

LICENSING COMMITTEE AGENDA

Tuesday, 12 December 2017 at 3.00 pm in the Bridges Room - Civic Centre

From the Chief Executive, Sheena Ramsey

Item Business

1 Apologies for absence

2 Constitution

The constitution of the Committee and the appointment of the Chair and Vice Chair as approved by the Council for the Current municipal year is set out below.

Councillor K Dodds – Chair
Councillor J Green – Vice Chair
Councillor D Bradford
Councillor M Charlton
Councillor W Dick
Councillor D Duggan
Councillor B Goldsworthy
Councillor J Graham
Councillor J Kielty
Councillor C McHatton
Councillor R Mullen
Councillor B Oliphant
Councillor M Ord
Councillor A Thompson
Councillor N S Weatherley

3 Minutes (Pages 3 - 10)

The Committee is asked to agree the minutes of the last meeting held on 28 February 2017.

4 Hearing and Reviews before Sub-Committees (Pages 11 - 14)

Report of the Strategic Director, Corporate Services and Governance

5 Licences and Certificates Issues under the Licensing Act 2003 (Pages 15 - 16)

Report of the Strategic Director, Communities and Environment

6 Other Applications and Notifications processed under the Licensing Act 2003 (Pages 17 - 18)

Report of the Strategic Director, Communities and Environment

- 7 **Licences Notifications Permits and Registrations issued under the Gambling Act 2005** (Pages 19 - 20)
Report of the Strategic Director, Communities and Environment.
- 8 **Appeals and Prosecutions - Licensing Act** (Pages 21 - 22)
Report of the Strategic Director, Corporate Services and Governance
- 9 **Appeals and Prosecution - Gambling Act**
There are no appeals and prosecutions to report under the Gambling Act
- 10 **Consultation on Proposals for changes to gaming Machines and Social Responsibility Measures** (Pages 23 - 28)
Report of the Strategic Director, Communities and Environment
- 11 **Case Law and Legislation Update** (Pages 29 - 30)
Report of the Strategic Director, Corporate Services and Governance
- 12 **The Government response to the report from the House of Lords select committee on the Licensing Act 2003** (Pages 31 - 36)
Report of the Strategic Director, Communities and Environment
- 13 **The introduction of a minimum unit price in Scotland.** (Pages 37 - 38)
Report of the Strategic Director, Communities and Environment

GATESHEAD METROPOLITAN BOROUGH COUNCIL

LICENSING COMMITTEE MEETING

Tuesday, 28 February 2017

PRESENT: Councillor K Dodds (Chair)

Councillor(s): C Bradley, M Charlton, D Davidson,
J Graham, J Kielty, B Oliphant, M Ord, A Thompson and
N Weatherley

APOLOGIES: Councillor(s): W Dick, D Duggan, B Goldsworthy and
R Mullen

LC24 MINUTES

RESOLVED - That the minutes of the last meeting held on 2 November 2016 be approved as a correct record.

LC25 APPEALS AND PROSECUTIONS UNDER THE LICENSING ACT

The Committee were advised that there were no appeals or prosecutions to report.

LC26 APPEALS AND PROSECUTIONS UNDER THE GAMBLING ACT

The Committee were advised there were no appeals or prosecutions to report.

LC27 LICENSING AND CERTIFICATES ISSUED UNDER THE LICENSING ACT 2003

The Committee were advised that the following number of Licence and Certificates have been issued under delegated powers between 1 October 2016 and 31 December 2016:-

Premises Licences and Club Premises Certificates	Number
New Premises Licences	5
Premises Licence Variations	1
New Club Premises Certificates	0
Club Premises Certificate Variations	0
Minor Variations	5
DPS Variations	29
Change of Name and address; replacement licence etc	5
Total	45

Personal Licences	Number
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New Personal Licences	38
Personal Licence change of address	28
Total	66

RESOLVED - that the information be noted

LC28 LICENCES NOTIFICATIONS REGISTRATIONS AND PERMITS ISSUED UNDER THE GAMBLING ACT 2005

The Committee were advised that the following licences, notifications, permits and registrations were issued between 1 October 2016 and 31 December 2016:-

Licences	
Type of Licence	Number
Bingo Premises Licence	0
Betting Premises Licence	1
Adult Gaming Centre Premises Licence	0
Family Entertainment Centre Premises Licence	0
Notifications	
Type of Notification	Number
Notice of intention of alcohol licensed premises to make gaming machines available for use	4
Permits	
Type of Permit	Number
Unlicensed family entertainment centre gaming machine permits	0
Prize giving permits	0
Alcohol – licensed premises gaming machine permits	0
Club Gaming Permits	0
Club Machine Permits	0
Registrations	
Type of Registration	Number
New Small Society Lotteries	13
Small Society Lottery Renewals	15

RESOLVED – that the information be noted

LC29 OTHER APPLICATIONS AND NOTIFICATIONS PROCESSED UNDER THE LICENSING ACT 2003

The Committee were advised that the following number of applications and notifications have been processed between 1 October 2016 and 31 December 2016:-

Type of Application/Notification	Number
Temporary Event Notices given	30
Premises Licence Holder Transfers	12
Notifications of Interest	0

RESOLVED – that the information be noted

LC30 HEARING AND REVIEWS BEFORE SUB COMMITTEES

The Committee were advised on the hearings and reviews before sub-committee between 1 October 2016 and 31 December 2016:-

Licensing Act 2003

Premises	Applicant	Date	Representations	Decisions
The One Eyed Stag, 5 The Square, Whickham NE16 4JB	The One Eyed Stag Limited	25 November 2016	Members of the public Northumbria Police Environmental Health	Grant the licence with an amendment to a proposed condition

Gambling Act 2005

Premises	Applicant	Date	Representations	Decisions
N/A				

RESOLVED – that the information be noted

LC31 UPDATE ON CASE LAW AND LEGISLATION

The Committee received an update on recent cases and amendments to legislation affecting the Licensing and Gambling Acts.

