current situation

- 4.9 At the time of writing this report no request to exempt premises from the requirement to have a Premises Licence authorising the provision of 'late night refreshment' has been received.
- 4.10 When considering whether or not to adopt an exemption, Members must consider the potential impact on the promotion of the Licensing Objectives, which are:
- The prevention of crime and disorder;
 - Public Safety;
 - Prevention of public nuisance, and
 - The protection of children from harm
- 4.11 Currently any premises wishing to provide 'late night refreshment' must either hold a Premises Licence, Club Premises Certificate or Temporary Event Notice ('TEN'). All of these are subject to a consultation/notification process, giving Responsible Authorities (and the community other than for 'TEN's) an opportunity to make relevant representations and examine whether conditions are appropriate to ensure the Licensing Objectives are upheld.
- 4.12 Another important facet of only carrying out an activity in accordance with an authorisation is that that authority (licence) can be modified or even withdrawn by way of a statutory review process in the event of there being problems associated with the provision of the licensable activity such as disorder or public nuisance.
- 4.13 Members are asked therefore to be mindful whether or not the reduction in the regulatory burden which may be conferred on certain premises by the introduction of exemption categories is sufficiently balanced against the upholding of the Licensing Objectives.
- 4.14 There are currently 284 premises in the district which are authorised to provide 'late night refreshment' together with other forms of licensable activities usually being the sale of alcohol which may benefit from an exemption. It is important to note that if the exemption for the provision of 'late night refreshment' were to be applied these premises would still have to maintain a Premises Licence in order to continue selling alcohol thus an operator would make no saving on any annual administrative costs.
- 4.15 However of the 284 premises referred to above there are currently only 19 which hold an authorisation solely for the provision of 'late night refreshment'. The premises include internationally recognised late night fast-food establishments, independent takeaways and some national convenience stores. Annual fees payable amongst these premises range from £70 to £320 depending on the non-domestic rateable value of each business. The latest venue trades until 02.00hrs. If minded to grant an exemption Members would need to consider whether or not to authorise a refund of the fees paid.

5. Outcomes to be achieved.

- 5.1 If Members are minded to introduce exemptions they are requested to consider the times that the exemption will apply and the types of premises which will benefit.
- 5.2 The introduction of an exemption will require an amendment of the current Statement of Licensing Policy.

6. Proposal.

- 6.1 Subject to the decision of Members this Authority is proposing to engage with the premises potentially affected and undertake the necessary processes.

7. Alternatives that have been considered.

- 7.1 Members are reminded that in determining this matter there are two alternatives available;
- To resolve *not* to introduce any exemptions from the current requirement to obtain a Licence/TEN for the provision of 'late night refreshment' or
 - To resolve to adopt a model of exemptions from the requirement to obtain a Licence/TEN authorising the provision of 'late night refreshment' in relation to specific types of premises and relevant hours of operation as determined by Members, and to carry out the relevant consultation and policy amendments.

8. Resource and Legal Implications

- 8.1 There are potential resource implications, slight reduction in income and workload, if a determination is made to deregulate the need to obtain authorisation for the provision of 'late night refreshment' at certain premises.

9. Consultation

- 9.1 No consultation is intended to be undertaken with this area of work other than directly with those premises potentially affected.

10. Community impact and corporate risks

- 10.1 There are no community impact and or corporate risks raised by this report.

11. Other Implications

| | |
|--|------|
| Crime and Disorder – the current licensing regime affords control through the attachment of appropriate conditions along with the review mechanism under the Licensing Act 2003. Deregulation would remove this process. | Yes |
| Climate Change | None |
| Human Rights and Equality Impact | None |
| Safeguarding | None |

12. Conclusion

- 12.1 Having noted the contents of this report, the officers recommendation and supporting Home Office guidance that Members determine whether it is appropriate, or not, as the case may be to exempt certain premises from the requirement to obtain authorisation for the provision of 'late night refreshment'.

13. Background Papers

Licensing Act 2003

Deregulation Act 2015

Chichester District Council's Statement of Licensing Policy 2016 - 2021

14. Appendices

Home Office Guidance on the licensing of late night refreshment (2015)



Guidance on the licensing of late night refreshment

1. Introduction

- 1.1 This guidance sets out what activities are to be treated as the provision of late night refreshment and as such are regulated under the Licensing Act 2003 (“the 2003 Act”). It also sets out which activities are exempt from the late night refreshment aspects of the licensing regime. In particular, it includes guidance on the provisions in the Deregulation Act 2015 which amends the 2003 Act to give licensing authorities powers to opt to exempt supplies of late night refreshment from the licensing requirements of the 2003 Act which are made at or from certain designated locations, types of premises or times.
- 1.2 This guidance is not issued as part of the statutory guidance under section 182 of the 2003 Act but will be incorporated into the section 182 guidance when it is next updated. It is intended to assist licensing authorities and police forces with monitoring and enforcement activity in relation to the provision of late night refreshment. It may also help businesses who wish to provide hot food or drink to determine whether they will require a licence under the 2003 Act in order to do so.

