



LICENSING AND GENERAL PURPOSES COMMITTEE

**MONDAY 7 SEPTEMBER 2009
7.30 PM**

COMMITTEE AGENDA

**COMMITTEE ROOMS 1 & 2,
HARROW CIVIC CENTRE**

MEMBERSHIP (Quorum 4)

Chairman: Councillor Mrs Lurline Champagnie

Councillors:

Husain Akhtar
Don Billson
G Chowdhury
Ashok Kulkarni
Mrs Vina Mithani (VC)
John Nickolay
Tom Weiss
Jeremy Zeid

Mrinal Choudhury
Mano Dharmarajah
Thaya Idaikkadar
Nizam Ismail
Phillip O'Dell
Raj Ray

Reserve Members:

Note: There are no Reserve Members currently appointed to this Committee.

**Issued by the Democratic Services Section,
Legal and Governance Services Department**

**Contact: Lysandra Dwyer, Acting Senior Democratic Services Officer
Tel: 020 8424 1264 E-mail: lysandra.dwyer@harrow.gov.uk**

***NOTE FOR THOSE ATTENDING THE MEETING:
IF YOU WISH TO DISPOSE OF THIS AGENDA, PLEASE LEAVE IT BEHIND AFTER THE MEETING.
IT WILL BE COLLECTED FOR RECYCLING.***

HARROW COUNCIL

LICENSING AND GENERAL PURPOSES COMMITTEE

MONDAY 7 SEPTEMBER 2009

AGENDA - PART I

1. **Declarations of Interest:**
To receive declarations of personal or prejudicial interests, arising from business to be transacted at this meeting, from:
 - (a) all Members of the Committee, Sub Committee, Panel or Forum;
 - (b) all other Members present in any part of the room or chamber.
- Enc. 2. **Minutes:** (Pages 1 - 4)
That the minutes of the meeting held on 8 June 2009 be taken as read and signed as a correct record.
3. **Public Questions:**
To receive questions (if any) from local residents or organisations under the provisions of Committee Procedure Rule 19 (Part 4B of the Constitution).
4. **Petitions:**
To receive petitions (if any) submitted by members of the public/Councillors under the provisions of Committee Procedure Rule 16 (Part 4B of the Constitution).
5. **Deputations:**
To receive deputations (if any) under the provisions of Committee Procedure Rule 17 (Part 4B of the Constitution).
- Enc. 6. **Secure Accommodation Reviews:** (Pages 5 - 20)
Report of the Corporate Director of Children's Services
- Enc. 7. **Revised Gambling Policy:** (Pages 21 - 52)
Report of the Corporate Director of Community and Environment.
- Enc. 8. **Delegation of Functions to Officers:** (Pages 53 - 66)
Report of the Corporate Director of Community & Environment

9. **Exclusion of the Press and Public:**

To resolve that the press and public be excluded from the meeting for the following item of business, on the grounds that it involves the likely disclosure of confidential information in breach of an obligation of confidence, or of exempt information as defined in Part I of Schedule 12A to the Local Government Act 1972:

<u>Agenda Item No</u>	<u>Title</u>	<u>Description of Exempt Information</u>
10.	Non-Executive Decision: Exercise of Discretion under Regulation 35 of the Local Government Pension Scheme Regulations 2007	Information under paragraph 1 of Part I of Schedule 12A to the Local Government Act 1972, relating to any individual.

AGENDA - PART II

- Enc. 10. **INFORMATION REPORT - Non-Executive Decision: Exercise of Discretion under Regulation 35 of the Local Government Pension Scheme Regulations 2007:** (Pages 67 - 70)
Report of the Director of Legal and Governance.

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REPORT OF LICENSING AND GENERAL PURPOSES COMMITTEE

MEETING HELD ON 8 JUNE 2009

Chairman: * Councillor Mrs Lurline Champagne

Councillors: * Husain Akhtar * Ashok Kulkarni
* Don Billson * Mrs Vina Mithani
* Mrinal Choudhury * John Nickolay
* G Chowdhury * Phillip O'Dell
* Mano Dharmarajah * Raj Ray
* Thaya Idaikkadar * Tom Weiss
* Nizam Ismail * Jeremy Zeid

* Denotes Member present

PART I - RECOMMENDATIONS - NIL

PART II - MINUTES

113. **Declarations of Interest:**

RESOLVED: To note that there were no declarations of interests made by Members in relation to the business to be transacted at this meeting.

114. **Minutes:**

The Committee received the minutes of the meeting held on 2 March 2009 and the Special meeting held on 11 May 2009. Councillor Weiss stated that minute 103 was inaccurate as the meeting had commenced prior to 7.30 pm.

RESOLVED: That the minutes of the meeting held on 2 March 2009 and the Special meeting held on 11 May 2009 be taken as read and signed as a correct record subject to the insertion of 'at this stage' after 'do not apply' in the resolution to minute 107.

115. **Public Questions, Petitions and Deputations:**

RESOLVED: To note that no public questions were put, or petitions or deputations received at the meeting under the provisions of Committee Procedure Rules 19, 16 and 17 respectively.

116. **Continuation of Additional Licensing for Houses in Multiple Occupation (HMOs):**

The Committee received a report of the Divisional Director of Environmental Services on a proposal to apply to the Secretary of State for Communities and Local Government to continue with and amend the discretionary Additional Houses in Multiple Occupation (HMOs) Licensing Scheme. It was noted that the Scheme would enable the Council to continue to license smaller properties so that means of escape, amenities and Anti Social Behaviour (ASB) could be dealt with effectively.

The officer informed the Committee that the Government's Mandatory Licensing Scheme regulated buildings of three or more storeys which were occupied by five or more unrelated people. Since April 2000, Harrow Council had operated an enhanced registration scheme that registered all properties occupied by three or more unrelated individuals or two or more households. The enhanced scheme better reflected the size of properties in multiple occupation in Harrow and enabled action to be initiated regarding the activities of landlords or arising from complaints by residents. The scheme generated income to enable such issues to be dealt with. It was reported that officers were aware that the Government was consulting on a national register for landlords which could result in the rejection of enhanced schemes in the short term.

In response to queries by Members officers stated that:

- the Government's Mandatory Licensing Scheme raised income from each property inspected. Three additional officer posts had been created in 2000 in anticipation of additional funding for the enhanced scheme but additional resources had not been forthcoming;
- licensing legislation enabled action to be taken quicker than other legislation allowed;

- the officer outlined the procedure that could culminate in prosecution. Three applications to commence prosecution had been signed that day;
- houses in Multiple Occupation could be identified by the number of doorbells, rubbish bins, vents, door knocking, responses to questions, land registry queries and writing to the owner/occupier. Areas were targeted during the local Weeks of Action;
- the scheme aided identification of landlords, which was a benefit and one of the reasons the Government was considering a national scheme. In instances such as flytipping the landlord could be identified immediately;
- planning legislation was separate to work undertaken in connection with the Housing Act 2004. Refusal of planning permission did not prevent an application for a licence. Enhanced communication was now undertaken with planning, fire, and immigration services;
- staff were trained to identify and forward issues such as child protection and noise nuisance to the appropriate department. Licensing officers would deal with issues arising between tenants;
- requests from landlords for licensing under the enhanced scheme could not currently be undertaken although the inspection took place once the property details were known;
- alleyways and communal areas formed the most difficult part of enforcement as it was difficult to prove the originator of the rubbish;
- the baseline of occupation by five or more unrelated people arose from the figure given by the Institute of Environmental Health as the maximum number of persons for use of one kitchen or toilet; and
- should the Committee agree the report, it would be submitted to the Secretary of State and any amendments made would be reported back to the Committee. A further report would be submitted to the Committee on the advertisement of the Scheme.

The officers were advised of a number of minor grammatical errors to the draft report to the Secretary of State.

RESOLVED: That the Private Sector Housing Enforcement Team apply to the Secretary of State for Communities and Local Government to continue with and amend the discretionary Additional Houses in Multiple Occupation Licensing Scheme which had been in operation since 6 September 2006.