The amendments that were set out in the last report to Committee have not yet been enacted by Parliament, but are still expected to be introduced on the near future.

The case of *Ivey v Genting Casinos UK Ltd (t/a Crockfords Club) [2016] EWCA Civ 1093* was decided by the Court of Appeal in November 2016. It is established law that when someone participates in a gambling activity there is an implied contract between the parties that the gambler will not cheat; and that where the gambler does cheat their winnings can be withheld. This case related to whether cheating requires a dishonest intention. The Court of Appeal found that it did not, and that a gambler who used an edge-sorting technique was not entitled to his winnings even though he believed edge-sorting to be an honest technique. The Gambling Act states that 'cheating' involves 'deception' or 'interference with the process by which gambling is conducted', and that interference can be done honestly but still amounts to cheating.

RESOLVED – that the information be noted

LC32 PUBLIC HEALTH PILOT PROJECT (HALO)

The Committee received an update report regarding the Public Health England pilot project that the Council participated in in 2016, and next steps.

In early 2016 Gateshead Council was one of eight licensing authorities that were invited by Public Health England to participate in a pilot project to evaluate an analytical package intended to support the use of health data in decision making under the Licensing Act. Health data is used by Directors of Public Health to inform whether they make representations in licensing matters, and if they do then it may be used to contextualise their concerns. However, Directors of Public Health have had mixed success when relying on health data, which has to some extent led to proposals for the Act to be amended to add a fifth Licensing Objective which related specifically to health.

The pilot project has now completed and a full report is being prepared by the University of Sunderland. Initial findings were reported in the Lancet on 25 November 2016. A summary document prepared by Public Health England was circulated to members of the committee for information.

The initial findings highlight the need for accurate and timely data in order to usefully inform the decision making process, as well as the need for training for officers and Members to enable a better understanding of how health data can usefully inform decisions.

RESOLVED – that the information be noted

LC33 HOUSE OF LORDS SELECT COMMITTEE ON THE LICENSING ACT

The Committee were provided with an update on the progress of the House of Lords Select Committee on the Licensing Act 2003.

The Select Committee on the Licensing Act 2003 was set up on 25 May 2016 with the task of conducting post-legislative scrutiny of the Act. The Committee is looking at the provisions of the Act, in its original form and with its subsequent amendments, at its implementation, and at related developments.

The Licensing Act 2003 was intended to provide a means of balancing the broad range of interests engaged by licensing decisions – those of the entertainment and alcohol industries, small and large businesses, local residents and communities, policing, public health, and the protection of children from harm. Decision making under the Act was expected to balance these interests for the public benefit.

A public call for written evidence was made on 30 June 2016 from anyone with an interest in the operation of the Licensing Act 2003. Gateshead Council contributed to a regional response through the North East Strategic Licensing Group which then fed into the Local Government Association response.

In particular the Committee were interested in a number of issues including:

- Should there be an additional objective e.g. the protection of health and wellbeing
- Does the Licensing Act now achieve the right balance between the rights of those who wish to sell alcohol and provide entertainment and the rights of

those who wish to object?

- Do local communities engage effectively in the licensing regime, and if not, what could be done?
- How effectively does the regime control supermarkets and large retailers, under-age sales, and delivery services?
- Should the Government introduce minimum unit pricing in England?
- Do licence fees need to be set at a national level?

Some of the additional issues raised through the region include:

- The lack of a national database of personal licence holders, allowing unsuitable applicants to move between councils as and when their premises gets shut down
- The absence of many Designated Premises Supervisors (DPS) from the premises itself and the general weakness of this role
- Weaknesses in the review/appeals system that allows unscrupulous operators to transfer the licence or delay closure for significant periods of time
- Concerns around enforcing the duty plus VAT mandatory condition
- The fact that licences cannot be removed where a premises has ceased trading, and in some cases, where it has been turned into a carpar. This means a council has to carry the debt from unpaid fees in perpetuity, and distorts the national picture of how many licences are in existence.

Public evidence sessions began on 5 July 2016 and since then thirteen sessions have taken place, the most recent being on 13 December 2016 and since the last report to Licensing Committee on 2 November 2016 a variety of bodies and individuals have given evidence.

RESOLVED – that the information be noted.

LC34 RESEARCH INTO VULNERABILITY TO GAMBLING RELATED HARM

The Committee received an update on recent research into the way that local authorities can protect vulnerable people from gambling related harm by improving the understanding of local area risk. The Committee also received the results on work commissioned by Westminster and Manchester City Councils which was published in 2016.

