

## CABINET ITEM COVERING SHEET PROFORMA

**AGENDA ITEM 14**

**REPORT TO CABINET**

**9 MARCH 2006**

**REPORT OF CORPORATE  
MANAGEMENT TEAM**

### **CABINET DECISION**

*Community Safety and Protection – Lead Cabinet Member – Councillor Kirton*

#### **THE GAMBLING ACT 2005 – IMPLEMENTING THE TRANSFER OF NEW FUNCTIONS TO THE LOCAL AUTHORITY**

1. Summary

To inform Cabinet of the progress of the Gambling Act 2005 and outline actions required for the authority to be able to undertake its new functions.

2. Recommendations

1. That Cabinet note the report and implications.
2. An all Member Seminar(s) be arranged
3. That further reports be submitted to Cabinet in due course concerning:
  - (i) financial implications and consultation costs (at the same time as the financial review of the Licensing Act 2003)
  - (ii) firm proposals on necessary changes to the Scheme of Delegation
  - (iii) approval of the Gambling Policy Statement

3. Reasons for the Recommendations/Decision(s)

New legislative framework which will impact significantly upon the Council

4. Members Interests

Members (including co-opted members with voting rights) should consider whether they have a personal interest in the item as defined in the Council's code of conduct (paragraph 8) and, if so, declare the existence and nature of that interest in accordance with paragraph 9 of the code.

Where a Member regards him/herself as having a personal interest in the item, he/she must then consider whether that interest is one which a member of the public, with knowledge of the relevant facts, would reasonably regard as so significant that it is likely to prejudice the Member's judgement of the public interest (paragraph 10 of the code of conduct).

A Member with a prejudicial interest in any matter must withdraw from the room where the meeting is being held, whilst the matter is being considered; not exercise executive functions in relation to the matter and not seek improperly to influence the decision about the matter (paragraph 12 of the Code).

**Further to the above, it should be noted that any Member attending a meeting of Cabinet, Select Committee etc.; whether or not they are a member of the Cabinet or Select Committee concerned, must declare any personal interest which they have in the business being considered at the meeting, and if their interest is prejudicial, they must also leave the meeting room during consideration of the relevant item.**

**AGENDA NO**

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#### **DETAIL**

##### **The Gambling Act 2005**

1. The Gambling Act 2005 gives effect to the Government's proposals for reform of the law on gambling. The Act contains a new regulatory system to govern the provision of all gambling in Great Britain, other than the National Lottery and spread betting. It received Royal Assent on 7 April 2005.
2. The Gambling Act 2005 repeals the Betting, Gaming and Lotteries Act 1963, the Gaming Act 1968 and the Lotteries and Amusements Act 1976.
3. Gambling will be unlawful in Great Britain, unless permitted by:
  - the measures contained in the Act; or
  - measures contained in the National Lottery etc Act 1993, or pursuant to the Financial Services and Markets Act 2000.

4. Two comprehensive offences are established by the Act: providing facilities for gambling or using premises for gambling, in either case without the appropriate permission. Such permission may come from a licence, permit, or registration granted in accordance with the Act or from an exemption given by the Act. Where authority to provide facilities for gambling is granted, it will be subject to varying degrees of regulation, depending on the type of gambling, the means by which it is conducted, and the people by whom and to whom it is offered.
5. The Act has introduced a unified regulator for gambling in Great Britain, the Gambling Commission, and a new licensing regime for commercial gambling (to be conducted by the Commission or by licensing authorities, depending on the matter to be licensed). The Act removes from licensing justices all responsibility for granting gaming and betting permissions, which they exercised previously. Instead, the Commission and licensing authorities will share between them responsibility for all matters previously regulated by licensing justices.
6. The Commission will not regulate spread betting, which remains the responsibility of the Financial Services Authority; or the National Lottery, which is regulated by the National Lottery Commission. With those exceptions, when the Act comes fully into effect, the Commission will regulate all commercial gambling in Great Britain.
7. On 1 October 2005, the sections of the Act that establish the Gambling Commission were brought into force. The Commission has taken over from the Gaming Board for Great Britain, and until the 2005 Act comes fully into force in 2007, will carry out the Gaming Board's former functions in relation to regulating gaming and certain lotteries.
8. From 2007, the Commission will be responsible for granting operating and personal licences for commercial gambling operators and personnel working in the industry. It will also regulate certain lottery managers and promoters. The Act sets out different types of operating licence that cover the full range of commercial gambling activities conducted in Great Britain. It also makes provision for the Commission to have powers of entry and inspection to regulate gambling, with safeguards for those subject to the powers.
9. Licensing authorities will have new powers to license gambling premises within their area, as well as undertaking functions in relation to lower stake gaming machines and clubs and miners' welfare institutes. The Act also provides for a new system of temporary use notices. These will authorise premises that are not licensed generally for gambling purposes to be used for certain types of gambling, for limited periods.

