

Part 6: Statement of licensing policy

Introduction

- 6.1** S.349 of the Act requires all licensing authorities to prepare and publish a statement of licensing principles that they propose to apply in exercising their functions under the Act, commonly known as a statement of policy. The statement of policy forms the licensing authority's mandate for managing local gambling provision and sets out how the licensing authority views the local risk environment and therefore its expectations in relation to operators with premises in the locality.
- 6.2** The statement of policy acts as the primary vehicle for setting out the licensing authority's approach to regulation having taken into account local circumstances. For example, a licensing authority might identify the safeguarding of children as a key priority, in which case its statement would set out those policies, procedures and control measures it would expect licensees to follow to mitigate any risks relating to underage gambling.
- 6.3** Statements of policy are likely to reflect differences in approach between different licensing authorities. The statement made by a seaside town licensing authority, which may see gambling businesses as an important part of its plans for growth and regeneration based on regular influx of visitors, may well be significantly different from that of an inner city authority, which may be more concerned with impact on the vulnerable. In this respect, licensing authorities may find it helpful to make an assessment of the pattern of gambling and associated risks to the licensing objectives in their own areas.
- 6.4** The Commission encourages licensing authorities to have a statement of policy that is genuinely reflective of local issues, local data, local risk and the expectations that a licensing authority has of operators who either currently offer gambling facilities or wish to do so in the future. The existence of a clear and robust statement of policy provides greater scope for licensing authorities to work in partnership with operators, other local businesses, communities, and responsible authorities to identify and to proactively mitigate local risks to the licensing objectives.
- 6.5** The statement of policy can be reviewed and revised by the licensing authority at any time, but must be produced following consultation with those bodies and persons set out in s.349(3) of the Act. Regulations made by the Secretary of State, or Scottish Ministers in Scotland, prescribe the form of statements, and the procedure to be followed in relation to them and their publication, as detailed in paragraph 6.11 onwards.
- 6.6** Licensing authorities should ensure that the statement of policy balances the need for a degree of certainty on the part of gambling businesses with the need to remain responsive to emerging risks. It should be evidence led, based on the principles outlined below and reviewed at least every three years.

Fundamental principles

- 6.7** Licensing authorities' statements of policy should begin by stating the three licensing objectives (s.1 of the Act), which the policy will promote:
- 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
 - protecting children and other vulnerable persons from being harmed or exploited by gambling.

- 6.8** The statement should also state that the licensing authority shall aim to permit the use of premises for gambling as set out in s.153 of the Act.
- 6.9** It is expected that licensing authorities will regulate gambling in the public interest which will be reflected in the statement of policy.
- 6.10** While the statement of policy may set out a general approach to the exercise of functions under the Act, it should not override the right of any person to make an application and to have that application considered on its merits. The exception to this is where the licensing authority has passed a 'no casino' resolution under s.166(1) of the Act, detailed in Part 17 of this Guidance. Additionally, the statement must not undermine the right of any person to make representations on an application or to seek a review of a licence where provision has been made for them to do so.

Form and content

- 6.11** The Gambling Act 2005 (Licensing Authority Policy Statement) (England and Wales) Regulations 2006¹¹ (and The Gambling Act 2005 (Licensing Authority Policy Statement) (Scotland) Regulations 2006¹², (set out requirements as to the form and publication of licensing authority statements of policy and subsequent revisions of statements. In addition to those requirements, this Guidance sets out certain information that the Commission considers should be included in all licensing authority statements of policy.
- 6.12** The regulations provide that the form of the statement can be determined by the licensing authority itself, subject to the requirement that the statement of policy must contain an introductory section summarising the matters contained within the statement. The introductory section must include:
- a description of the geographical area to which the statement of policy applies, which can be satisfied by including a plan of the area
 - a list of the persons consulted in preparing the statement.
- 6.13** The statement of policy should set out the activities that the licensing authority is able to license.
- 6.14** The regulations also require the statement of policy to set out specific matters in separate sections relating to the principles to be applied by the licensing authority in exercising:
- i. its powers under s.157(h) of the Act to designate, in writing, a body which is competent to advise it about the protection of children from harm
 - ii. its powers under s.158 of the Act to determine whether a person is an interested party in relation to a premises licence, or an application for or in respect of a premises licence
 - iii. the functions under s.29 and s.30 of the Act with respect to the exchanges of information between it and the Commission, and the functions under s.350 of the Act with respect to the exchange of information between it and the other persons listed in Schedule 6 to the Act
 - iv. the functions under Part 15 of the Act with respect to the inspection of premises and the power under s.346 of the Act to institute criminal proceedings in respect of the offences specified in that section.

Each of these is set out in further detail below.