In 2015 Westminster and Manchester City Councils commissioned a study to:-

- To explore and document the range of characteristics that suggest someone is vulnerable to harm from gambling
- To investigate how these characteristics can be measured at a local level, using a range of different data, and
- To develop a local risk index model showing areas where those who may be more vulnerable to harm are located with the aim of mapping results visually, so that areas of potential risk are highlighted with the intention that these results become a tool for both local authorities and industry when making decisions about the location of gambling venues, helping them to think through the specific needs of local communities and enabling them to work

together to develop plans to protect vulnerable people

The first aim of this study was to consider the types of people who may be at greater risk of harm from gambling and where they might be located. Based on review of existing research evidence, it was concluded that the following groups are potentially more vulnerable to harm from gambling:-

- Youths
- People affected by substance abuse/misuse/excessive alcohol consumption
- Poor mental health
- People living in deprived areas
- Certain ethnic groups
- People with low IQs
- People with personality/cognitive impairments
- People seeking treatment for gambling problems
- People who are unemployed

Having identified these groups, the Committee were advised that the next stage was to bring this information together to create local risk indices, showing areas with greater concentrations of people who are more likely to be vulnerable to harm.

The Committee were advised that the models using were probabilistic – just because an area is highlighted as being at greater risk, does not mean that all people in those areas will experience harm. The models suggest that there may be greater propensity for harm and therefore greater consideration should be given to attempts to mitigate this.

The models are based on current knowledge and available data – they are limited to areas where more research has been conducted and where good quality local level data are available.

The evidence base used to develop the models shows those vulnerable to gambling problems rather than gambling-related harm is broader than problem gambling.

The Committee were advised that the recommendations arising from the study were:-

The Gambling Commission's introduction of Local Area Risk profiles represents a new opportunity for local authorities and industry alike to think more deeply about the protection of vulnerable people from gambling-related harm. This means extending understanding of local area risk beyond mapping deprivation and considering a more nuanced range of factors.

Local authorities interested in pursuing this approach should start to consider the different types of data they have available and how these can be used in local area profiles.

Local authorities should also start to consider what data and/or evidence is missing and how they fill these gaps, working with different departments within the authority to capture relevant information.

The models developed are based on the best information currently available. An acknowledged limitation of gambling research is the paucity of evidence available. The study recommends that the models are periodically reviewed and updated to take onto account growing knowledge, better data and changes in local areas.

RESOLVED – that the information be noted

Chair.....

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TITLE OF REPORT - **Hearings and reviews before sub-committees**

REPORT OF - **Mike Barker, Strategic Director of Corporate Services & Governance**

The Committee is requested to consider the attached report on sub-committee hearings between 18 January 2017 and 27 November 2017.

Licensing Act 2003

Premises	Applicant	Date	Representations	Decision
The Metropole Public House 262 High Street Gateshead NE8 1AQ	Amber Taverns Ltd	8 May 2017	Director of Public Health Trading Standards 2 Interested parties	(1) Grant provision of late night refreshment subject to amendment to conditions (2) Refuse variation for extended hours for sale of alcohol
The Railway Tavern Public House Abel House 1-2 Station Road Rowlands Gil NE39 1QD	Mr Stephen Olver	14 June 2017	Planning Department 18 Interested parties Petition with 94 signatories	Grant sale of alcohol subject to conditions
Whitehall Corner Shop 143 Rawling Road Gateshead NE8 4QT	Trading Standards	16 August 2017	Trading Standards Local Safeguarding Children Board Director of Public Health	(1) Refuse transfer of licence (2) Remove Designated Premises Supervisor

			Licensing Authority Northumbria Police	(3) Revoke premises licence
Sunlea Store 17 Hookergate Lane High Spen NE39 2BE	Trading Standards	16 August 2017	Trading Standards Local Safeguarding Children Board Director of Public Health Licensing Authority Northumbria Police 1 Interested party	Licence to continue in force, subject to conditions
33 Penshaw View Birtley DH3 2JL	Haseena Mahmood	16 August 2017	Licensing Authority 1 Interested party	Licence granted, subject to conditions
Dunston Social Club Ravensworth Road Dunston NE11 9AF	Dunston Social Club & Institute Ltd	3 October 2017	1 Interested party	Licence granted
Rapid Service Station Durham Road Harlow Green NE9 7TD	Penny Petroleum Partnership 2	31 October 2017	Director of Public Health Licensing Authority	Extension of hours for sale of alcohol granted, subject to conditions
Durham Road Service Station Durham Road Birtley DH3 2PF	Penny Petroleum North East Limited	31 October 2017	Director of Public Health Licensing Authority	Extension of hours for sale of alcohol granted, subject to conditions

Gambling Act 2005

Premises	Applicant	Date	Representations	Decision
N/A				

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TITLE OF REPORT - Licences and Certificates issued under the Licensing Act 2003
REPORT OF - Strategic Director Communities and Environment

The following number of Licence and Certificates have been issued under delegated powers between 1 January 2017 and 31 October 2017

Premises Licences and Club Premises Certificates	
New Premises Licences	20
Premises Licence Variations	4
New Club Premises Certificates	0
Club Premises Certificate variations	0
Minor Variations	5
DPS Variations	103
Change of Name and address; replacement licence etc	24
Total	155

Personal Licences	
New Personal Licences	136
Personal Licence changes of address/name	45
Total	91

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TITLE OF REPORT - Other applications and notifications processed under the Licensing Act 2003
REPORT OF - Strategic Director, Communities and Environment

The following number of applications and notifications have been processed between 1 January 2017 and 31 October 2016

Type of Application/Notification	
Temporary Event Notices given	245
Premises Licence Holder Transfers	36
Notifications of Interest	1