### **Licensing Objectives**

10. The Act contains three licensing objectives which underpin the functions that the Commission and licensing authorities will perform. These objectives are central to the new regulatory regime created by the Act. They 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;
11. The Commission and local authorities have an overriding obligation to pursue and have regard to the objectives, and to permit gambling so far as they think is reasonably consistent with them.

## Transitional Arrangements

12. The Government's primary objective is to implement swiftly and effectively the system of regulation set out in the Gambling Act 2005, and through that deliver the licensing objectives of the new Act:
- 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.
13. In doing so, they have stated that they will seek to ensure that, as far as possible:
- the transitional arrangements are simple and user friendly for both industry and regulators;
  - the minimum burden is placed on operators, consistent with the need to ensure effective regulation when the new regulatory system takes effect on 1 September 2007;
  - the transitional arrangements give regulators and industry sufficient notice to prepare for the changes, and make it clear to everyone what they have to do and by when;
  - existing operators will benefit from certain continuation rights, which are explained below;
  - new operators will be able to set up in business under the existing law during the transition period;
  - where operators do not require both operating and premises licences under the 2005 Act, more streamlined and lighter touch transitional arrangements will apply;
  - the workload falling on the Gambling Commission and licensing authorities will be managed, and peaks and troughs of work avoided, particularly at the outset.

## Key Implementation Dates

14. The broad timetable for the implementation of the Act is set out below. This is an indicative timetable only, but it is anticipated that the new regime will come fully into effect on 1 September 2007:

28 April 2006	Casinos only – Last date for applications for certificates of consent for new casinos under the 1968 Act.
1 July 2006	Section 34 permits – AWP's in chip shops, etc. Final date on which applications for new permits or renewals can be made.
1 Sept 2006	Arcades/Betting/Bingo/Casinos/External lottery managers – Existing permissions that expire on or after 1 September 2006 will be renewed automatically by the issuing authority, so that they are valid until 31 August 2007. These automatic renewals will not be subject to any fee.
1 Jan 2007	The Gambling Commission will begin to accept advance applications for permissions under the 2005 Act.
31 Jan 2007	Licensing authorities will begin to accept advance applications for permissions under the 2005 Act.
27 April 2007	Existing operators (and new operators with outstanding applications under the existing legislation) will need to apply to the appropriate licensing authority for permissions under the 2005 Act by this date to qualify for continuation rights.

Arcades/Betting/Bingo/Casinos/External lottery managers  
No applications for renewals or new permissions under the existing legislation will be permitted after this date

1 Sept 2007 All sectors –  
Implementation date for 2005 Act. All licences/permits under 2005 Act take effect from this date.

All existing operators who qualify for continuation rights will continue to be able to operate, even if their advance applications under the 2005 have not yet been resolved.

Existing legislation is repealed.

Arcades/Betting/Bingo/Casinos/External lottery managers –  
Permissions issued under existing legislation lapse.

Society lotteries/Gaming machine supply and repair/Pubs/Clubs –  
Existing permissions will continue to have effect under the 2005 Act. Prior to 1 September 2007, operators will continue to apply for new permissions or renewals under the existing legislation. They will have to apply under the 2005 Act at least two months before their existing permission is due to expire.