¹¹ SI 2006/636: The Gambling Act 2005 (Licensing Authority Policy Statement) (England and Wales) Regulations 2006

¹² SSI 2006/156: The Gambling Act 2005 (Licensing Authority Policy Statement) (Scotland) Regulations 2006

i. Competent authority for protection of children from harm

- 6.15** Under s.349 of the Act, the statement of policy must set out the principles that the licensing authority proposes to apply in exercising their functions. One of those functions is to determine who will be competent to advise them about the protection of children from harm and so the statement of policy must contain a section that sets out the principles the licensing authority will apply in designating a competent body.
- 6.16** In many licensing authority areas, the recognised competent body will be the local Safeguarding Children Board in England and Wales, or the Child Protection Committee in Scotland. However, the licensing authority has discretion to determine the most appropriate competent body to advise it, and must consider which body best fulfils this function. The statement of policy should set out this consideration, or the criteria the authority intends to use, in order to designate that body and confirm that designation in writing.
- 6.17** A designated body is a responsible authority under s.157(h) of the Act. Licensing authorities should engage fully with the designated body and provide sufficient opportunity for them to be consulted on the development of the statement of policy, as they can offer valuable insight into the impact of gambling on children in the local area. Licensing authorities might also opt to consult such groups as part of its own local area profile, discussed at paragraph 6.47 onwards.

ii. Interested parties

- 6.18** Licensing authority statements of policy must contain a section that sets out the principles to be applied by the licensing authority to determine whether a person is an interested party in relation to a premises licence, or in relation to an application for or in respect of a premises licence.
- 6.19** S.158 of the Act defines interested parties as persons who, **in the opinion of the licensing authority:**
- a) live sufficiently close to the premises to be likely to be affected by the authorised activities
 - b) have business interests that might be affected by the authorised activities
 - c) represent persons who satisfy paragraph a) or b).
- 6.20** It is a matter for the licensing authority to decide whether a person is an interested party with regard to particular premises and that should be decided on a case by case basis. However, the licensing authority should set out the principles it will apply in determining whether a person is an interested party in its statement of policy, and that may include relevant factors it will take into account. For example, this could be the size of the premises and the nature of the activities taking place as larger premises may be considered to affect people over a broader geographical area compared with smaller premises offering similar facilities.
- 6.21** Licensing authority statements of policy should include guidance as to whom they consider comes within the category of those who living sufficiently close to premises to be affected by it or have business interests, that may be affected by it. For example, this could include trade associations, trade unions, residents' and tenants' associations. It is expected that the types of organisations that may be considered to have business interests will be interpreted broadly to include, for example, partnerships, charities, faith groups and medical practices.

iii. Exchange of information

- 6.22** Licensing authority statements of policy must contain a section that sets out the principles to be applied by the licensing authority in relation to the exchange of information with the Commission (s.29 and s.30 of the Act) and other persons (s.350 of the Act).
- 6.23** S.29 of the Act enables the Commission to require information from licensing authorities, including the manner in which the information is compiled, collated and the form in which it is provided, providing that it:
- forms part of a register maintained under the Act
 - is in the possession of the licensing authority in connection with a provision of the Act.
- 6.24** S.350 of the Act allows licensing authorities to exchange information with other persons or bodies for use in the exercise of functions under the Act. Those persons or bodies are listed in Schedule 6(1) as:
- a constable or police force
 - an enforcement officer
 - a licensing authority
 - HMRC
 - the First Tier Tribunal
 - the Secretary of State
 - Scottish Ministers.
- 6.25** The licensing authority statement of policy must set out how it will approach information exchange with other persons or bodies under the Act, and whether it intends to establish any protocols in this regard. The statement of policy should also include the authority's approach to data protection and freedom of information, in particular, how information will be protected, whether the confidentiality of those making representations will be maintained, what information will be shared with other agencies or persons and how information can be accessed by data subjects.
- 6.26** Further information regarding the exchange of information can be found in Part 13 of this Guidance.
- 6.27** For the purposes of their statement of policy, licensing authorities should confirm that they will act in accordance with the relevant legislation and Guidance from the Commission and will adopt the principles of better regulation (detailed at paragraph 5.27).

iv. Inspection and criminal proceedings

- 6.28** Licensing authority statements of policy must contain a section that sets out the principles to be applied by the licensing authority in exercising their inspection function (part 15 of the Act) and in instigating criminal proceedings (s.346 of the Act).
- 6.29** The statutory principles of good regulation and the Regulators' Code (paragraph 5.27) apply to licensing authorities. This means that inspection and enforcement activities must be carried out in a way which is transparent, accountable, proportionate, consistent and targeted, and promotes efficient and effective regulatory approaches which improve outcomes without imposing unnecessary burdens on business.