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TITLE OF REPORT - Licences, notifications, permits and registrations issued under the Gambling Act 2005
REPORT OF - Strategic Director Communities and Environment

The following licences, notifications, permits and registrations were issued between 1 January 2017 and 31 October 2017

Licences

Type of Licence	Number
Bingo Premises Licence	0
Betting Premises Licence (Grant)	1
Betting Premises Licence (Transfers)	2
Adult Gaming Centre Premises Licence	0
Family Entertainment Centre Premises Licence	0

Notifications

Type of Notification	Number
Notice of intention of alcohol licensed premises to make gaming machines available for use	9

Permits

Type of Permit	Number
Unlicensed family entertainment centre gaming machine permits	0
Prize gaming permits	0
Alcohol - licensed premises gaming machine permits	0
Club Gaming permits	0
Club Machine Permits	0

Registrations

Type of Registration	Number
New Small Society Lotteries	24
Small Society Lottery Renewals	35

TITLE OF REPORT - **Appeals and Prosecutions**

REPORT OF - **Mike Barker, Strategic Director of Corporate Services & Governance**

The Committee is requested to consider the attached report on licensing-related appeals and prosecutions between 18 January 2017 and 27 November 2017.

Appeals - Licensing Act 2003

Premises	Appellant	Date	Decision being appealed	Decision
Whitehall Corner Shop 143 Rawling Road Gateshead	Mr Hany Adil	16 October 2017	Revocation of premises licence	Pending – final hearing 14 December 2017

Prosecutions - Licensing Act 2003

Defendant	Court	Date	Offence	Description	Result
Ms Jacqueline Diamond	Gateshead Magistrates' Court	20 October 2017	Section 136(1) Licensing Act 2003	Sale of alcohol otherwise than in accordance with licence at Coach & Horses Front Street Wrekenton NE9 7JR	Guilty - £40 fine, £200 costs, victim surcharge
Paramjit Singh	Gateshead Magistrates' Court	8 November 2017	Section 146 Licensing Act 2003	Underage sale of alcohol at Sunlea Stores 17 Hookergate Lane High Spen NE39 2BE	Guilty - £90 fine, £200 costs, victim surcharge

Manjit Kaur	Gateshead Magistrates' Court	8 November 2017	Section 146 Licensing Act 2003	Underage sale of alcohol at Whitehall Corner Shop 143 Rawling Road Gateshead NE8 4QT	Guilty - £225 fine, £200 costs, victim surcharge
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Appeals - Gambling Act 2005

Premises	Applicant	Date	Representations	Decision
N/A				

Prosecutions - Gambling Act 2005

Defendant	Court	Date	Offence	Description	Result
N/A					

TITLE OF REPORT: **Consultation on Proposals for changes to gaming
Machines and Social Responsibility Measures**

REPORT OF: **Paul Dowling, Strategic Director, Communities and Environment**

1. Purpose of the Report

To provide Members with an overview of the recently published Department for Digital, Culture Media and Sport consultation on proposals for changes to gaming machines and social responsibility measures.

2. Background

The Government announced a review of gaming machines and social responsibility measures in October 2016 and following a call for evidence seeking evidence-based proposals a 12 week consultation was launched on 31 October 2017.

The main proposals put forward in the consultation are:

- proposed regulatory changes to the maximum stake for B2 gaming machines, looking at options between £50 and £2, in order to reduce the potential for large session losses and therefore to potentially harmful impacts on players and their wider communities;
- While the industry proposes increases to the remaining stakes and prizes, permitted numbers and allocations across other categories of machine (B1, B3, B3A, B4, C and D gaming machines), the Government believes retention of the current regulatory environment will better protect players from potential harm than industry's proposed increases;
- corresponding social responsibility measures across gaming machines that enable high rates of loss, on player protections in the online sector, on a package of measures on gambling advertising and on current arrangements for the delivery of research, education and treatment (RET).

Respondents are invited to answer 16 questions as detailed below.

3. B2 gaming machines (Fixed-Odds Betting Terminals)

The call for evidence generated a substantive proportion of submissions regarding B2 machines, more commonly referred to as Fixed-Odd Betting Terminals (FOBTs). There was widespread support for a reduction in stake limits for B2 machines to £2.

The main arguments focused on the disparity between the maximum stakes on B2 machines of £100 and the maximum stake on other gaming machines in accessible locations of only £2. Respondents argued that the £100 maximum stake was linked to gambling-related harm, wider harm to communities, and in some instances, anti-social behaviour. The high-staking nature of B2 machines can lead to significant losses in a short space of time.

The betting sector, argued for the need to maintain the status quo, specifically on B2 machines. The betting sector argued that income from B2 machines has become increasingly important to maintaining the viability of many high street betting shops. and that there is no correlation between the increased number of B2 machines over time and levels of at-risk and problem gambling during the same period, and that B2 machines do not cause increased harm to problem gamblers

The Government acknowledges that B2 machines are important to the economic viability of many betting shops but cannot ignore the evidence put forward as part of the call for evidence to support action and remain concerned about the current regulation of this sub-category of machine in terms of the impact on players and their wider communities.

The Government feels that the weight of evidence justifies action on B2 machines, but acknowledges that there is limited evidence to inform exactly at what level the revised maximum stake should be.

A number of illustrative options are set out in the consultation and Question 1 asks

Do you agree that the maximum stake of £100 on B2 machines (FOBTs) should be reduced?

If yes, what alternative maximum stake for B2 machines (FOBTs) do you support?