### **Functions of licensing authorities**

15. The Act gives licensing authorities a number of important regulatory functions in relation to gambling. Their main functions are to:
  - license premises for gambling activities;
  - consider notices given for the temporary use of premises for gambling;
  - grant permits for gaming and gaming machines in clubs and miners' welfare institutes;
  - regulate gaming and gaming machines in alcohol licensed premises;
  - grant permits to family entertainment centres for the use of certain lower stake gaming machines;
  - grant permits for prize gaming;
  - consider occasional use notices for betting at tracks; and
  - register small societies' lotteries.
16. Licensing authorities have an obligation to provide information to the Gambling Commission, including details of licences, permits and registrations issued.
17. In addition, licensing authorities are required to prepare, every three years, a statement of the principles which they propose to apply when exercising their functions, and they must publish the statement. The statement, which may also be referred to as a 'policy', can be reviewed and re-published during the three-year period in which it has effect. In preparing the statement, licensing authorities must follow the procedure set out in the Act, including whom they should consult
18. It is proposed that a draft Gambling Policy Statement be prepared upon release of the Guidance by the Secretary of State (likely to be April 2006). After consideration of this draft by the Licensing Committee this should then be published for formal consultation with the finalised version being agreed by Council in December 2006 following further reports to the Licensing Committee and Cabinet.

19. The Licensing Committee will have particular functions under this Act and will broadly have similar functions and powers as under the Licensing Act 2003. However, there are some differences and a summary is attached as Appendix 1.
20. The Scheme of Delegations will need to be adapted for the purposes of the Gambling Act and proposed delegations are included as Appendix 2.

## **FINANCIAL AND LEGAL IMPLICATIONS**

21. The Government has stated that money has been made available through the Revenue Support Grant (RSG) distributed by ODPM for the start-up costs associated with gambling premises licensing. This money was available in 04/05 and 05/06. The Government envisaged that the following should be considered as start-up costs:

- training for existing licensing officers, councillors and administrative staff;
- staff/recruitment costs (where additional staff are required to fulfil gambling premises licensing responsibilities);
- additional software/hardware requirements;
- transfer of records from licensing justices to licensing authorities; and
- production of the licensing authority's three year licensing policy statement, and consultation on it.

In accordance with the medium term financial plan this resource is not passported - but implications upon workload and capacity will have to be considered in detail in a further report (as suggested in paragraph 27)

22. The ongoing costs of authorities' new responsibilities under the Act are to be met through initial application and annual fees (for premises licences) and fees for permits and other permissions.
23. Premises licence fees in England and Wales will be set via a series of bands, with a prescribed maximum in each band. Licensing authorities will be able to select precise fees from within the bands, limited to cost recovery. This is intended to allow authorities to fully recover the costs of their new responsibilities whilst providing consistency of approach across England and Wales and providing the gambling industry with a degree of certainty over the fees that may be charged.
24. In addition, certain high performing authorities will be free to set their own fees, again limited to cost recovery. This will give those selected authorities the freedom to consider other types of fee structure, such as higher fees for an expedited service. It is currently envisaged that this freedom will apply to those authorities rated excellent under the Audit Commission's Comprehensive Performance Assessment.
25. The Secretary of State will set the fees for permits and other services.
26. The draft regulations covering fees are not likely to be published until mid April and therefore officers have not, as yet, been able to determine the resource implications for the authority. Consultation on premise applications by the local authority will not be covered by the license fee (as per the Licensing Act 2003). If the authority wishes to continue this form of consultation, further resources will be required.
27. It is propose that the report on the review of resource requirements for the Licensing Act 2003 should also include the resource requirements for the Gambling Act 2005.

28. The implementation of the Council's new responsibilities under the Gambling Act 2005 involves making complex decisions, balancing the interests of applicants for licences with the interests of their customers and those of the community at large

## **COMMUNITY STRATEGY IMPLICATIONS**

29. To secure a safe and attractive environment for current and future generations;  
To promote the safety and well being of the community;  
To further regenerate the Borough and improve the local economy.

Environmental Implications-The implementation of the Gambling Act 2005 will impact on the communities' environment. Through the introduction of a strategic Gambling Policy there may be opportunities to further improve the environment, to the benefit of all.

Community Safety Implications - Community Safety is one of the cornerstones of the introduction of the Gambling Act 2005. The introduction of the new regime should assist in reducing crime and disorder by deterring criminals from using gambling establishments to launder money and to reduce the level of problem gambling.

## **RISK ASSESSMENT**

30. Risks have been identified which could lead to inability to meet business objectives and to deliver services, leading to financial loss, non-compliance with legislation, damage to the Council's image and reputation and failure to meet stakeholders expectations. The degree of risk varies significantly, dependant upon the outcome of the final legislation, fee levels etc. The risk score has currently been assessed as 6, placing the issue in the LOW category, with lead responsibility assigned to the Head of Community Protection.