- 6.30** The statement of policy should set out the principles to be applied by the licensing authority in relation to inspections. It is recommended that licensing authorities adopt a risk-based approach to inspection programmes and the statement of policy should outline the criteria the licensing authority will use to determine the level of risk in respect of premises. Such an approach could include targeting high-risk premises which require greater attention, whilst operating a lighter touch in respect of low-risk premises, so that resources are more effectively concentrated on potential problem premises. If the licensing authority has a local area profile, as outlined at paragraph 6.47 onwards below, their inspection approach is likely to be informed by it.
- 6.31** Many licensing authorities in England and Wales will have general enforcement policies which are in accordance with the codes of practice developed with the Crown Prosecution Service. Such licensing authorities may wish to refer to these codes in their statement of policy, in relation to the management of criminal cases.
- 6.32** Further guidance on licensing authorities' compliance and enforcement responsibilities is available in Part 36 of this Guidance. This has been developed following discussions between the Commission, the police, licensing authorities and other law-enforcement and regulatory agencies to agree respective roles in relation to particular types of gambling and licensed premises.

Other matters to be considered

Relevant factors when considering applications and reviews

- 6.33** The statement of policy should set out what factors it is likely to take into account when considering applications for premises licences, permits and other permissions, and when determining whether to review a licence. This may be informed by the licensing authority's local area profile and will include considerations such as the proximity of gambling premises to schools and vulnerable adult centres, or to residential areas where there may be a high concentration of families with children.
- 6.34** Although the statement of policy should identify the factors to be considered, it should be clear that each application or review will be decided on its merits. Importantly, if an applicant for a premises licence can show how risks to the licensing objectives can be mitigated, the licensing authority will need to take that into account in its decision making.

Statement regarding casino resolution

- 6.35** The statement of policy should include details about how the licensing authority has taken or will take a decision in relation to a casino resolution. A licensing authority may resolve not to issue casino premises licences within its area. If it does so, the resolution must be published in its statement of policy (s.166(5) of the Act).

Other regulatory regimes

- 6.36** The statement of policy should include a firm commitment to avoid duplication with other regulatory regimes, so far as possible. For example, a range of general duties are imposed on the self-employed, employers and operators of gambling premises, both in respect of employees and of the general public, by legislation governing health and safety at work and fire safety. Therefore such requirements do not need to be included in the statement of policy.

Demand for gaming premises

- 6.37** Previous legislation required that the grant of certain gambling permissions should take account of whether there was unfulfilled demand for the facilities. This is no longer the case and each application must be considered on its merits without regard to demand. The statement of policy should reflect the 'aim to permit' principle (s.153 of the Act) and should not comment on whether there is demand for gambling premises.

6.38 However, the statement of policy may comment on the location of premises and the general principles it will apply in considering the location so far as it relates to the licensing objectives. For example, a statement of policy may set out that the licensing authority will carefully consider applications for premises licences and whether there is a need for condition(s) to mitigate risks, in respect of certain kinds of gambling located very close to a school or a centre for gambling addicts, in light of the third licensing objective. The statement of policy must be clear that each case will be decided on its merits and will depend to a large extent on the type of gambling that is proposed for the premises.

Other information

6.39 Licensing authorities may wish to include other information in their statement of policy to ensure clarity on their approach to local regulation, particularly the factors that will not be relevant to the exercise of their functions under the Act. This will ensure that applicants or persons who wish to make representations have all the necessary information to be able to do so, including what representations may not be relevant.

6.40 For example, licensing authorities may wish to explain in their statements of policy that any objections to new premises or requests for a review should be based on the licensing objectives of the Act. The statement of policy could make it clear that – unlike the Licensing Act 2003 and the Licensing (Scotland) Act 2005 – the Act does not include the prevention of public nuisance and anti-social behaviour as a specific licensing objective.

Local risk assessments

6.41 The Commission's [Licence Conditions and Codes of Practice \(LCCP\)](#) which were revised and published in February 2015, formalise the need for operators to consider local risks.

6.42 Social responsibility (SR) code 10.1.1 requires all premises licensees to assess the local risks to the licensing objectives posed by the provision of gambling facilities at each of their premises, and have policies, procedures and control measures to mitigate those risks. In undertaking their risk assessments, they must take into account relevant matters identified in the licensing authority's statement of policy.

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

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

6.44 The new SR provision is supplemented by an ordinary code provision that requires licensees to share their risk assessment with licensing authorities when applying for a premises licence or applying for a variation to existing licensed premises, or otherwise at the request of the licensing authority, such as when they are inspecting a premises. Both provisions take effect from April 2016.