2. General

- 2.1 Schedule 2 to the 2003 Act provides a definition of what constitutes the provision of late night refreshment. It involves only the supply of ‘hot food and hot drink’ between the hours of 11pm and 5am. Under Schedule 2, food or drink is considered to be ‘hot’ if, before it is supplied, it has been heated on the premises or elsewhere for the purpose of enabling it to be consumed at a temperature above the ambient air temperature and at the time of supply it is above that temperature; or after it is supplied, may be heated on the premises for the purpose of enabling it to be consumed at a temperature above the ambient air temperature.
- 2.2 Shops, stores and supermarkets selling cold food and cold drink, whether it is immediately consumable or not, from 11.00pm are not licensable as providing late night refreshment. The 2003 Act affects premises such as night cafés and takeaway food outlets where people may gather to purchase hot food or drink at any time from 11.00pm and until 5.00am. In this case, supply takes place when the hot food or hot drink is given to the customer and not when payment is made. For example, supply takes place when a table meal is served in a restaurant or when a takeaway is handed to a customer over the counter.
- 2.3 Some premises provide hot food or hot drink between 11.00pm and 5.00am by means of vending machines. The supply of hot drink by a vending machine is not a licensable activity and is exempt under the 2003 Act provided the public have access to and can operate the machine without any involvement of the staff.
- 2.4 However, this exemption does not apply to hot food. Premises supplying hot food for a charge by vending machine are licensable if the food has been heated on the premises, even though no staff on the premises may have been involved in the transaction.
- 2.5 It is not expected that the provision of late night refreshment as a secondary activity in licensed premises open for other purposes such as public houses, cinemas or nightclubs or casinos should give rise to a need for significant additional conditions.
- 2.6 The supply of hot drink which consists of or contains alcohol is exempt under the 2003 Act as late night refreshment because it is licensed by the provisions relating to the sale or supply of alcohol.
- 2.7 The supply of hot food or hot drink free of charge is not a licensable activity. However, where any charge is made for either admission to the premises or for some other item in order to obtain the hot food or hot drink, this will not be regarded as “free of charge”. Supplies by a registered charity or anyone authorised by a registered charity are also exempt.

- 2.8 Supplies made on moving vehicles (for example boats, trains or coaches) are also exempt. However supplies made from a vehicle which is permanently or temporarily parked, such as from a mobile takeaway van, are not exempt (see section 3.4 below for more detail on provisions for 'Vessels, vehicles and moveable structures').
- 2.9 Supplies of hot food or hot drink from 11.00pm are exempt from the provisions of the 2003 Act if there is no admission to the public to the premises involved and they are supplies to:
- a member of a recognised club supplied by the club;
 - persons staying overnight in a hotel, guest house, lodging house, hostel, a caravan or camping site or any other premises whose main purpose is providing overnight accommodation;
 - an employee of a particular employer (for example in a staff canteen);
 - a person who is engaged in a particular profession or who follows a particular vocation (for example, a tradesman carrying out work at particular premises);
 - a guest of any of the above.

3. Exemptions based on designated locations, premises types and times

- 3.1 The provision of late night refreshment is regulated primarily because it is often linked to alcohol-fuelled crime and disorder in the night-time economy, such as at fast-food takeaways where late-night drinkers congregate. However, these safeguards may not be needed everywhere or for every type of late night refreshment business. For example, some late-night cafés serving hot drinks after 11pm may be located nowhere near pubs and nightclubs or areas associated with alcohol-related crime and disorder.
- 3.2 Paragraph 2A of Schedule 2 to the 2003 Act (as inserted by the Deregulation Act 2015) gives licensing authorities powers to exempt premises, in certain circumstances, from the requirement to have a licence to provide late night refreshment. Decisions to exempt supplies of late night refreshment are best made with local knowledge. The powers therefore allow licensing authorities to choose to apply an exemption specifically where they think it will be helpful to businesses and where there are no problems with anti-social behaviour or disorder associated with the night time economy. As well as freeing up the businesses in question from unnecessary costs, this can also provide greater flexibility for licensing authorities to target their resources more effectively.
- 3.3 The powers allow a relevant licensing authority to exempt the supply of late night refreshment if it takes place:
- a) on or from premises which are wholly situated in a designated area;
 - b) on or from premises which are of a designated description; or
 - c) during a designated period (beginning no earlier than 11.00 p.m. and ending no later than 5.00 a.m.).
- 3.4 When choosing to designate a particular area as exempt, the relevant licensing authority must define the location, which can be of any size.