## **CONSULTATION, INCLUDING WARD COUNCILLORS**

31. Local authorities are required to issue a Licensing Policy Statement outlining how they will promote the objectives of:
- Preventing gambling from being a source of crime and disorder or being used to support crime
  - Ensuring gambling is conducted in a fair and open way
  - Protecting children and other vulnerable persons from being harmed or exploited by gambling.
32. Consultation in preparation of the authority's Gambling Policy Statement, will take a similar form as that undertaken when preparing the Licensing Act 2003 Licensing Policy Statement. Consultation will be undertaken with the following statutory consultees:
- a) the chief officer of police for the authority's area;
  - b) the fire authority for the authority's area;
  - c) 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
  - d) one or more persons who appear to the authority to represent the interests of persons who are likely to be affected by the exercise of the authority's functions under the Gambling Act,.

and the following non statutory consultees:

- e) representatives of businesses and residents in the Stockton Borough Council area;
- f) the Safer Stockton Partnership;
- g) the Area Child Protection Committee;





## Appendix 1

### The Licensing Act 2005 and The Gambling Act 2005

1. The Licensing Act 2003 introduces new laws on the sale and supply of alcohol, late night refreshments and public entertainment, and, in particular, gives responsibility for this to local authorities in England and Wales. The Gambling Act, in introducing new regulations for gambling, also gives responsibility for a number of important functions to local authorities in England and Wales. Common to both Acts is a system for authorising premises to be used permanently or on a temporary basis for licensable activities, and for giving permission to clubs.
2. The 2003 and 2005 Acts take different approaches to the regulatory principles which underpin the functions of licensing alcohol and gambling. Therefore, the substantive rules that authorities must apply under the Acts are different in a number of respects. It is important that authorities do not confuse the two regimes. However, there are common procedural rules in the two systems, and this is intended to assist authorities to streamline procedures.
3. This Annex describes the areas common to both Acts, and then sets out, in a table, the key differences. This cannot represent a comprehensive summary of the law under either Act, and reference should be made to the relevant guidance for each regime. The purpose of the table is to highlight where there are major differences requiring different approaches.
4. This Annex does not deal with the transitional arrangements that applied to the 2003 Act, and will apply to the 2005 Act. Nothing in this Annex relates to Scotland, as the 2003 Act does not extend to Scotland.
5. The focus of this Annex is premises licensing, which is a function common to both Acts. It does not deal with the permit-related functions under the 2005 Act, which have no counterpart in the 2003 Act.

#### Common Procedural Approaches

- (a) Both Acts transfer responsibilities from licensing justices (magistrates) to local authorities for premises-bases regulation, and implement significant new licensing and regulatory regimes.
- (b) Both Acts contain a system of premises licensing.
- (c) Both Acts contain systems for authorising temporary use of premises (permitted temporary activities under Part 5 of the 2003 Act and temporary use of premises under Part 9 of the 2005 Act).
- (d) Both Acts apply to England and Wales, but the Gambling Act also applies to Scotland (where licensing boards have the equivalent responsibilities).

(e) Both Acts define the same classes of local authority as the “licensing authority” for regulatory purposes i.e.

- district council;
- county council where there are no district councils;
- London borough council
- County or county borough council in Wales
- Common Council of the City of London; and
- the council of the Isles of Scilly

(f) The only differences in definition of “licensing authority” are as follows:

- the 2003 Act includes the sub Treasurer of the Inner Temple and the Under Treasurer of the Middle Temple. These authorities are only deemed licensing authorities under the 2005 Act for the purposes of Part 12 (in relation to alcohol-licensed premises) and Schedule 13.
- the territorial extent of the 2005 Act requires the Act to include licensing boards constituted under section 1 of the Licensing (Scotland) Act 1976.

(g) The 2005 Act draws upon parts of the 2003 Act when establishing the delegation and procedural arrangements for the operation of licensing authorities. The licensing committees established under section 6 of the 2003 Act are also the relevant committees for the purpose of gambling functions under the 2005 Act. Therefore, the same committee that deals with applications and other issues in relation to alcohol premises licences will also be responsible for premises licence applications and other issues (i.e. permits) in relation to gambling.

(h) The delegation arrangements for sub-committees and officers have a common basis under section 10 of the 2003 Act. The table in this annex describes some functional differences.

(i) The proceedings of the licensing committee are regulated by section 9 of the 2003 Act (and regulations made under that section). Particular provision can be made for proceedings in relation to just the 2003 Act functions or just the 2005 Act functions. Any such regulations will be consulted upon in due course.

