

## CABINET ITEM COVERING SHEET PROFORMA

**AGENDA ITEM**

**REPORT TO CABINET**

**22 NOVEMBER 2007**

**REPORT OF CORPORATE  
MANAGEMENT TEAM**

### **COUNCIL DECISION**

**Housing and Community Safety– Lead Cabinet Member – Councillor Nelson**

#### **THE GAMBLING ACT 2005 DELEGATION OF POWERS**

1. Summary

The purpose of this report is to propose the delegation of powers to the Licensing Committee in relation to small lotteries; gaming machines and/or gaming in alcohol licensed premises; and occasional use notices; and to delegate the authority to appoint 'authorised officers'; prosecution of offences; the duty to provide the Gambling commission with information and to set premise licence fees under the provisions of the Gambling Act 2005 to the Corporate Director of Development and Neighbourhood Services.

2. Recommendations

It is recommended that: -

- (1) the authority to grant, refuse, revoke or cancel small society lottery registrations be delegated to the Licensing Committee set up to deal with the Licensing Act 2003.
- (2) the authority to remove the right to two gaming machines and/or the right to have gaming on alcohol-licensed premises be delegated to the Licensing Committee set up to deal with the Licensing Act 2003.
- (3) Functions relating to occasional use notices be delegated to the Licensing Committee set up to deal with the Licensing Act 2003
- (4) The Corporate Director of Development and Neighbourhood Services be authorised to appoint 'authorised persons' under the Gambling Act 2005.
- (5) The Corporate Director of Development and Neighbourhood Services be authorised to institute legal proceedings in respect of offences under the Gambling Act 2005
- (6) The Corporate Director of Development and Neighbourhood Services be authorised to provide the Gambling Commission with information as required under the Gambling Act 2005
- (7) The Corporate Director of Development and Neighbourhood Services be authorised to set premise licence fees.

### 3. Reasons for the Recommendations/Decision(s)

The reasons for the recommendations are supported are to ensure effective and timely decision making by the Council with respect to: -

- (a) the statutory requirement to grant/refuse/revoke or cancel small society lottery registrations
- (b) the power to remove the automatic right to two gaming machines and/or gaming on alcohol licensed premises
- (c) the statutory procedures relating to the service of occasional use notices
- (d) the appointment of appropriate officers for the purpose of exercising statutory functions under the Act.
- (e) the prosecution of offences under the Act
- (f) providing the Gambling Commission with information as and when required.
- (g) the setting of premise licence fees

### 4. Members' Information

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 (**paragraphs 10 and 11 of the code of conduct**).

A Member with a prejudicial interest in any matter must withdraw from the room where the meeting considering the business is being held -

- in a case where the Member is attending a meeting (including a meeting of a select committee) but only for the purpose of making representations, answering questions or giving evidence, provided the public are also allowed to attend the meeting for the same purpose whether under statutory right or otherwise, immediately after making representations, answering questions or giving evidence as the case may be;
- in any other case, whenever it becomes apparent that the business is being considered at the meeting;

and must 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 (unless the interest arises solely from the Member's membership of, or position of control or management on any other body to which the Member was appointed or nominated by the Council, or on any**

**other body exercising functions of a public nature, when the interest only needs to be declared if and when the Member speaks on the matter), and if their interest is prejudicial, they must also leave the meeting room, subject to and in accordance with the provisions referred to above.**

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**COUNCIL DECISION**

**GAMBLING ACT 2005 – DELEGATION OF POWERS**

**SUMMARY**

The purpose of this report is to propose the delegation of powers to the Licensing Committee in relation to small lotteries; gaming machines and/or gaming in alcohol licensed premises; and occasional use notices; and to delegate the authority to appoint 'authorised officers'; prosecution of offences; the duty to provide the Gambling commission with information and to set premise licence fees under the provisions of the Gambling Act 2005 to the Corporate Director of Development and Neighbourhood Services.