117. **Early Retirement - Delegation of Authority for Approval:**

In accordance with a request by the Early Retirement Sub-Committee, a report of the Corporate Director of Finance was submitted to the Committee which reviewed the discretionary delegations relating to the Local Government Pension Scheme Early Retirements. The Sub-Committee had sought a review of the exercise of discretionary delegations in circumstances where either the business case for redundancy or efficiency of the service did not enable the exercise of any discretion or it was clearly illustrated that there was no financial strain on the pension fund.

The officer gave a presentation which detailed the types of early retirements, that is redundancy, efficiency of the service, early retirement (active) under Regulation 30 and early retirement (deferred) under Regulation 30. In circumstances where a request for payment carried a strain on the Pension Fund, such cases would continue to be referred to the Early Retirement Sub-Committee.

In response to a question as to how the effectiveness of the delegations would be monitored, the officer advised that it was recommended that an annual report to the Committee would detail all early retirement cases. External verification was undertaken by HM Revenue and Customs. It was noted that a separate record of Compensatory Added Years was maintained, the cost of which was declining.

Members thanked the officer for a good, clear presentation.

RESOLVED: That (1) redundancy retirements be approved by the Officer Sub-Group and the release of pension benefits be signed off by the Corporate Director of Finance;

(2) efficiency retirements be approved by the Officer Sub-Group and release of pension benefits be signed off by the Corporate Director of Finance;

(3) early retirements (active or deferred members) under Regulation 30, where there was no strain on the pension fund, be approved by the Divisional Director of Shared Services; and

(4) the Divisional Director of Shared Services submit an annual report to the Committee providing a breakdown of all early retirement cases.

118. **INFORMATION REPORT - Voluntary Severance Scheme Progress Update:**

The Committee received an information report of the Corporate Director of Finance, which outlined the background to the Voluntary Severance Scheme (VSS) and provided an update on savings achieved and the cost to the pension fund.

The officer informed Members that an Urgent Non-Executive Action had been agreed by the Chairman and Nominated Member to delegate authority to officers to determine requests from employees leaving in accordance with the scheme to receive their pension benefits under Regulation 30 of the Local Government Pension Scheme Regulations 2007. The Divisional Director of Shared Services reported monthly to the Chairman and Nominated Member on the number of cases and savings. The scheme required the submission of a report to the Committee on all costs incurred to the Pension Fund and savings achieved from the scheme.

Members noted that Voluntary Severance Scheme cases were still being processed and that the figures provided in Appendix A did not reflect the final position.

The officer provided an explanation of the content of Appendix A and responded to Member queries as follows :

- the 2009/10 severance payments and associated costs were fully met by the appropriate Directorate and the identified savings had been taken out of the appropriate budget;
- the figure for Adult and Housing should read as 21 due to the inclusion of the HARP (Housing (needs And resident services), Revenues & Benefits & Planning) and Housing Revenue Account figures from the preceding table;
- the business case established arrangements for the work to continue to be undertaken. Some posts were held vacant before being filled at a lower grade, some posts were amalgamated, therefore the saving achieved could be less than one person's salary. The saving could be further reduced by annual leave payments. Oncosts included pension contributions;
- once savings were removed from the budget, it was for the Department to decide if the use of contractors was the most suitable option to undertake the work. Depending on the circumstances, such as pension contributions, agency staff could be cheaper;
- an employee who left under the Scheme could not be re-engaged for at least 12 months as an employee or contractor;
- information was not available at the meeting as to how many people had been re-employed after 12 months from redundancy or early retirement;
- it was estimated that the recorded time and additional resource of running the scheme was in the region of £40,000. Two meetings a week had been held, lasting up to an hour and attended by four senior managers;
- payment of 50% of salary had been agreed as part of the scheme;
- the saving achieved depended on the date the member of staff left the employment of the Council;
- the criteria had been set by the Chief Executive and Corporate Director of Finance;
- as a voluntary scheme, there were limitations as to what could be achieved in that only volunteers could be considered. Member comments regarding efficiency, headcount and sustainability within a flattened structure and amalgamations could only be achieved in a wider context; and

- assets would be examined against liabilities during the actuarial valuation in April 2010, the cost of pensions would be spread over 25-30 years. The Government was investigating a cost sharing mechanism which would impact on the 2013 valuation.

Members expressed concern that the report contained insufficient explanation and was not sufficiently clear to enable a full discussion and understanding. A more detailed report was requested for the next meeting of the Committee and should include: the grade of posts affected so that Members were aware of the impact of the scheme, clarification as to how the criteria had been set and what deliberations had taken place, detail of the severance payment, savings in the first and subsequent years, and further detail on the agency situation.

An officer who dealt with the figures on a daily basis would attend the next meeting in order to respond to the financial questions raised by Members.

RESOLVED: That a further, more detailed report and presentation be submitted to the next meeting.

119. **Review of Polling Districts and Polling Stations:**

In accordance with Committee Procedure Rule 9.1, the Chairman raised an item of Any Other Business to request the Returning Officer to reconvene the Polling Districts and Polling Station Review Working Group.

At its meeting on 24 November 2008, the Committee had agreed the recommendations of the Working Group in relation to polling districts as set out in the appendix to the report to that meeting. The Committee agreed to the consideration of the item as urgent as the recommendations included issues to be resolved for the 2010 elections. The recent European Election had highlighted that action was still required.

RESOLVED: That the Returning Officer be requested to reconvene the Polling Districts and Polling Station Review Working Group in order to undertake further work on the recommendations of the Working Group contained in Appendix 1 to the report to the Committee on 24 November 2008.

(Note: The meeting, having commenced at 7.30 pm, closed at 9.40 pm).

(Signed) COUNCILLOR MRS LURLINE CHAMPAGNIE
Chairman



Meeting:	Licensing and General Purposes Committee
Date:	7 September 2009
Subject:	Secure Accommodation Reviews
Responsible Officer:	Corporate Director for Children's Services, Paul Clark
Portfolio Holder:	Portfolio Holder for Children's Services, Christine Bednell
Exempt:	No
Enclosures:	Appendix 1 – "SECURE ACCOMMODATION POLICY AND PROCEDURES. APPLICATIONS UNDER S.25 CHILDREN ACT 1989. HARROW COUNCIL"

Section 1 – Summary and Recommendations

This report proposes changing the way that Secure Accommodation Reviews are managed in Harrow which will reflect current best practice nationally

Recommendations:

- The Committee is asked to support the proposal by which Secure Accommodation Reviews are managed as described in the enclosed document entitled "SECURE ACCOMMODATION POLICY AND PROCEDURES. APPLICATIONS UNDER S.25 CHILDREN ACT 1989.HARROW COUNCIL"
- The Committee is asked to amend the Social Services Appeal Panel terms of reference to reflect this position.

Reason: (For recommendation)

- To reflect current national best practice

Section 2 – Report

Background

Restricting the liberty of a child is a most serious step and must only be taken when there is absolutely no alternative. It must be a last resort, with all other options having been considered and rejected. The Local Authority must be able to demonstrate that the child has a history of absconding and is likely to abscond from any other description of accommodation AND is likely to suffer significant harm OR if s/he is kept in any other description of accommodation s/he is likely to injure her/himself or other persons.

The use of secure accommodation by local authorities is subject to restrictions both in terms of the circumstances in which children they are looking after may be placed in secure accommodation and the maximum periods for which such accommodation may be used, with or without a court order. Where such placements are to exceed 72 hours the local authority must seek the authority of the court.

The local authority's immediate powers to secure a child for up to 72 hours in an emergency can only be used with the agreement of the Corporate Director, Children Services or the Director of Schools and Children's Services in his/her absence.

For application for any child under thirteen years agreement by the Secretary of State is required

In order to restrict the liberty of a child the Local Authority has to follow a number of processes:

- Each Local Authority will have their own procedure, however it is normal practice that the social worker would consult with senior managers before an application is considered
- A "Secure Accommodation Planning Meeting" chaired by a senior manager considers whether the criteria are met
- Legal advice will invariably be sought
- Permission by the Corporate Director would be required
- The Court would decide whether to extend the period of secure. A Children's Guardian would be appointed
- If parents withhold consent, consideration of application for an interim care order, along with secure accommodation needs to be made.