(j) Both acts require authorities to maintain a register of the premises licences issued. This is likely to mean that in most cases, computer and database specifications used by the authority under the 2003 Act may also be used for the 2005 Act.

(k) Both Acts require the licensing authority to publish a licensing policy statement.

(l) Both Acts require advance publication of premises licence applications, and give local residents, businesses, and bodies such as the Police rights to make representations. These representations are taken into account in the licensing process.

(m) Under both Acts, appeals against decisions made by licensing authorities must be made to the Magistrates' Court within 21 days of the decision (unless they are proceedings by way of judicial review).

(n) Under both Acts, premises licences are issued in perpetuity. Authorities are able to review licences and impose a number of administrative sanctions, following a review (including the addition or modification of conditions, suspension or revocation of the licence).

(o) Both Acts grant new powers to licensing authorities to initiate prosecutions in respect of certain offences.

### Key differences between the 2003 and 2005 Acts

Key differences	Licensing Act 2003	Gambling Act 2005
<p>1. Extent of the legislation</p> <p>2. The licensing objectives</p>	<p>Applies in England and Wales only</p> <p>Set out in section 4(2) of the 2003 Act, they are:</p> <ul style="list-style-type: none"> <li>a) the prevention of crime and disorder</li> <li>b) public safety</li> <li>c) the prevention of public nuisance; and</li> <li>d) the protection of children from harm.</li> </ul> <p>Note (b) and (c) are absent from the 2005 Act.</p>	<p>Applies in England, Wales and Scotland (and sections 43, 331, 340 and the related entry in Schedule 17 also apply to Northern Ireland)</p> <p>Set out in section 1 of the 2005 Act, they are:</p> <ul style="list-style-type: none"> <li>a) preventing gambling from being a source of crime or disorder, being associated with crime or disorder or being used to support crime;</li> <li>b) ensuring that gambling is conducted in a fair and open way; and</li> <li>c) protecting children and other vulnerable persons from being harmed or exploited by gambling.</li> </ul> <p>Note the inclusion of vulnerable persons in the protection from harm objective.</p>
<p>3. 'Relevant licensing authority'</p>	<p>The relevant licensing authority is the authority for the area in which the premises are wholly or partly situated. Where the premises are across the boundary, it is the authority for the area in which the greater or greatest part of the premises is situated.</p>	<p>An application may be made to an authority in whose area the premises are wholly or partly situated. There are no provisions to differentiate between two licensing authorities where the premises straddle more than one area: it is for the applicant to choose which one he puts his application in to.</p> <p>The other authority will be a "responsible authority" in relation to the application.</p>