4. Stakes and prizes on other gaming machines

As part of the call for evidence, the Government requested evidence-based proposals on maximum stakes and prizes for all categories of gaming machines permitted under the Gambling Act 2005.

The industry proposals for increases are set out in the table below:

Machine Category	Speed of play	Current Max Stake	Current Max Prize	Industry Proposed stake	Industry Proposed prize
B1	2.5 seconds	£5	£10,000	No change	No change
B1 progressive Jackpot	2.5 seconds	£5	£20,000	No change	£100,000
B3	2.5 seconds	£2	£500	£2.50	No change
B3A	2.5 seconds	£2	£500	No change	No change
B4	2.5 seconds	£2	£400	No change	No change

C	2.5 seconds	£1	£100	£2	£150
D non-money Prize (other than crane grab machine)	n/a	30p	£8	50p	£10
D non-money prize (crane grab machine)	n/a	£1	£50	£2	£75
D money prize	n/a	10p	£5	20p	£8
D combined money and non-money prize	n/a	10p	£8 (of which no more than £5 may be a money prize)	20p	£10 (of which no more than £8 may be money prize)
D combined money and non-money prize (coin pusher or penny falls)	n/a	20p	£20 (of which no more than £10 may be a money prize)	25p	£22 (of which no more than £12 may be a money prize)

The Government's preferred proposals on stakes and prizes are to maintain the status quo across all categories, with the exception of prize gaming in which case it is content that industry proposals to increase stake from £1 to £2 and prizes from £70 to £100 (£1,000 aggregate) on prize gaming are in keeping with the objective of the review and that these activities are low risk. It therefore proposes to take these changes forward.

Questions 2 to 7 therefore asks:

Do you agree with the government's proposals to maintain the status quo on category B1/B3/B3A/B4/C and D gaming machines?

and Question 8 asks:

Do you agree with the government's proposals to increase the stake and prize for prize gaming, in line with industry proposals?

5. Gaming machine allocations

The Government also requested evidence-based proposals on allocations of gaming machines permitted in all licensed premises under the Gambling Act 2005.

The casino industry sector argued that current machine entitlements are restrictive by international standards. The Greene King pub chain submitted a proposal to raise the automatic entitlement to category C or D gaming machines from two to four in pubs. The arcade sector proposed the introduction of a new sub-category of gaming machine (B5) with a maximum stake of £10 and maximum prize of £125 with a proposed spin cycle of 30 seconds to allow operators to offer a more varied selection of products.

In all cases the Government is minded to maintain the status quo and Question 9 asks:

Do you agree with the government's proposals to maintain the status quo on allocations for casinos, arcades and pubs?

6. Contactless payments on gaming machines

Industry respondents from across all sectors, with the exception of bookmakers, submitted proposals for the introduction of contactless payments on gaming machines. The Government's view is that legislation prevents the use of credit or debit cards as a means of direct payment for gaming machines and so the introduction of contactless payments would be a significant shift from the current regulatory framework and that the use of credit or debit cards as a direct form of payment to gaming machines would be a backward step in the protection of vulnerable players.

The Government proposes that the use of contactless payments is barred and Question 10 asks :

Do you agree with the government's proposals to bar contactless payments as a direct form of payment to gaming machines?

7. Social responsibility (SR) measures

As part of the call for evidence, Government requested responses on the effectiveness of social responsibility measures implemented by industry since 2013 and on the effects of gambling advertising.

Player protection measures on gaming machines

A number of respondents to the call for evidence highlighted the perceived inadequacies of industry codes on social responsibility, specifically on gaming machines, primarily citing the lack of evidence of impact and effect of the measures.

The Government would like to see industry trial and evaluate additional measures on B1, B2 and B3 gaming machines to improve player protections and to create parity across category B gaming machines, the majority of which are in highly accessible locations and in particular:

- work done to encourage take up on voluntary time and spend limit setting on B2 gaming machines and introduction of these measures on B1 and B3 gaming machines.
- trial and evaluation of mandatory alerts when certain time and spend benchmarks are reached.
- prohibiting mixed play between B2 and B3 which only applies in practice to gaming machines in betting shops
- The utilisation of algorithms to identify problematic play on gaming machines.

The Government have also asked the Gambling Commission to advise on the costs and benefits of introducing a form of tracked play on B1, B2 and B3 gaming machines and want to see industry establish a process with the RGSB, GambleAware and the Gambling Commission in which data on how gaming machines are played is routinely shared, for the purposes of monitoring, evaluation and research.

The consultation sets out these measures in detail and Question 11 asks:

Do you support this package of measures to improve player protection measures on gaming machines?

Online gambling

A number of respondents to the call for evidence raised online gambling, questioning in particular whether the controls in place to protect young and vulnerable people are effective.

The Government welcomes the various positive industry led initiatives currently in place, but also notes concerns expressed by the Gambling Commission that the pace of change by the industry to enhance the measures currently in place to protect consumers and promote responsible gambling has not been fast enough.

The Government expects the industry to accelerate its work wherever possible and in the consultation document sets out a number of detailed measures that it expects of the industry and the Gambling Commission as regulator and Question 12 asks:

Do you support this package of measures to improve player protection measures for the online sector?

Gambling Advertising

The call for evidence raised concerns about the volume and scheduling of advertising and the tone and content of advertising. The Government acknowledges that the increase in both broadcast and online gambling advertising in the years following the 2005 Act has clearly been a noticeable social change and caused concern.