Given the gravity of taking such action it is therefore necessary for the Local Authority to ensure that the decision-making can stand up to close scrutiny.

It is equally important that the experience of practitioners and advocates of children at a senior level undertaking the review of the Director's decision to place a young person in secure can stand up to outside scrutiny.

The regulations state that the placing authority is required to appoint a minimum of three people to any Secure Accommodation Review Panel. They also require that there must be at least one independent member of the Secure Accommodation Review Panel who is neither a member nor an officer of the Local Authority.

The regulations do not state who the other members of the panel should be, but it is nationally accepted good practice that they should not be people who have had direct involvement in managing the case.

The regulations do not set requirements for the appointment of the Chair. However, it is nationally accepted good practice that an experienced senior manager, independent of the case should chair a Secure Accommodation Review Panel. This may be an Independent Reviewing Officer or Manager. It may also be a Senior Manager employed by the Local Authority who has extensive knowledge of childcare issues but is not part of the line management of the case.

With the introduction of the Independent Reviewing Officers, and an expectation that they monitor the performance of the Local Authority's functions in relation to the child's case it is now good practice that they are one of the Panel Members

Current situation

Currently the Social Services Appeals Panel, a subsidiary of the Licensing and General Purposes Committee undertakes the secure accommodation reviews together with an independent person who chairs the meeting. The terms of reference for the Panel is:

"To review in accordance with The Children (Secure Accommodation) Regulations 1991 the keeping of children in secure accommodation."

Why a change is needed

Given the complexity of the decision making- both in deciding to restrict the liberty of a child and the review of that decision by a Panel- it is now accepted good practice that the make up the Panel demonstrates current and good working knowledge in this complex area. Equally it is now good practice that the Panel members are both independent of the line management of the case and also able to challenge the decision of the Corporate Director on a professional level

Examples of this are as follows. In Wandsworth, a Senior Manager (quality assurance) who is not responsible for the line management of the case chairs the meeting. The other Panel members comprise of an independent reviewing officer and an Independent Person from Voice

Similarly in Westminster, a senior manager, Head of Commissioning, chairs the meeting and is accompanied by an Independent Reviewing Officer and an Independent Person from Voice

Kensington and Chelsea follow the same pattern, with a senior manager independent of the line management of the case chairing the meeting with the other Panel members being an Independent Reviewing Officer and an Independent Person from Voice

Main options

The Committee is asked to support the proposal by which Secure Accommodation Reviews are managed as described in the enclosed document entitled "SECURE ACCOMMODATION POLICY AND PROCEDURES. APPLICATIONS UNDER S.25 CHILDREN ACT 1989.HARROW COUNCIL". This will align Harrow with current national practice

Other options considered

No other options are under consideration

Implications of the Recommendation

If in agreement with the aforementioned recommendation, the Committee is asked to amend the Social Services Appeal Panel terms of reference to reflect this position.

Changing our current practice will remove the burden of the 3-month review cycle.

Financial Implications

There are no significant financial implications of the proposals. Currently the Council incurs a small amount, approximately £800 per case, on appointing an Independent Investigator. Under the proposals this will be a saving for Adults and Housing, where the budget for the Independent Investigator and the administration of the panel is currently held.

This work will now be undertaken in-house by officers from within Children's Services. Children's Safeguarding and Review Unit, who are practiced in the setting up of children looked after reviews, will undertake the administration of the panel. This will be an additional cost for Children's Services that will have to be met from within existing budgets.

Risk Management Implications

It is important that the process of removing the liberty of a child and the review of that decision is able to withstand close outside scrutiny. Changing practices in the delivery of such decision-making will bring us into line with recognised "best practice"

Section 3 - Statutory Officer Clearance

Name: Emma Stabler	<input checked="" type="checkbox"/>	on behalf of the Chief Financial Officer
Date: 21 August 2009		
Name: Sharon Clarke	<input checked="" type="checkbox"/>	on behalf of the Monitoring Officer
Date: 20 August 2009		

Section 4 - Contact Details and Background Papers

Contact: Andreas Kyriacou, Senior Professional, Safeguarding and Review, Children Looked After

Background Papers: Appendix 1 – “SECURE ACCOMMODATION POLICY AND PROCEDURES. APPLICATIONS UNDER S.25 CHILDREN ACT 1989. HARROW COUNCIL”

If appropriate, does the report include the following considerations?

1.	Consultation	YES / NO
2.	Corporate Priorities	YES / NO

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SECURE ACCOMMODATION POLICY AND PROCEDURES. APPLICATIONS UNDER S.25 CHILDREN ACT 1989 HARROW COUNCIL

1. INTRODUCTION

1.1 Secure Accommodation is the most restrictive option when considering where best to keep Children and Young People who are looked after safe.

1.2 It is essential that any decision taken to place a child or young person in such accommodation should be taken carefully and with all available information considered, evaluated and risk assessed. This decision will then be presented to the Courts.

1.3 This policy will explain this process in detail as a means of ensuring the needs of the child or young person are given paramount consideration when decisions are taken to restrict their liberty.

1.4 Given the complex nature and different routes to secure accommodation Harrow will, as other Local Authorities, ensure that the responsibility for the review of secure placements rest with Senior Officers

2. PURPOSE OF THE POLICY

2.1 The purpose of this policy is to describe the processes by which a young person can be kept in secure accommodation.

3. LEGAL CONTEXT

3.1 There are a number of routes whereby this may occur. They are:

- Applications under s.25 Children Act 1989
- Court Ordered Secure Remand s.23 Children and Young Persons Act 1969
- Detention and Training Orders (s.100 Powers of Criminal Courts (Sentencing) Act 2000) Court must refer to s.79 of same act when considering Detention and Training orders as an option.
- Sentenced under s.90-91 Powers of Criminal Courts (Sentencing) Act 2000 (Grave Offences and Murder)
- S.38 Police and Criminal Evidence Act 1989

4. APPLICATIONS UNDER S.25 CHILDREN ACT 1989 (Applications are heard in the Family Proceedings Court)

4.1 S.25 states:

‘a child who is being looked after by a Local Authority may not be placed and if placed, may not be kept, in accommodation provided for the purpose of restricting liberty unless it appears that:

(a) He has a history of absconding and is likely to abscond from any other description of accommodation and

ii. If he absconds he is likely to suffer significant harm

or

(b) That if he is kept in any other description of accommodation he is likely to injure himself or other persons.

PROCEDURE

4.2 Consultation with the Service Manager and Head of service to consider whether the criteria under s.25 Children Act 1989 are met. If agreed that these criteria apply a Secure Accommodation Planning Meeting should be convened.

4.3 The Secure Accommodation Planning Meeting should include:

- Head of Service
- Service Manager
- Legal Representative
- Social Worker
- Social Worker's Line Manager
- Independent Reviewing Officer or Manager
- Child's Carer (if appropriate)

4.4 This meeting should discuss

- The child's history and placement experiences.
- Evaluation of what has and has not worked to keep the young person safe
- Whether all other options have been explored fully
- How placing the child or young person in secure accommodation will improve the outcomes for the child or young person.
- The child's current situation in order to establish if the criteria for making a secure order are met.
- What the purpose of applying for a secure accommodation order is in relation to the overall care plan for the child.
- The views of the child, carers, adults with parental responsibility, any advocate, IRO and any other significant persons.
- Consideration as to whether Harrow will make an application to the Court for a Care Order
- What the child's exit plan from secure accommodation would be should the Court make the order
- The criteria for Secure under s.25 Children Act 1989 and whether they are met in this instance

4.5 The final decision for applying for a secure accommodation order rests with the Corporate Director of Children Services or in his/her absence the Director of Schools and Children's Development. Once authorisation has been provided a referral is required to the Placement Officer to identify a suitable placement

4.6 The social worker, with guidance from Legal Services will write a statement for Court outlining the history of the child and the reasons why a secure accommodation order is necessary.

4.7 The Local Authority will then be responsible for transporting the child/young person to the receiving secure unit and ensuring all necessary documentation accompanies the child.

4.8 The receiving unit will require a copy of the Court Order authorising secure accommodation and all relevant LAC documentation as would accompany a child to any other care provision.