**Key differences****Licensing Act 2003****Gambling Act 2005**

<p>4. Structure of delegation See s.154 of the 2005 Act &amp; ss.6,7,9 &amp; 10 of the 2003 Act</p>	<p>All decisions are delegated to a licensing committee, except:</p> <ul style="list-style-type: none"><li>a) the statement of licensing policy; and</li><li>b) matters that relate to the licensing functions of the authority and to another function of the authority, which may be referred to another committee of the licensing authority (but need not be).</li></ul> <p>Where a matter that relates to a licensing function is dealt with by the licensing authority, or a committee other than the licensing committee, the licensing authority/other committee must consider a report of the licensing committee before discharging the function concerned. Where it is dealt with by the licensing committee, the committee must consider any report of any of the licensing authority's other committees. There is no equivalent provision in the 2005 Act. Applications under both the 2003 Act and the 2005 Act are already required to be dealt with by the same s.6 licensing committee.</p>	<p>All decisions relating to premises licences are delegated to the licensing committee of the licensing authority except</p> <ul style="list-style-type: none"><li>a) casino resolutions (which must be taken by the whole authority);</li><li>b) three-year licensing policy (which must be made by the whole authority); and</li><li>c) setting fees – these may be, but are not automatically, delegated to the licensing committee.</li></ul> <p>All other premises licence decisions may be further delegated to a sub-committee or an officer of the authority, except for the following, which may not be taken by an officer:</p> <ul style="list-style-type: none"><li>a) determination of an application for a premises licence where representations have been made and not withdrawn;</li><li>b) determination of an application for variation of a licence where representations have been made and not withdrawn</li><li>c) determination of an application for a provisional statement where representations have been made and not withdrawn;</li><li>e) a review of a premises licence.</li></ul> <p>Decisions on temporary use notices are delegated to a licensing committee and may be sub-delegated to a sub-committee or an officer of the licensing committee. Any decision to give a counter notice cannot be sub-delegated to an officer, however.</p>
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Key differences	Licensing Act 2003	Gambling Act 2005
5. Personal Licences	Under Part 6 of the 2003 Act, personal licences are granted by the licensing authority.	Under the 2005 Act, personal licences are granted by Gambling Commission (as are operating licences). Authorities have no “suitability” test to apply in relation to premises licences.
6. Principles to be applied by the licensing authority when exercising its functions	<p>Section 4 of the 2003 Act requires an authority to carry out its functions under the Act with a view to promoting the licensing objectives. It is also to have regard to the following when carrying out its licensing functions:</p> <ul style="list-style-type: none"> <li>a) its licensing statement published under s.5; and</li> <li>b) any guidance issued by the Secretary of State under s.182</li> </ul>	<p>Section 153 of the Act requires authorities to aim to permit the use of premises for gambling in so far as the authority think it:</p> <ul style="list-style-type: none"> <li>a) in accordance with any relevant code of practice under s.24;</li> <li>b) in accordance with any relevant guidance issued by the Commission under s.25;</li> <li>c) reasonably consistent with the licensing objectives (subject to (a) and (b)); and</li> <li>d) in accordance with the authority’s own licensing policy statement (subject to (a)-(c))</li> </ul> <p>Note: there is no Secretary of State guidance.</p>
7. Determination of the application for a premises licence	<p>In the absence of relevant representations having been made, Section 18 of the 2003 Act requires the licensing authority to grant an application for a premises licence and to do so subject only to such conditions that are in accordance with the operating schedule submitted by the applicant.</p> <p>Special weight is given to representations made by the Police that relate to the crime prevention objective (see section 18(9)).</p> <p>Note that relevant representations, for the purpose of deciding whether to hold a hearing, are those made within the relevant time limits that are not vexatious or frivolous.</p>	<p>Licensing authorities may reject an application for a premises licence (in accordance with the principles described above) or attach any conditions they think necessary (subject to the constraints of the Act) regardless of whether representations have been made.</p> <p>Note that representations that can be disregarded (for the purpose of deciding whether to hold a hearing) are those that are vexatious, frivolous or will certainly not influence the authority’s determination of the application.</p>

Key differences	Licensing Act 2003	Gambling Act 2005
<p>8. Responsible authorities: the list of responsible authorities differs between the two pieces of legislation</p>	<p>Set out in section 13(4) of the Act, they are (in layman's terms):</p> <ul style="list-style-type: none"> <li>a) the Police;</li> <li>b) the Fire Authority;</li> <li>c) the enforcing authority within the meaning given by a s.18 of the Health and Safety at Work Act;</li> <li>d) the local planning authority;</li> <li>e) Environmental Health (or similar body);</li> <li>f) A body competent to advise the authority in matters relating to the protection of children from harm;</li> <li>g) Any licensing authority (other than the relevant licensing authority) in whose area part of the premises is situated; and</li> <li>h) In relation to a vessel, a navigation authority, the Environment Agency, the British Waterways Board or the Secretary of State.</li> </ul>	<p>Set out in Section 157 of the Act, they are (in layman's terms):</p> <ul style="list-style-type: none"> <li>a) a licensing authority in England and Wales in whose area the premises is wholly/partly situated (nb. This means that the licensing authority (as in the issuing authority) is also a responsible authority);</li> <li>b) the Gambling Commission;</li> <li>c) the Police;</li> <li>d) the Fire Authority;</li> <li>e) the local planning authority;</li> <li>f) the council constituted under Section 2 of the Local Government etc (Scotland) Act 1994;</li> <li>g) Environmental Health (or similar body);</li> <li>h) A body designated in writing that is competent to advise the authority in matters relating to the protection of children from harm;</li> <li>i) In relation to a vessel, a navigation authority, the Environment Agency, the British Waterways Board or the Secretary of State.</li> </ul>
<p>9. Interested parties: the definition of interested party differs between the two pieces of legislation</p>	<p>Set out in Section 13(3) of the Act, interested party means any of the following:</p> <ul style="list-style-type: none"> <li>a) a person living in the vicinity of the premises;</li> <li>b) a body representing persons who live in that vicinity;</li> <li>c) a body representing persons involved in such businesses.</li> </ul> <p>Note that "in the vicinity of" is likely to mean something different from "be affected by". The former suggests a geographical limit, the second is a limit imposed in terms of the level of impact on a person or business.</p>	<p>Set out in Section 158 of the Act, a person is an interested party if, in the opinion of the licensing authority, the person:</p> <ul style="list-style-type: none"> <li>a) lives sufficiently close to the premises to be likely to be affected by the authorised activities;</li> <li>b) has business interests that might be affected by the authorised activities; or</li> <li>c) represents persons who satisfy a) or b)</li> </ul> <p>See the main body of the guidance for further examination of this provision.</p>