Vessels, vehicles and moveable structures

Under section 189 of the 2003 Act, a vehicle which is not permanently situated in the same place and is or is proposed to be used for one or more licensable activities while parked at a particular place, is to be treated as if it were premises situated at that place. Therefore, a mobile provider of late night refreshment, such as a kebab van, could be treated as exempt if it supplied hot food to the public late at night in an area which had been designated as exempt. If the mobile van drove to and began operating in a non-exempt area, a licence to carry on this activity would be required. Should the licensing authority introduce an exemption, and subsequently wish to revoke it if problems arise, it has the power to do so. Areas which are likely to be considered for exemption by licensing authorities (for example, an area outside a town centre) are unlikely to be areas in which mobile kebab vans would frequently operate. As such, mobile vehicles selling late night refreshment are likely to still require licences in the areas in which they are more commonly found.

- 3.5 When choosing to designate particular categories of premises as exempt, a licensing authority can only exempt types of premises set out in the regulations. These are:
- Motorway service areas;
 - petrol stations;
 - local authority premises (except domestic premises) unless there is an event taking place at which more than 500 people are present;
 - schools (except domestic premises) unless there is an event taking place at which more than 500 people are present;
 - hospitals (except domestic premises);
 - community premises (church, chapel, village, parish or community hall or other similar building) unless there is an event taking place at which more than 500 people are present;
 - licensed premises authorised to sell by retail alcohol for consumption on the premises between the hours of 11pm and 5am.
- 3.6 When choosing to exempt the provision of late night refreshment at particular times, the relevant licensing authority must determine the times between 11pm and 5am when the exemption applies. The exemption and any subsequent change to the time will apply to the whole licensing authority area.
- 3.7 A relevant licensing authority may use more than one type of exemption at the same time, for example by changing the times across the licensing authority area during which licensing requirements will apply and also exempting premises by type across the whole licensing authority area. However, it cannot use different forms of exemption in conjunction with one another – for example, it would not be permitted to change the times in one geographic area only.
- 3.8 Where a premises is situated in the areas of two or more licensing authorities, any of those authorities may be the relevant licensing authority and it would be advisable for an authority wishing to apply an exemption to discuss it with the other authority concerned. This might apply, for example, where an area or premises type exemption is being applied and the licensing authority is aware that a particular premises such as a motorway service area sits across the boundary of two or more licensing authority areas.

- 3.9 Licensing authorities do not have to use the exemptions at all and can continue to require all late night refreshment providers to be licensed. However, licensing authorities should consider deregulation where appropriate.
- 3.10 Existing late night refreshment licences for premises that become exempt from regulation will remain extant unless the holder chooses to surrender it to the licensing authority, but there will be no requirement on the licence holder to pay annual renewal fees and any conditions on the licence will cease to apply for as long as the exemption is in place. In cases where an exemption in relation to late night refreshment provision is applied, other licensing is unaffected. For example if a premises is licensed to sell alcohol and is exempt from requiring a late night refreshment licence, their licence in respect of the sale of alcohol is unaffected. Where a premises benefits from an exemption applied by the licensing authority, any existing conditions on a licence relating solely to the provision of late night refreshment will have no effect during the period of the exemption.
- 3.11 When deciding which exemption to use, if any, the relevant licensing authority should always first consider what the risks are in terms of the promotion of the licensing objectives. The decision to make an exemption is a licensing function that licensing authorities should include within their statement of licensing policy. It would then therefore be subject to the statutory consultation process with other responsible authorities and relevant parties set out in section 5 of the 2003 Act. However, it is for the licensing authority to decide on the detail and extent of the consultation beyond the statutory minimum. The licensing authority may decide to only consult on the proposed exemption or, alternatively, it may form part of a wider review of other matters within its statement of licensing policy. It is also for the licensing authority to decide within its statement of licensing policy whether the decision to grant exemptions is delegated to its licensing committee or to an officer.
- 3.12 When applying any of the exemptions the relevant licensing authority must publicise the changes and should decide on the most appropriate way to do this, in addition to updating its statement of licensing policy as soon as is practical. There is no requirement for licensing authorities to tell premises individually, however they should publicise the exemption in a way that ensures that those who are likely to be affected may benefit from it. If any fees are paid prior to an exemption coming into effect, licensing authorities should consider whether a refund or partial refund is appropriate. It is for each individual licensing authority to develop its own refund policy and ensure that it is communicated appropriately to all licence holders that are likely to be affected by an exemption.
- 3.13 Licensing authorities can review the exemptions at any time, to change the times, locations or types. However, unlike many other types of licensing decision, the late night refreshment exemptions are not made on a case by case basis and there is no recourse to bring an individual premises back into the licensing regime if there is a problem with that particular premises. In such cases the licensing authority would have to take a decision about the entire exemption and apply it across the whole area. Alternatively, depending on the scale of the problem, other powers could be used such as closure powers under the Anti-social Behaviour, Crime and Policing Act 2014. Environmental health legislation around noise nuisance may also offer a solution.