4.9 It is essential to forward all documentation approving the use of secure accommodation to the identified unit. If this has not been received by the unit prior to the young person being admitted the secure unit will not admit the child.

72-HOUR RULE (THE GROUNDS FOR APPLYING THIS RULE MUST FALL WITHIN S.25 CHILDREN ACT 1989)

5.1 A child can be placed in secure accommodation for 72 hours should it be considered necessary to act immediately to protect the child/young person from risk of significant harm.

PROCEDURE

5.2 Should the application of the 72-hour rule be considered relevant Legal Services must be notified immediately in order to confirm that the criteria apply.

5.3 A Secure Accommodation Planning Meeting as described in 4.2 - 4.4 should be convened as soon as is practicable after the decision to place a child in secure accommodation under the 72-hour rule. This must be done within sufficient time as to allow parent(s), carer(s) and child to be notified and offered the opportunity to express their views in relation to the application. If the child is supervised by YOT, the responsible officer should also be invited to the meeting.

5.4 Only the Corporate Director of Children's Services, or in his/her absence, the Director of Schools and Children's' Development can give permission for a child to be detained in secure accommodation under the 72 hours rule

5.5 The Secure Unit will require written confirmation of this decision before they will agree to admit the child.

5.6 It is unlikely that any unit will agree to admit a child without there being an explicit understanding of the Local Authority's intention to apply for a formal order in the Family Proceedings Court.

5.7 The Court will expect the child to attend the Secure Accommodation Hearing if it is deemed to be in their best interests to do so and will seek their views directly, in addition to hearing from the Child's guardian.

5.8 The 72-hour rule can only extend for 72 hours consecutively or in aggregate in any period of 28 consecutive days.

5.9. Unless a child or young person who is placed in secure accommodation is subject to a care order they are accommodated by the local authority. This applies whether the young person is placed in secure accommodation following an application to court by the local authority, or is remanded to secure accommodation by the court as part of criminal proceedings.

Where an application is made to place a young person who has attained the age of sixteen and who is accommodated under Section 20 in a secure placement, an interim care order must be applied for first to support the secure application.

AGE OF CHILD

6.1 Secretary of State (DCSF) approval will be required before any child/young person under 13 can be admitted under the 72-hour rule and include consultation with CSCI. This can only be done at Service Manager level and above.

PRACTICE GUIDANCE:

Ideally a Secure Accommodation Planning meeting should be convened prior to any placement in secure accommodation, however it is accepted that there may be rare occasions where this is not possible.

Contact details for DCSF:

CIC Division

DCSF

0207 2735905

0207 273 5897

0207 9723000 (out of hours number ask for CIC Division Duty Officer))

6.2 DCSF approval will only be required on the initial application, or if there has been a break in placement.

6.3 If the child is accommodated under s.20 Children Act 1989 any person with parental responsibility can remove the child from secure accommodation at any time.

6.4 If the child is accommodated under s.20 Children Act 1989 the child/young person can elect to leave secure accommodation upon reaching their 16th birthday.

6.5 DCSF will consult with Ofsted prior to granting their approval for a secure application to be made. DCSF will then notify the Local Authority with their decision

6.6 The receiving unit will request evidence that this permission for placement has been sought from the child's parent(s) and/or persons holding Parental Responsibility.

PROCEDURE ONCE CHILD HAS BEEN ADMITTED UNDER S.25 CHILDREN ACT.

7.1 The maximum length of the initial secure accommodation order is 3 months. However they are more likely to grant an interim order for a shorter period. The maximum order thereafter is 6 months.

7.2 It is the Local Authority responsibility to ensure that the eligibility criteria for securing the child/young person exist and that this is reviewed regularly.

7.3 A secure accommodation order is a permissive order. Therefore if the child is considered, at any point, within the period defined by the order, to no longer meet the eligibility criteria, the child must be released immediately.

PLANNING PROCEDURE

7.4 A placement in secure accommodation is managed as under looked after child regulations so CLA documentation must be completed as in any other care setting.

7.5 Within 5 days of the placement a Planning Meeting must be held in the Secure Unit to establish the Care Plan for the child/young person

7.6 The Social Worker must arrange this meeting in consultation with the Secure Unit in order to ensure the required personnel are available. This would include:

- Child
- Parent or person with Parental Responsibility
- Unit Key worker

- Secure Unit Manager
- Education Representative
- Child's Guardian
- CLA Nurse
- Representative from Secure Unit's Therapeutic Support (where appropriate)
- YOT worker if appropriate

7.7 The Planning meeting will be chaired by the relevant Service Manager.

SECURE ACCOMMODATION REVIEW

8.1 A panel will need to be established in respect of every secure placement in order to consider the criteria for placing that child within secure accommodation.

8.2. The regulations state that the placing authority is required to appoint a minimum of three people to any Secure Accommodation Review Panel. They also require that there must be at least one independent member of the Secure Accommodation Review Panel who is neither a member nor an officer of the Local Authority.

The regulations do not state who the other members of the panel should be, but it is nationally accepted good practice that they should not be people who have had direct involvement in managing the case and that issues of ethnic background and gender should be considered, if practicable, in deciding the make up of the panel.

8.3. The regulations also do not set requirements for the appointment of the Chair. However, it is nationally accepted good practice that an experienced senior manager, independent of the case should chair a Secure Accommodation Review Panel. This may be an Independent Reviewing Officer or Manager. It may also be a Senior Manager employed by the Local Authority who has extensive knowledge of childcare issues but is not part of the line management of the case.

With the introduction of the Independent Reviewing Officers, and an expectation that they monitor the performance of the Local Authority's functions in relation to the child's case it is now good practice that they are one of the Panel Members.

8.4. Given the complexities of such reviews it is of the utmost importance that the Panel Members are experienced and practiced in the area of childcare. The recommended membership is therefore:

- Senior Manager who does not have line management responsibility (Chair)
- Independent Person who has experience of representing the views of children who are looked after. The Independent Person will arrange to see the young person prior to the review

- Independent Reviewing Officer or Manager

A legal representative should make himself or herself available by telephone for consultation as required.

8.5. The Children's Safeguarding and Reviewing Unit will organise the Secure Accommodation Review Panel. However it is the responsibility of the social worker to notify the Children's Safeguarding and Reviewing Unit that a review panel is required.

8.6. The purpose of this meeting is to review the criteria for placing the child/young person in secure accommodation, in particular to ascertain if:

- The criteria for keeping a child in secure accommodation continue to apply
- Any other description of accommodation would be appropriate but in doing so having regard to the welfare of the child whose case is being reviewed.

8.7. The first review panel of the child's placement in secure accommodation must take place within one month of the placement starting and then at intervals not exceeding 3 months.

8.8. This is in addition to the CLA processes, which must also occur in this setting such as Placement Planning Meetings, Statutory Reviews and ensuring the child is visited as a minimum within the statutory guidelines

8.9 The child/young person's social worker should attend the panel, with:

- The relevant Service Manager and Team Manager
- The child
- Parents and those with parental responsibility. An interpreter if necessary
- Representative from the Secure Unit
- Independent Visitor (if one has been appointed)
- The Educational Psychologist (if the young person has a statement of special educational needs)
- Other members of staff able to offer specialist advice on issues of race, culture language or disability
- Other significant people, as appropriate
- The IRO, if available

Only the Chair and/or the IRO Manager can authorise any non-attendance by the above

8.10. The child's permission will need to be sought in order to share Court papers with the Independent Person sitting on the Panel. Legal advice will be sought if permission is not forthcoming.

8.11. The responsible Social Worker or Team Manager will advise the Children Safeguarding and Review Unit within 48 hours of a young person detained in Secure by way of s.25 Children Act 1989.

When organising the secure review panel the Children Safeguarding and Review Unit will request that the secure unit provide reports relating to the child's behaviour and progress on the unit, their progress in school and any information relating to therapeutic input.