**RECOMMENDATIONS**

It is recommended that: -

- (1) the authority to grant, refuse, revoke or cancel small society lottery registrations be delegated to the Licensing Committee set up to deal with the Licensing Act 2003.
- (2) the authority to remove the right to two gaming machines and/or the right to have gaming on alcohol-licensed premises be delegated to the Licensing Committee set up to deal with the Licensing Act 2003.
- (3) Functions relating to occasional use notices be delegated to the Licensing Committee set up to deal with the Licensing Act 2003
- (4) The Corporate Director of Development and Neighbourhood Services be authorised to appoint 'authorised persons' under the Gambling Act 2005.
- (5) The Corporate Director of Development and Neighbourhood Services be authorised to institute legal proceedings in respect of offences under the Gambling Act 2005
- (6) The Corporate Director of Development and Neighbourhood Services be authorised to provide the Gambling Commission with information as required under the Gambling Act 2005
- (7) The Corporate Director of Development and Neighbourhood Services be authorised to set premise licence fees.

## DETAIL

1. On 30<sup>th</sup> November 2006 Council approved the Statement of Principles in relation to the Gambling Act 2005 and revisions to the Scheme of Delegations.
2. With the exception of the powers to pass a resolution not to issue Casino licences and the power to approve the Gambling Policy (Statement of Principles) the 2005 Act specifically delegates most Local Authority functions to the Licensing Committee set up to deal with the Licensing Act 2003. This committee will deal with contested applications and reviews of problem premises.
3. The primary legislation reflected some small anomalies in relation to delegation of powers but it was anticipated that the regulations to accompany the legislation would address these matters. It has now become clear that there are matters that have not been resolved as follows: -
  - (a) The authority to grant/refuse/revoke or cancel the registration of small lotteries.
  - (b) The authority to remove the right of alcohol licensed premises to two gaming machines and/or the right to have gaming on such premises.
  - (c) Functions relating to the use of occasional use notices for track betting
  - (d) Appointment of 'authorised officers'
  - (e) Prosecution of offences
  - (f) The duty to provide the gambling Commission with information
  - (g) The power to set premise licence fees
4. In relation to (a) above, the legislation refers to the Local Authority rather than the Licensing Authority and in (b) to (g) there is no automatic delegation to the Licensing Committee. A debate at national level has ensued as to whether such authority would rest with the executive (as per section 13 of the Local Government Act 2000) or with Council. The advice from the Department of Culture Media and Sports (DCMS) is that these are functions of Council.
5. Given that a small society lottery registration is required for fundraising raffles etc, and that all alcohol licensed premise are entitled to two gaming machines, and occasional use notices cannot be refused if statutory procedure is followed it may be inappropriate for such measures to be referred to Council for what will be routine decisions and which were, under previous legislation, determined by officers and/or the Licensing Committee. It is, therefore, proposed that these functions are delegated to the Licensing Committee, set up to deal with the Licensing Act 2003 who, in turn, will be invited to delegate most of these authorities to officers.
6. The Corporate Director of Development and Neighbourhood Services currently has, under the Council's Scheme of Delegation, authorisation to authorise officers to act generally and to institute legal proceedings under legislation that is within the remit of his role. It is however, considered appropriate to provide him with specific authorisation to appoint 'authorised persons' as defined in the Gambling Act and to prosecute for offences under the Act in order to withstand any legal challenges that could arise as a result of any such authorised person carrying out their statutory functions under the Act.
7. Providing information to the Gambling Commission is an administrative task and it is therefore considered appropriate for this function to be delegated to officers.

8. Prior to this amended advice being received the Licensing Committee has already delegated the setting of fees to officers.

### **FINANCIAL IMPLICATIONS**

9. None

### **LEGAL IMPLICATIONS**

10. Appropriate delegations must be made in order that the enforcement and administration of the Gambling Act 2005 can take place. Failure to appropriately delegate functions will leave the authority open to legal challenge.

### **RISK ASSESSMENT**

11. These proposed delegations are categorised as low to medium risk. Existing management systems and daily routine activities are sufficient to control and reduce risk.

### **COMMUNITY STRATEGY IMPLICATIONS**

12. Introduction of Gambling Act 2005 will assist in preventing crime and protecting vulnerable children and adults from harm.

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#### Background Papers

The Gambling Act 2005

#### Wards & Councillors

Not ward related

#### Property