Key differences	Licensing Act 2003	Gambling Act 2005
10. Operating Schedule	Section 17 of the 2003 Act requires an application for a premises licence to be accompanied by an operating schedule and a plan of the premises.	The Secretary of State will prescribe the information that must accompany a premises licence application. There is no equivalent to an operating schedule under the 2005 Act, since operating licences are determined by the Gambling Commission.
11. Provisional Statements	<p>Provisional statements serve a similar purpose, but function in different ways under the two Acts.</p> <p>A licensing authority cannot refuse to issue a provisional statement under the 2003 Act, since the statement indicates what the authority will do when it receives a full premises licence application.</p> <p>Under Section 31, if there are no relevant representations a licensing authority is required to issue a provisional statement stating so.</p> <p>Where relevant representations are made, a licensing authority (after any hearing) must issue the statement indicating what action (grant/reject/conditions) it would consider necessary upon any subsequent consideration of a premises licence application in relation to the proposal.</p> <p>When the full application for the licence is received, representations will be excluded if:</p> <ul style="list-style-type: none"> <li>a) the same representations could have been made when the application for the provisional statement was made; and</li> <li>b) there has been no material change in circumstances relating either to the relevant premises or the area in the vicinity of those premises.</li> </ul>	<p>Provisional statements serve a similar purpose, but function in different ways under the two Acts.</p> <p>The 2005 Act does not impose a statutory obligation on authorities to issue provisional statements. That is because the provisional statement serves the function of a provisional grant of a premises licence. Authorities apply the same tests for the provisional statement as would apply for the premises licence.</p> <p>When the full application for the premises licence comes in, the licensing authority must disregard any representations unless:</p> <ul style="list-style-type: none"> <li>a) they address matters that could not have been addressed in representations relating to the application for the provisional statement; or</li> <li>b) they reflect a change in the applicant's circumstances.</li> </ul> <p>Note this is different from a change to the premises or the area in the vicinity of those premises.</p>

Key differences	Licensing Act 2003	Gambling Act 2005
<p>12 Premises Licence Conditions: the regime for attaching conditions to a premises licence differs between the two Acts.</p>	<p>The 2003 Acts sets out all mandatory conditions to be applied to a premises licence on the face of the Act.</p> <p>In addition, Section 18 of the 2003 Act enables authorities to impose conditions to individual premises licences where there have been relevant representations made (but the conditions that can be attached are only those that are consistent with the operating schedule, modified to such extent as the authority considers necessary for the promotion of the licensing objectives).</p>	<p>The 2005 Act sets out three types of conditions that can be attached to premises licences:</p> <ul style="list-style-type: none"> <li>• Mandatory – set by the Secretary of State (some set out on the face of the Act s.176, 177, 179, 180, 182, 183) and some to be prescribed in Regulations, for all, or classes of licence;</li> <li>• Default – to be prescribed in Regulations made by the Secretary of State, to be attached to all or classes of premises licence unless excluded by the licensing authority; and</li> <li>• Specific – conditions that can be attached to an individual premises licence by the licensing authority.</li> </ul> <p>Licensing authorities are not limited to conditions that are consistent with anything in the application in the same way that they are with operating schedules under the 2003 Act; however, they cannot impose conditions that would prevent compliance with operating licence conditions.</p>
<p>13. Right of freeholder to be notified of licensing matters</p>	<p>Section 178 of the 2003 Act enables a person with a property interest in any premises to give notice to the authority to enable him to be notified of any changes made to the register of premises in relation to that premises</p>	<p>There is no such provision in the Gambling Act 2005, although authorities are still required to keep a register of premises licences and other permissions and provide copies of the registers when requested.</p>

**Key differences****Licensing Act 2003****Gambling Act 2005****14. Vessels and Vehicles**

Definition of vehicle in 2003 Act: “vehicle means a vehicle intended or adapted for use on roads”.