The Government is clear that on gambling advertising, as with other aspects of social responsibility, more should be done by operators and others who benefit from gambling to minimise the risks to vulnerable people. In the consultation it sets out a package of measures and initiatives for regulators, broadcasters, the gambling industry and gambling charities to address concerns about gambling advertising and Question 13 asks:

Do you support this package of measures to address concerns about gambling advertising?

Research, Education and Treatment (RET)

In order to ensure appropriate and effective player protection systems and to minimise the risk of harm from gambling the Government wants to see industry

support for relevant research to build the evidence base, action to raise awareness of the risks and where to find help and support, and support services to those at risk of or experiencing harm.

If this voluntary system fails to deliver on these issues, the Government will consider alternative options, including the introduction of a mandatory levy and Question 14 asks:

Do you agree that the Government should consider alternative options, including a mandatory levy, if industry does not provide adequate funding for RET?

8. Local Authorities

A number of respondents to the call for evidence proposed the introduction of cumulative impact assessments (CIAs) to give more powers to manage gambling at the local level.

The Government states that it is keen to support LAs in their management of gambling at a local level, but believe that their objectives can be achieved using existing powers and encourage LAs to continue to work closely with the Gambling Commission to ensure the effective deployment of the existing tools at their disposal.

It also points out that where an increase in the number of betting shops is considered to be a local issue, having an up-to-date, relevant local plan policy in place will support the local planning authority in the determination of any applications for planning permission.

The National Planning Policy Framework provides the framework within which local planning authorities and their communities can produce their own distinctive local plan which reflects the specific needs and priorities of their area.

Question 15 asks :

Do you agree with our assessment of the current powers available to local authorities?

The final Question 16 asks:

Are there any other relevant issues, supported by evidence, that you would like to raise as part of this consultation but that has not been covered by questions 1-15?

9. Recommendation

Members' views are sought to inform a consultation response on behalf of the Council, which will also feed into a response on behalf of the North East Strategic Licensing Group

TITLE OF REPORT: Case Law and Legislation Update
REPORT OF: Mike Barker, Strategic Director, Corporate Services & Governance

Purpose of the Report

1. To inform the Committee of recent cases and amendments to legislation affecting the Licensing and Gambling Acts.

Legislation

2. The Policing & Crime Act 2017 approved the amendment of the Licensing Act 2003 to place cumulative impact policies on a statutory footing by introducing the concept of "cumulative impact assessments", which will enable the Council to identify parts of the Borough where it is considered likely that it would be inconsistent with the Authority's duty to promote the Licensing Objectives to grant any further premises licences or club premises certificates in those places. This new statutory power will supplement the work being undertaken to develop 'local licensing guidance' which will help inform applicants, licensees and residents of the issues of particular concern in certain parts of the Borough. The date for the amendment to the Licensing Act to come into force is yet to be appointed.

Case law

3. With regard to the Licensing Act, the Scottish case of *Martin McColl Ltd v West Dunbartonshire Licensing Board* (2017) LLR 551 illustrates the approach that the Courts take to cumulative impact as above. The Scottish legislation is slightly different and refers to 'overprovision' in certain areas. In the case in question the Licensing Board had refused to grant a provisional premises licence for a convenience store to begin selling alcohol on the basis that the applicant had not done enough to rebut the presumption to refuse due to existing overprovision in the relevant area. The Sheriff found on appeal that the Licensing Board had acted properly in making its decision, and emphasised the importance of giving full and clear reasons when making such decisions.
4. Members will also note the separate report regarding minimum unit pricing and the recent decision of the Supreme Court in the case of *Scotch Whisky Association and others v The Lord Advocate and another* (2017) UKSC 76.

5. With regard to the Gambling Act, the Court of Appeal case of Greene King Brewing and Retailing Ltd v Gambling Commission [2017] EWCA Civ 372 confirmed that the Gambling Commission had been entitled to refuse to grant operating licences to Greene King which would have enable the company to provide facilities for playing unlimited stake and prize bingo in its pub premises. The Commission formed the view that it would be harmful to the statutory Licensing Objectives for such high stakes gambling to be available in pubs, and the Court found that it was reasonable to anticipate that visitors to a pub, after consuming alcohol, might be vulnerable to available high stake gambling.

Recommendations

6. The Committee Members are asked to note the content of this Report.

CONTACT: Tim Briton extension 2460

PLAN REF:

TITLE OF REPORT: **The Government response to the report from the House of Lords select committee on the Licensing Act 2003**

REPORT OF: **Paul Dowling, Strategic Director, Communities and Environment**

1. Purpose of the Report

To provide Members with an update on the Government response to the report from the House of Lords Select Committee on the Licensing Act 2003.

2. Background

The Select Committee on the Licensing Act 2003 was set up on 25 May 2016 with the task of conducting post-legislative scrutiny of the Act. The Committee looked at the provisions of the Act, in its original form and with its subsequent amendments, at its implementation, and at related developments.

A public call for written evidence was made on 30 June 2016 from anyone with an interest in the operation of the Licensing Act 2003. Gateshead Council contributed to a regional response through the North East Strategic Licensing Group which then fed into the Local Government Association response.