A report will need to be provided by the Social Worker and authorised by the relevant Service Manager and in addition a copy of the Child's care plan, the original court report, if available, and a chronology of events prior to placement in secure accommodation. The report from the Social Worker should cover the following matters:

- The reason for the secure placement and the criteria applied
- The other options explored, why these were not considered appropriate and on what basis they have been rejected
- The extent to which the criteria are still met and the risks faced if the child does not continue to be held in secure accommodation
- The child's previous placement history (including, in the case of a child remanded to local authority accommodation, details of previous convictions and sentences)
- How the current placement is meeting the child's needs (this should include education arrangements and if appropriate any medical assessments or treatment being considered or undertaken);
- The Care Plan for the child (including what consideration has been given to how the secure placement will meet the child's cultural, linguistic and religious needs);
- The child's views;
- The views of the child's parents or others holding Parental Responsibility;
- The views of the current placement and the views of the Independent Visitor for the child;
- The social worker's recommendation to the Review Panel as to whether the child should continue to be held in secure accommodation.

8.12. The Children Safeguarding and Review Unit will request this documentation be sent to the Chair and Panel Members of the Secure Review Panel 5 days before the meeting.

PRACTICE GUIDANCE:

These meetings can be very difficult for the child/young person, so efforts should be made to keep this brief, focused on the issues, where possible tied in with the statutory review process and offer the child clarity with regards to their future placement needs.

8.11 In reaching their decision the Panel must have regard to the views and wishes of

- The child
- Their parent
- Any other person with Parental Responsibility
- The child's Independent Advocate
- Views of the Secure Unit in which the child is placed
- The Child's Guardian
- Any other person who has had care of the child
- Legal advice where appropriate
- YOT worker where appropriate

8.12 The review panel should also receive information about alternative non-secure placements

8.13 Should the Review Panel come to the conclusion that the criteria for keeping a child in secure accommodation no longer exists the expectation is that the Local Authority would respond positively to this outcome, or where it does not provide an explanation of the reasons why. (LAC (92) 13)

8.14 **The child cannot be kept in secure accommodation because the Local Authority are unable to find an alternative, and this should not be a factor in reaching a decision as to whether the criteria still apply.**

8.15 If the review panel concludes that the criteria for keeping the child in secure accommodation still apply the Local Authority must then consider requesting the Court to make a further Secure Accommodation Order.

8.16 Where relevant, a date for the next Review Panel should also be fixed.

8.17 Legal Services will advise on the content of any statement, which accompany additional applications to Court.

8.18 Minutes of the Review meeting will be recorded by the Conferencing and

Reviewing Unit, whenever possible, and will be typed within 2 working days of the meeting. A minute taker will be identified by Children Safeguarding and Review Unit if not available from the Conferencing and Reviewing Unit, These minutes, once signed, will then be distributed to the persons involved, including the young person, children's guardian and legal services

Andreas Kyriacou
Senior Professional, Children looked After
Safeguarding and Review
July 2009



Meeting:	Licensing and General Purpose Committee
Date:	7 September 2009
Subject:	Revised Gambling Policy –for approval
Responsible Officer:	Brendon Hills – Corporate Director - Community & Environment
Portfolio Holder:	Councillor Susan Hall - Environment and Community Safety
Exempt:	No
Enclosures:	Draft revised Gambling Policy and Responses to consultation

Section 1: Summary and Recommendations

This report provides the draft revised Gambling Policy for this Authority and the responses received to the consultation exercise in respect of it.

Recommendations:

The Committee is requested to:

1. Consider the responses received following the consultation exercise on the draft revised Gambling Policy.
2. Consider the draft revised Gambling Policy
3. Refer the Policy to Full Council for approval.

Reason (for recommendation)

To discharge its statutory duties under the Gambling Act 2005 this Authority is required to produce a Gambling Policy and review it at least every three years as per the Gambling Commission's guidance. The current Gambling Policy was published on 11 December 2006 and this report brings members attention to the draft revised Gambling Policy and the consultation on it.

Section 2: Report

2.1 Background & Current Situation

Under Section 349 of the Gambling Act, a licensing authority must prepare a statement of the principles that they propose to apply in exercising their functions under this Act. The current Gambling Policy was published on 11 December 2006 and as noted above, it is a requirement that the Authority reviews it at least every three years.

The draft revised Policy was under consultation from 18 May 2009 to 7 August 2009, and the responses received are attached to this report.

Under s166 of the Gambling Act, a licensing authority may resolve not to issue Casino Premises Licences. This Authority currently has a 'no casino' resolution which is effective for three years, also from 11 December 2006, and the draft Policy contains a statement proposing to continue this.

Members of the L&GP committee will form the sub-committees that will hear Gambling Licence applications and this report keeps them informed of the forthcoming changes.

2.2 Options considered

The options are limited as the process is legislative and is dictated by the Act itself and the Gambling Commission's guidance. We have no discretion as to the making of a statement of policy, although there is some discretion as to the content of the statement.

There are three main areas of change to the revised Policy and these are marked with grey boxed out areas. One area is to provide clarification regarding club formation where a Club gaming permit is to be applied. Another area is to clarify where the operator claims that s/he is providing Skill with prizes machines -how this Authority will determine the suitability of these machines according to premises. And the third is the addition of Small Society Lotteries.

There are options available to the licensing authority regarding the fee structure and the fees are currently set at the maximum allowed levels.

2.3 Consultation

The Gambling Policy consultation took place from 18 May 2009 and ended on 7 August 2009.

The consultation was carried out in accordance with the Guidance issued by the Gambling Commission. Section 349 (3) of the Gambling Act 2005 requires the licensing authority to consult the following on the policy statement or any subsequent revision to it:

- the chief officer of police for the authority's area;

- one or more persons who appear to the authority to represent the interests of persons carrying on gambling businesses in the authority's area; and
- one or more persons who appear to the authority to represent the interests of persons who are likely to be affected by the exercise of the authority's functions under this Act.

This authority consulted with the (Chief Officer of) Police for the Harrow area, the Gambling Commission, all premises carry out gambling and/or betting activities in Harrow, and Gamcare. The draft policy was published on the Council's website and articles were published advertising the period of consultation in the local newspapers.

By the end of the consultation period the Authority had received only two responses regarding the policy statement. Both responses are attached to this report.

2.4 Cost of Proposals

None

2.5 Legal Implications

As noted above, it is a statutory requirement that the Authority produces a statement of the principles that it proposes to apply in exercising its functions under the Act, and that it reviews it at least every three years.

2.6 Equalities Impact

An Equalities Impact Assessment will be undertaken as part of the process of introduction of the revised Gambling Policy, in line with the Corporate Equalities Policy.

2.7 Community safety - Section 17 Crime and Disorder Act

The key remit of the Gambling Policy will be the manner in which it and the decisions based on the policy address the need for partner agencies to work together to develop and implement strategies to tackle crime and disorder which may be related to the implementation of the Gambling Act and related controls and enforcement. Implementation of the Policy will serve to underpin the delivery of crime reduction strategy priorities and as such directly support section 17 key objectives and the Crime and Disorder Reduction Strategy.

2.8 Financial Implications

None

2.9 Risk Management Implications

If the Authority does not produce a revised Policy and related procedures within the statutory timescale, there is a risk that the Authority will not be in a position to process applications, leaving the Authority open to challenge by persons wishing to make such applications. Furthermore, the Authority will also have failed to comply with its legal obligations under the Act and Guidance and could face challenge on this too.

Section 3 – Statutory officer clearance

On behalf of the Chief Finance Officer	<input checked="" type="checkbox"/>	Name: Sheela Thakrar
		Date: 25 th August 2009
On behalf of the Monitoring Officer	<input checked="" type="checkbox"/>	Name: Paresh Mehta
		Date: 25 th August 2009

Section 4 - Contact Details and Background Papers

Contact: P Sivashankar, Service Manager, 020 8736 6237

Background Papers:

Harrow Council's draft revised GAMBLING POLICY (attached)

Responses received as part of consultation (attached)

HARROW COUNCIL'S STATEMENT OF PRINCIPLES under Gambling Act 2005

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PART A

1. Introduction

Licensing authorities are required by the Gambling Act 2005 to publish a Statement of the Licensing Policy which they propose to apply when exercising their functions under the Act. This statement must be published at least every three years.