The 2003 Act prohibits the sale of alcohol on moving vehicles, but an authority may consider applications for a vehicle that is parked or stationary.

Definition of vessel under 2003 Act: “vessel includes a ship, boat, raft, or other apparatus constructed or adapted for floating on water”.

The 2003 Act applies in relation to a vessel which is not permanently moored or berthed as if it were premises situated in the place where it is usually moored or berthed.

Under the 2003 Act, railway vehicles, aircraft engaged on journeys and vessels engaged on international journeys are exempt from the licensing regime of the 2003 Act.

Definition of vehicle in 2005 Act: “vehicle includes a train, an aircraft, a seaplane and an amphibious vehicle (other than a hovercraft)”.

Premises licences may not be issued in relation to a vehicle (or part of a vehicle) Section 211(1) of the 2005 Act refers.

Definition of vessel under 2005 Act: “vessel includes anything, other than a seaplane or an amphibious vehicle, designed or adapted for navigation or other use in, on or over water, a hovercraft, and anything or any part of any place, situated in or on water.”

The 2005 Act enables a premises licence to be issued in relation to all or part of a vessel. A licensing authority may attach a condition to a premises licence issued in respect of a vessel that relates to its location.

The following permits may not be issued to a vessel or a vehicle under the 2005 Act:

- a) An FEC permit (Schedule 10);
- b) A Prize Gaming permit (Schedule 14);
- c) A Club/Gaming/Club Machine permit (Schedule 12);

A Licensed Premises Gaming Machine permit may be issued to a vessel, but not a vehicle under the 2005 Act.

Aircraft whilst in international airspace and vessels on a journey outside British waters are exempt from the licensing regime of the 2005 Act.

See sections 211, 353(1), 359, and 360.

Key differences	Licensing Act 2003	Gambling Act 2005
15. Fees	Prescribed by the Secretary of State	Prescribed by the Secretary of State but may be devolved to authorities (wholly or to a limited extent), subject to cost recovery principle.
16. Temporary Use Notices	Where premises are situated in the area of two or more licensing authorities, each authority is the relevant licensing authority.	The relevant licensing authority is the authority for the area in which the premises are situated.
17. Licensing Policy Statement	<p>List of consultees set out in Section 5(3):</p> <ul style="list-style-type: none"> <li>• Police</li> <li>• Fire Authority</li> <li>• Representatives of licence holders</li> <li>• Representatives of club premises certificates</li> <li>• Representatives of personal licence holders</li> <li>• Other persons representative of business and residents in the area.</li> </ul>	<p>List of consultees set out in Section 349:</p> <ul style="list-style-type: none"> <li>• Police</li> <li>• Representatives of gambling businesses in the area</li> <li>• Representatives of those likely to be affected by the exercise of licensing authority's functions</li> </ul>
18. Other functions	Licensing authorities also regulate clubs (club premises certificates) and issue personal licences.	<p>Licensing authorities also issue:</p> <ul style="list-style-type: none"> <li>• Family Entertainment Centre permits;</li> <li>• Club Gaming and Club Machine permits;</li> <li>• Licensed Premises Gaming Machine permits;</li> <li>and</li> <li>• Prize Gaming permits.</li> </ul> <p>They may also register small society lotteries, and will take responsibility for occasional use notices, and various automatic notifications and authorisations.</p>

## Suggested Scheme of Delegation for The Gambling Act 2005

Matter to be dealt with	Full Council	Sub-Committee of licensing committee	Officers
Three year licensing policy	X		
Policy not to permit casinos	X		
Fee setting (when appropriate)			X
Application for premises licences		Where representations have been received and not withdrawn	Where no representations received/representations have been withdrawn
Application for a variation to a licence		Where representations have been received and not withdrawn	Where no representations received/representations have been withdrawn
Application for a transfer of a licence		Where representations have been received from the Commission	Where no representations received from the Commission
Application for a provisional statement		Where representations have been received and not withdrawn	Where no representations received/representations have been withdrawn
Review of a premises licence		X	
Application for club gaming/club machine permits		Where objections have been made (and not withdrawn)	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	