In particular the Committee were interested in a number of issues including:

- should there be additional objectives eg the protection of health and wellbeing
- does the Licensing Act now achieve the right balance between the rights of those who wish to sell alcohol and provide entertainment and the rights of those who wish to object?
- do local communities engage effectively in the licensing regime, and if not, what could be done?
- how effectively does the regime control supermarkets and large retailers, under-age sales, and delivery services?
- should the Government introduce minimum unit pricing in England?
- do licence fees need to be set at national level?

Some of the additional issues raised through the region include:

- The lack of a national database of personal licence holders, allowing unsuitable applicants to move between councils as and when their premises gets shut down

- The absence of many Designated Premises Supervisors (DPS) from the premises itself and the general weakness of this role
- Weaknesses in the review/appeals system that allows unscrupulous operators to transfer the licence or delay closure for significant periods of time
- Concerns around enforcing the duty plus VAT mandatory condition
- The fact that a licence cannot be refused where a business owes the council unpaid business rates
- The fact that licences cannot be removed where a premises has ceased trading and, in some cases, where it has been turned into a carpark. This means a council has to carry the debt from unpaid fees in perpetuity, and distorts the national picture of how many licences are in existence.

3. Public evidence sessions

Public evidence sessions began on 5 July 2016 and thirteen sessions took place, the last one on 13 December 2016. The Committee then met in private four times and published its report on 4 April 2017.

4. The report

The report contained more than 70 recommendations. Some of the main recommendations of the report were as follows:

- There should be a trial merger of Licensing Committees and Planning Committees. This is not a merger of licensing and planning law that is recommended, but rather Councillors who sit on Planning Committees consider licensing applications using the procedures and practices, and with the same support that they already have to deal with planning applications. The recommendation is that this proposal should be trialled in a few pilot areas;
- The equivalent of The Planning Inspectorate, which hears planning appeals, to hear licensing appeals, rather than the Magistrates' Courts;
- All Councillors sitting on Licensing Committees should undertake compulsory training, and the Guidance is amended to introduce a requirement to undertake training to a standard set out in the S182 Guidance;
- If a minimum unit price is brought into force in Scotland, once Scottish ministers have published their assessment of its workings, if the assessment demonstrates that the policy is successful, a minimum unit price should be introduced in England and Wales;
- Applicants should not need to give notice by advertisements in the local newspaper, but notices should be given prominently by online notification systems run by the Local Authority;

- Licensing Committees should take into account and, where appropriate, follow any relevant decision given by a Planning Committee, and vice versa;
- The promotion of health and wellbeing is a necessary and desirable objective for an alcohol strategy, but it is not appropriate as a licensing objective;
- Whilst not recommending as a licensing objective, “compliance with the Equality Act 2010” or “securing accessibility for disabled persons”, the law should be amended to require, as in Scotland, an application for a Premises Licence should be accompanied by a disabled access and facilities statement;
- Licensing Authorities should be given the power to object to Temporary Event Notices, alongside Police and Environmental Health Officers, and a system for notifying local Councillors and local residents of TENs in a timely fashion should be implemented;
- The provisions relating to Community and Ancillary Sellers Notices should not be brought into force and should be repealed;
- The development and implementation of a comprehensive Police Licensing Officer training programme, designed by the College of Policing;
- Paragraph 9.12 of the Guidance should be removed, which provides Licensing Authorities should “accept all reasonable and proportionate representations made by the Police unless the Authority has evidence that to do so would not be appropriate for the promotion of the licensing objectives”;
- The powers providing for the introduction of Early Morning Restriction Orders should be repealed;
- The powers for Licensing Authorities to introduce Late Night Levies also be repealed and, if not, the pending amendments to Levies should be reviewed and the legislation abolished unless an affirmative resolution is passed for Levies to continue. If they do continue, the proceeds to be split 50/50 between Police and Councils;
- Support for the Government’s intention to transfer Cumulative Impact Policies onto a statutory footing from the Section 182 Guidance;
- Licensing fees should be set locally to reflect the fact that the cost of administering the Act varies from place to place;
- The creation of a National Database of Personal Licence Holders for use by Courts and Licensing Authorities which is linked to the Police National Database;

- The removal of the requirement for a two day waiting period for new members of premises holding Club Premises Certificates;
- The Licensing Act 2003 be amended so that it applies airside at airports, ports and hoverports, so that premises providing licensable activities would require a Premises Licence that are airside or portside.

5. The Government's Response

The Government published its response to the report from the House of Lords Select Committee on the Licensing Act 2003 on 6 November 2017. The response is very long and comprehensive but the general feeling is that while the Committee's report states that the Act requires a 'radical comprehensive overhaul' it is unlikely that there will be anything in the way of legislative change as a result but rather where the Government does agree with the Select Committee's recommendations the Statutory Guidance is likely to be amended.

The Government believes that rather than the numerous piecemeal amendments made to the Licensing Act 2003 and the Statutory Guidance since its implementation being problematic as suggested by the Committee's report, they have served to make the legislative framework stronger and more effective.

With respect to some of the main recommendations the Government responded as follows:

- The Government rejected the Committee's proposed transfer of the functions of local authority licensing committees and sub-committees to the planning committees but accepted that the Committee had raised important points in its report on the effectiveness of licensing processes and decision making. It accepted that improvements could be made in some local areas and that synergies between planning and licensing should be part of an ongoing discussion about supporting local improvements. The Government stated that they are focusing on improving training for Councillors and providing stronger guidance on how licensing hearings should be conducted. Similarly, the Government do not intend to change the system so that licensing appeals no longer go to magistrates' courts but to the planning inspectorate.
- The Government said that it will consider the evidence of the impact of any decision by the Scottish Government to introduce a minimum unit price for alcohol
- The Government said that it has no plans to revisit the requirement for an applicant to publish a notice in a local newspaper.
- With respect to the Committee's proposal for the amendment of the Statutory Guidance to make it clear that a licensing committee should take into account a decision already taken by a planning committee, and where appropriate follow it (and vice versa) the Government's response is to revisit the Guidance with a view to strengthening the call for consistency wherever possible.