This Statement of Licensing Policy for premises authorised for gambling sets out the issues which the Licensing Authority will take into consideration when determining the grant of Premises Licences and other permissions and it covers licensed premises throughout the London Borough of Harrow. This Statement of Licensing Policy sets out those matters that will normally be taken into account when considering applications under the Gambling Act 2005 and also seeks to provide clarity for applicants, objectors, residents and other occupiers of property.

2. The Licensing Objectives

In exercising most of their functions under the Gambling Act 2005, licensing authorities must have regard to the licensing objectives as set out in section 1 of the Act. The licensing objectives are:

- Preventing gambling from being a source of crime or disorder, being associated with crime or disorder or being used to support crime
- Ensuring that gambling is conducted in a fair and open way
- Protecting children and other vulnerable persons from being harmed or exploited by gambling

It should be noted that the Gambling Commission has stated: “The requirement in relation to children is explicitly to protect them from being harmed or exploited by gambling”.

This licensing authority is aware that, as per Section 153, in making decisions about premises licences and temporary use notices it should aim to permit the use of premises for gambling in so far as it thinks it is:

- in accordance with any relevant code of practice issued by the Gambling Commission
- in accordance with any relevant guidance issued by the Gambling Commission
- reasonably consistent with the licensing objectives and
- in accordance with the authority’s statement of licensing policy

3. Authorised Activities

Gambling is defined in the Act as either gaming, betting or taking part in a lottery:

- (a) Gaming means playing a game of chance for a prize
- (b) Betting means making or accepting a bet on:
 - (i) the outcome of a race, competition, or any other event or process,
 - (ii) the likelihood of anything occurring or not occurring, or
 - (iii) whether anything is or is not true.

- (c) A Lottery is where persons are required to pay in order to take part in an arrangement, during the course of which one or more prizes are allocated by a process that relies wholly on chance.

Private gaming in private dwellings and on domestic occasions is exempt from licensing or registration providing that no charge is made for participating, only equal chance gaming takes place, and it does not occur in a place to which the public have access.

4. Consultation

Licensing authorities are required by the Gambling Act 2005 to publish a statement of the principles which they proposed to apply when exercising their functions. This statement must be published at least every three years. The statement must also be reviewed from "time to time" and any amended parts re-consulted upon. The statement must be then re-published.

In preparing this Policy (or any revision thereafter), the Licensing Authority has (and will) consult with persons representing the interests of persons carrying on gambling businesses within the borough and with interested parties who represent the interest of persons who are likely to be affected by gambling.

Harrow Council has carried out a consultation exercise upon this statement before it is finalised and published. The Gambling Act requires that the following parties are consulted by Licensing Authorities:

- The Chief Officer of Police;
- One or more persons who appear to the authority to represent the interests of persons carrying on gambling businesses in the authority's area;
- 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 2005.

This licensing authority has consulted:

- The Chief Officer of Police
- Social Services
- Trade Associations
- Residents Associations
- All existing licensed premises under the Gambling Act 2005
- All 'on' licensed premises under the Licensing Act 2003
- All other interested businesses such as takeaway shops, taxi offices.

Our consultation took place between 18th May 2009 and 7th August 2009 and we followed the Revised Code of Practice (which came into effect in April 2004), the best practice guidance as set out by the Department for Business, Enterprise and Regulatory Reform and the Cabinet Office Guidance on consultations by the public sector. These documents are available via:

<http://www.cabinetoffice.gov.uk/regulation/consultation/code/index.asp>
<http://www.cabinetoffice.gov.uk/regulation/consultation/documents/pdf/code.pdf>
www.berr.gov.uk

The full list of comments received and the consideration by the Council of those comments are available on request by contacting the Licensing Service via the Council's website at: www.harrow.gov.uk/licensing or in writing to Licensing Service, Harrow Council, P O Box 18, Station Road, Harrow, HA1 2UT or emailing licensing@harrow.gov.uk

Should you have any comments as regards this policy statement please send them via e-mail or letter to the contact details specified as above.

5. Declaration

In producing this final statement, the licensing authority declares that it has had regard to the licensing objectives of the Gambling Act 2005, the guidance issued by the Gambling Commission, and any responses from those consulted on the statement.

6. Responsible Authorities

Section 157 of the Act identifies the bodies that are to be treated as responsible authorities. They are:

- (a) A licensing authority in England and Wales in whose area the premises is wholly/partly situated;
- (b) The Gambling Commission;
- (c) The chief officer of police/chief constable for the area in which the premises is wholly or partially situated;
- (d) The fire and rescue authority for the same area;
- (e) (i) In England and Wales, the local planning authority; or
(ii) In Scotland, the planning authority;
- (f) The council constituted under section 2 of the Local Government etc (Scotland) Act 1994 (c.39) for an area in which the premises are wholly or partly situated;
- (g) An authority which has functions by virtue of enactment in relation to minimising or preventing the risk of pollution of the environment or of harm to human health in area in which the premises are wholly or partly situated;
- (h) A body, designated in writing by the licensing authority as competent to advise the authority about the protection of children from harm;
- (i) HM's Commissioners of Customs and Excise; and
- (j) Any other person prescribed in regulations by the Secretary of State.

The licensing authority is required by regulations to state the principles it will apply in exercising its powers under Section 157(h) of the Act to designate, in writing, a body which is competent to advise the authority about the protection of children from harm. The principles are:

- The need for the body to be responsible for an area covering the whole of the licensing authority's area; and
- The need for the body to be answerable to democratically elected persons, rather than any particular vested interest group.
- That this body is experienced in dealing with the protection of children

In accordance with the suggestion in the Gambling Commission's Guidance for local authorities, this authority designates the Local Safeguarding Children Board (please

contact Mr Steve Spurr, Snr Child Protection Co-ordinator, Civic Centre Civic 1 2nd Floor East Wing, Station Road, Harrow, HA1 2UT) for this purpose.

The contact details of all the Responsible Authorities under the Gambling Act 2005 are available via the Council's website at: www.harrow.gov.uk/licensing

7. Interested parties

Interested parties can make representations about licence applications, or apply for a review of an existing licence. These parties are defined in the Gambling Act 2005 as follows:

“For the purposes of this Part a person is an interested party in relation to a premises licence or in relation to an application for or in respect of a premises licence if, in the opinion of the licensing authority which issues the licence or to which the application is made, the person-

- a) lives sufficiently close to the premises to be likely to be affected by the authorised activities,
- b) has business interests that might be affected by the authorised activities, or
- c) represents persons who satisfy paragraph (a) or (b)”

The licensing authority is required by regulations to state the principles it will apply in exercising its powers under the Gambling Act 2005 to determine whether a person is an interested party. These principles are:

- Each case will be decided upon its merits.
- This authority will not apply a rigid rule to its decision making.
- This Authority will consider the examples of considerations provided in the Gambling Commission's Guidance to local authorities.
- It will also consider the Gambling Commission's Guidance that "business interests" should be given the widest possible interpretation and include partnerships, charities, faith groups and medical practices.

- The Gambling Commission has recommended that licensing authorities state whom they consider falls within the category of those that represent persons living close to the premises, or have business interests that may be affected by it and such persons can include trade associations and trade unions, and residents' and tenants' associations (Gambling Commission Guidance for local authorities 6.25 & 8.17).

- Interested parties can be persons who are democratically elected such as councillors and MP's. No specific evidence of being asked to represent an interested party will be required as long as the councillor / MP represents the ward likely to be affected. Likewise, parish councils likely to be affected will be considered to be interested parties. Other than these however, this authority will generally require written evidence that a person/body (e.g. an advocate / relative) 'represents' someone who either lives sufficiently close to the premises to be likely to be affected by the authorised activities and/or represents a person that has business interests that might be affected by the authorised activities. A letter from one of these persons, requesting the representation should be sufficient.

If individuals wish to approach councillors to ask them to represent them then care should be taken that the councillors are not part of the Licensing Committee dealing with the licence application. If there are any doubts then please contact the Licensing Authority.

This Licensing Authority will take into account the following factors when interpreting 'sufficiently close':

- Size of the premises
- Nature of the premises
- Distance of the premises from the location of the person making the representation
- Potential impact of the premises, i.e. number of customers, routes likely to be taken by those visiting the establishment;

This list is not exhaustive.

This Licensing Authority will take into account the following factors when determining whether an individual is a person with a 'business interest that might be affected':

- Size of the premises
- The 'catchment' area of the premises (i.e. how far people travel to visit);
- Whether the person making the representation has business interests in that catchment area that might be affected.
- Whether or not the representation is purely based on 'competition' as the Licensing Authority does not consider this to be a relevant representation.

This list is not exhaustive.

8. Exchange of Information

Licensing authorities are required to include in their statements the principles to be applied by the authority in exercising the functions under sections 29 and 30 of the Act with respect to the exchange of information between it and the Gambling Commission, and the functions under section 350 of the Act with the respect to the exchange of information between it and the other persons listed in Schedule 6 to the Act.

The principle that this licensing authority applies is that it will act in accordance with the provisions of the Gambling Act 2005 in its exchange of information which includes the provisions of the Data Protection Act and Freedom of Information Act. The licensing authority will also have regard to any Guidance issued by the Gambling Commission to local authorities on this matter when it is published, as well as any relevant regulations issued by the Secretary of State under the powers provided in the Gambling Act 2005.

This Licensing Authority confirms that it will act in accordance with the relevant legislation and guidance from the Commission and will adopt the principles of better regulation. The Licensing Authority recognises the need to work closely with the Gambling Commission in exchanging information as and when required, and understands that the Licensing Authority will have a key role in providing information to the Gambling Commission and will provide information to the Commission to assist it in carrying out its functions.

The Licensing Authority will work closely with the Gambling Commission, Local Police Enforcement in Harrow and with other Responsible Authorities where there is a need to determine whether there is a need for information on specific premises and in order to target agreed problem and high risk premises that require greater attention.

9. Enforcement

Licensing authorities are required by regulation under the Gambling Act 2005 to state the principles to be applied by the authority in exercising the functions under Part 15 of the Act with respect to the inspection of premises; and the powers under section 346 of the Act to institute criminal proceedings in respect of the offences specified.

This licensing authority's principles are that:

It will be guided by the Gambling Commission's Guidance for local authorities and its own Enforcement Policy will endeavour to be:

- Proportionate: regulators should only intervene when necessary: remedies should be appropriate to the risk posed, and costs identified and minimised;
- Accountable: regulators must be able to justify decisions, and be subject to public scrutiny;
- Consistent: rules and standards must be joined up and implemented fairly;
- Transparent: regulators should be open, and keep regulations simple and user friendly; and
- Targeted: regulation should be focused on the problem, and minimise side effects.

As per the Gambling Commission's Guidance for local authorities this licensing authority will endeavour to avoid duplication with other regulatory regimes so far as possible.

The main enforcement and compliance role for this licensing authority in terms of the Gambling Act 2005 will be to ensure compliance with the licence and other permissions which it authorises and any relevant Codes of Practice. The Gambling Commission will be the enforcement body for the operating and personal licences and illegal gambling. Concerns about manufacture, supply or repair of gaming machines will not be dealt with by the Licensing Authority but information will be passed on to the Gambling Commission where such concerns are found.

In considering enforcement action, the Licensing Authority will bear in mind the Human Rights Act, in particular:

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

Any decision to instigate legal proceedings and the subsequent management of our criminal cases will take account of the criteria set down in the Code for Crown Prosecutors and Attorney General Guidelines.

This licensing authority will also keep itself informed of developments as regards the work of the Better Regulation Executive in its consideration of the regulatory functions of local authorities.

This licensing authority has signed up to the Enforcement Concordat agreement which can be accessed via their website:

<http://www.berr.gov.uk/whatwedo/bre/inspection-enforcement/implementing-principles/regulatory-compliance-code/enforcement/page46822.html> or by contacting the Licensing Department, Harrow Council at licensing@harrow.gov.uk

10. Licensing Authority functions

Licensing Authorities are required under the Act to:

- Licence 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 (FECs) for the use of certain lower stake gaming machines
- Grant permits for prize gaming
- Consider occasional use notices for betting at tracks
- Register small societies' lotteries
- Maintain a Register in the prescribed form as required under section 156 Gambling Act 2005.

It should be noted that local licensing authorities will not be involved in licensing remote gambling at all. This will fall to the Gambling Commission via operating licences.

PART B

PREMISES LICENCES

This licensing authority resolved on 11th December 2006, not to issue casino premises licences pursuant to s166 Gambling Act 2005. This resolution will lapse after three years. It is proposed to continue this resolution and if approved the resolution will continue for a further three years from the date of approval¹.

1. General Principles

Premises Licences authorise the provision of gambling facilities on the following:

- Adult Gaming Centres (for Category B3, B4, C and D machines)
- Family Entertainment Centres (for Category C and D machines). The Licensing Authority may also issue Family Entertainment Centres Gaming Machine Permits that authorise the use of Category D machines only).
- Casino Premises
- Bingo Premises
- Betting Premises, including race tracks used by betting intermediaries

¹ This wording will be amended when a determination on the reaffirmation on the resolution has been made.

Except in the case of race tracks (where the occupier may not be the person offering gambling), Premises Licences will only be issued to people with the relevant Operating Licences.

Premises licences will be subject to the requirements set out in the Gambling Act 2005 and regulations, as well as specific mandatory and default conditions. Licensing authorities are able to exclude default conditions and also attach others, where it is believed to be appropriate.

The Licensing Authority when considering applications will not take into account whether or not there is an unfulfilled demand for gambling facilities within the borough of Harrow. Every application for a Premises Licence made to the Licensing Authority will be considered on its merits and will be treated fairly and objectively in accordance with the three Licensing Objectives. The Licensing Authority will consult with responsible authorities on all applications.

This licensing authority is aware that in making decisions about premises licences it should aim to permit the use of premises for gambling in so far as it thinks it is:

- In accordance with any relevant code of practice issued by the Gambling Commission;
- In accordance with any relevant guidance issued by the Gambling Commission ;
- Reasonably consistent with the licensing objectives; and
- In accordance with the authority's statement of licensing policy.

It is appreciated that as per the Gambling Commission's Guidance for local authorities "moral objections to gambling are not a valid reason to reject applications for premises licences" (except as regards any 'no casino resolution' - see section on Casinos below).

In considering applications and in making any decisions, the Licensing Authority will take into account the Human Rights Act, in particular Articles 1, 6, 8 and 10.

Definition of "premises" - Premises is defined in the Act as "any place". Section 152 therefore prevents more than one premises licence applying to any place. But there is no reason in principle why a single building cannot to be subject to more than one premises licence, provided they are for different parts of the building and the different parts of the building can be reasonably regarded as being different premises.

Whether different parts of a building can properly be regarded as separate premises will depend on the circumstances and the suitability of the division and this is a matter for discussion between the operator and the licensing authority. The crux of the matter is whether the proposed premises are genuinely separate premises that merit their own licence and are not an artificially created part of what is readily identifiable as a single premise.

In determining whether two or more premises are truly separate, the licensing authority will consider all the circumstances of the particular case; these may include:

- Is a separate registration for business rates in place for the premises?
- Is the premises' neighbouring premises owned by the same person or someone

else?

- Can each of the premises be accessed from the street or a public passageway?
- Can the premises only be accessed from any other gambling premises?

Where there are issues about the sub-division of a single building or plot, the licensing authority will ensure that mandatory conditions relating to access between premises are observed. The broad principle is that there can be no access from one licensed premises to another, except between premises which allow access to those under the age of 18 and with the further exceptions that licensed betting premises may be accessed from other licensed betting premises. There is no definition of 'direct access' in the Act or Regulations.

Section 152 of the Act means that different premise licences cannot apply in respect of a single premise at different times. There is no temporal element to a premises licence. Therefore, a premise could not, for example, be licensed as a bingo club on week days and a betting shop at weekends.

It should also be noted that an applicant cannot obtain a full premises licence until the premises in which it is proposed to offer the gambling are constructed. The Gambling Commission has advised that references to "the premises" are to the premises in which gambling may now take place. Thus a licence to use premises for gambling will only be issued in relation to premises that are ready to be used for gambling. This authority agrees with the Gambling Commission that it is a question of fact and degree whether premises are finished to a degree that they can be considered for a premises licence. The Gambling Commission emphasises that requiring the building to be complete ensure that the authority can, if necessary, inspect it fully, as can other responsible authorities with inspection rights.