- The Government agrees with the Select Committee's view that the promotion of health and well-being as a licensing objective is not appropriate.
- The Government agrees with the Select Committee's view that the additional licensing objectives should not be used to achieve compliance with disabled accessibility in licensed premises but does not agree that the law should be amended to require that an application for a premises licence should be accompanied by a disabled access and facilities statement. It does however commit to exploring what practical measures can be taken resulting in significant improvements for disabled people without the need for additional regulations.
- The Select Committee recommends that licensing authorities are given the power to object to Temporary Event Notices alongside police and environmental health officers, and should notify local councillors and residents of TENs. The Government rejects this recommendation but proposes that the Statutory Guidance should recommend that licensing authorities consider how to bring TENs to the attention of residents who may be particularly affected for example if there have been previous complaints about a premises.
- The Government notes the Committee's recommendation that Community and Ancillary Sellers' Notices should not be brought into force but advises that it is giving further consideration to the impact of introducing this measure in the future.
- The Government agrees with the Committee's view that comprehensive training should be available for all police officers undertaking licensing duties and commits to working with the College of Policing to consider whether a police licensing officer training programme should be commissioned in the future.
- The Government agrees with the Select Committee's view that it is wrong that the Statutory Guidance requires that police evidence to Licensing Committees should be given additional weight solely because of its provenance and will amend the guidance to remove this emphasis.
- While the Select Committee recommends that the provisions on Early Morning Restriction Orders (EMRO) should be repealed the Government maintains that the EMRO is a powerful tool and it is important to keep it available should any licensing authority wish to consider whether it is suitable for use in their area.
- The Government rejects the Committee's recommendation that the Late Night Levy is abolished and has no plans to change the current 70:30 police and licensing authority split of Late Night Levy funds.
- The Government acknowledges that the costs of licensing vary significantly between licensing authorities but does not accept that allowing fees to be set locally is a simple answer; the Government does not intend to change the existing fees in the near future.

- The Government considers that it would be disproportionately complex, resource intensive and expensive for the Government, local authorities and magistrates' courts to create and administer a database of all personal licences as proposed by the Select Committee. It does however, see merit in the creation of a central register limited to records of refused, suspended and revoked personal licences and commits to working with the Local Government Association and partners to examine the possibility of adding these records to the proposed national register of taxi and private hire vehicle drivers refusals and revocations.
- The Select Committee recommended that the two day waiting period required of new members in the case of members clubs be abolished however the Government do not consider this to be a significant burden and have no intention of altering or removing this provision.
- The Government will issue a call for evidence on the Committee's recommendation that the Licensing Act should apply fully airside at airports so that the practicalities and resources required to implement the Act in these environments can be carefully assessed.

6. Recommendation

The Committee Members are asked to note the content of this report.

TITLE OF REPORT: **The introduction of a minimum unit price in Scotland.**

REPORT OF: **Paul Dowling, Strategic Director, Communities and Environment**

1. Purpose of the Report

To provide Members with an update on the recent ruling by the UK Supreme Court.

2. Background

The Supreme Court ruling in London on 15 November 2017 was the final stage of a five-year legal battle, with the case having already passed through courts in Edinburgh and Luxembourg.

MSPs at the Scottish Parliament passed The Alcohol (Minimum Pricing) (Scotland) Act 2012 in May 2012, setting a 50p minimum unit price as part of an effort to tackle alcohol misuse.

The Scotch Whisky Association (SWA) took action against the proposal, which it said would breach European law and, after an initial challenge at the Court of Session failed in 2013, the SWA appealed to the European Court of Justice (ECJ).

In December 2015 a European court said the legislation might break EU law if other tax options would prove as effective, but said it was "ultimately for the national court to determine" whether they did.

The case then returned to the Scottish courts and in October 2016 the Court of Session in Edinburgh ruled against the challenge by the Scotch whisky industry,. Scottish judges Lord Carloway, Lord Brodie and Lord Menzies ruled that the plans to introduce a minimum unit price were legally sound.

However, in December 2016 the three judges allowed the Scottish Whisky Association to go to the UK Supreme Court after hearing from the organisation's advocate Aidan O'Neill QC, who argued that the original ruling misunderstood European law.

The two-day hearing in July 2017 in the Supreme Court was the final point of appeal for the case in UK courts. Seven Supreme Court judges considered the arguments and in a unanimous judgment announced on 15 November 2017, said the legislation did not breach European Union law.

The judges ruled the measure was a "proportionate means of achieving a legitimate aim".

The judges at the Supreme Court rejected the Scotch Whisky Association's claim that an excise duty or tax would be an equally effective way of achieving the government's objectives.

Their judgment said minimum pricing targeted "the health hazards of cheap alcohol and the groups most affected in a way that an increase in excise or VAT does not".

Ministers are expected to make Scotland the first country in the world to establish a minimum price per unit of alcohol, possibly early next year.

3. Recommendation

The Committee Members are asked to note the content of this report.