Location - This licensing authority is aware that demand issues cannot be considered with regard to the location of premises but that considerations in terms of the licensing objectives can. As per the Gambling Commission's Guidance for local authorities, this authority will pay particular attention to the protection of children and vulnerable persons from being harmed or exploited by gambling, as well as issues of crime and disorder. Should any specific policy be decided upon as regards areas where gambling premises should not be located, this statement will be updated. It should be noted that any such policy does not preclude any application being made and each application will be decided on its merits, with the onus upon the applicant showing how potential concerns can be overcome.

When determining the location of proposed gambling facilities, the Licensing Authority in appropriate circumstances, will consider very carefully the following factors when considering applications for Premises Licences, permits and other permissions:

- Proximity of premises to local schools
- Proximity of premises to centres that pose a high risk to vulnerable and young persons
- Proximity of premises to residential areas where there is a high concentration of children and young people
- Proximity of premises to places of worship, particularly where Sunday Schools are in operation

This list is not exhaustive and each case will be determined on its merits.

Duplication with other regulatory regimes - This licensing authority will seek to avoid any duplication with other statutory / regulatory systems where possible, including planning. This authority will not consider whether a licence application is likely to be awarded planning permission or building regulations approval, in its consideration of it. It will though, listen to, and consider carefully, any concerns about conditions which are not able to be met by licensees due to planning restrictions, should such a situation arise.

Licensing objectives - Premises licences granted must be reasonably consistent with the licensing objectives. With regard to these objectives, this licensing authority has considered the Gambling Commission's Guidance to local authorities and some comments are made below.

Preventing gambling from being a source of crime or disorder, being associated with crime or disorder or being used to support crime - This licensing authority is aware that the Gambling Commission will be taking a leading role in preventing gambling from being a source of crime. The Gambling Commission's Guidance does however envisage that licensing authorities should pay attention to the proposed location of gambling premises in terms of this licensing objective. Thus, where an area has known high levels of organised crime this authority will consider carefully whether gambling premises are suitable to be located there and whether conditions may be suitable such as the provision of door supervisors. This licensing authority is aware of the distinction between disorder and nuisance and will consider factors such as whether police assistance was required and how threatening the behaviour was to those who could see it, so as to make that distinction. Issues of nuisance cannot be addressed via the Gambling Act provisions.

Ensuring that gambling is conducted in a fair and open way - This licensing authority has noted that the Gambling Commission has stated that it would generally not expect licensing authorities to become concerned with ensuring that gambling is conducted in a fair and open way as this will be addressed via operating and personal licences. There is however, more of a role with regard to tracks which is explained in more detail in the 'tracks' section below.

Protecting children and other vulnerable persons from being harmed or exploited by gambling - This licensing authority has noted the Gambling Commission's Guidance for local authorities states that this objective means preventing children from taking part in gambling (as well as restriction of advertising so that gambling products are not aimed at or are particularly attractive to children).

According to mandatory and default conditions relating to gambling premises that admit under 18's, any area where category B or C gaming machines are located must be:

- separated from the rest of the premises by a physical barrier which is effective to prevent access other than by an entrance designated for that purpose
- supervised at all times to ensure that under 18's do not enter the area
- arranged in a way that ensures that all parts of the area can be observed

- supervised by either:
 - (a) one or more persons whose responsibilities include ensuring that under 18's do not enter the areas
 - (b) CCTV monitored by one or more persons whose responsibilities include ensuring that under 18's do not enter the areas.

A notice stating that no person under the age of 18 is permitted to enter the area must be displayed in a prominent place at the entrance to the area.

Where there are age restrictions on entry to certain premises, the Licensing Authority recommends applicants consider and adopt BACTA's and GamCare's joint training initiative on a Site Age-of-Entry Control Policy.

This licensing authority will also make itself aware of the Codes of Practice which the Gambling Commission issues as regards this licensing objective, in relation to specific premises.

As regards the term "vulnerable persons" it is noted that the Gambling Commission is not seeking to offer a definition but states that "it will for regulatory purposes assume that this group includes people who gamble more than they want to; people who gambling beyond their means; and people who may not be able to make informed or balanced decisions about gambling due to a mental impairment, alcohol or drugs." This licensing authority will consider this licensing objective on a case by case basis. Should a practical definition prove possible in future then this policy statement will be updated with it, by way of a revision.

Conditions - Any conditions attached to licences will be proportionate and will be:

- relevant to the need to make the proposed building suitable as a gambling facility
- directly related to the premises and the type of licence applied for;
- fairly and reasonably related to the scale and type of premises: and
- reasonable in all other respects.

Decisions upon individual conditions will be made on a case by case basis, although there will be a number of measures this licensing authority will consider utilising should there be a perceived need, such as the use of supervisors, appropriate signage for adult only areas etc. There are specific comments made in this regard under some of the licence types below. This licensing authority will also expect the licence applicant to offer his/her own suggestions as to way in which the licensing objectives can be met effectively.

This licensing authority will also consider specific measures which may be required for buildings which are subject to multiple premises licences. Such measures may include the supervision of entrances; segregation of gambling from non-gambling areas frequented by children; and the supervision of gaming machines in non-adult gambling specific premises in order to pursue the licensing objectives. These matters are in accordance with the Gambling Commission's Guidance.

This authority will also ensure that where category A, B and C machines are on offer in premises to which children are admitted:

- all such machines identified are located in an area of the premises which is

separated from the remainder of the premises by a physical barrier which is effective to prevent access other than through a designated entrance;

- only persons over 18 years of age are admitted to the area where these machines are located;
- access to the area where the machines are located is supervised;
- the area where these machines are located is arranged so that it can be observed by the staff or the licence holder; and
- at the entrance to and inside any such areas there are prominently displayed notices indicating that access to the area is prohibited to persons under 18.

These considerations will apply to premises including buildings where multiple premises licences are applicable.

This licensing authority is aware that tracks may be subject to one or more than one premises licence, provided each licence relates to a specified area of the track. As per the Gambling Commission's Guidance, this licensing authority will consider the impact upon the third licensing objective and the need to ensure that entrances to each type of premises are distinct and that children are excluded from gambling areas where they are not permitted to enter.

It is noted that there are conditions, which the Licensing Authority cannot attach to premises licenses which are:

- any condition on the premises licence which makes it impossible to comply with an operating licence condition
- conditions relating to gaming machine categories, numbers, or method of operation;
- conditions which provide that membership of a club or body be required (the Gambling Act 2005 specifically removes the membership requirement for casino and bingo clubs and this provision prevents it being reinstated and
- conditions in relation to stakes, fees, winning or prizes

Door Supervisors - The Gambling Commission advises in its Guidance for local authorities that licensing authorities may consider whether there is a need for door supervisors in terms of the licensing objectives for protection of children and vulnerable persons from being harmed or exploited by gambling, and also in terms of preventing premises becoming a source of crime.

For premises other than casinos and bingo premises, operators and licensing authorities may decide that supervision of entrances / machines is appropriate. If Door Supervisors are required, they must hold a valid SIA registration.

There is no evidence that the operation of betting offices has required door supervisors for the protection of the public. The authority will make door supervision requirement only if there is clear evidence from the history of trading at the premises that the premises cannot be adequately supervised from the counter and that door supervision is both necessary and proportionate.

Gaming Machines – The Gambling Commission is responsible for licensing manufacturers and suppliers of gaming machines and advises operators to obtain machines from Commission-licensed suppliers. Permit holder and those applying for

permits for clubs, alcohol licensed premises or family entertainment centres will also be advised through Commission Guidance to obtain gaming machines from Commission-licensed suppliers.

Section 172 of the Act prescribes the number and category of gaming machines that are permitted in each type of a gambling premises licensed by authorities. Neither the Gambling Commission nor the licensing authority has the power to set different limits or further expand or restrict the categories of machine that are permitted (with the exception of alcohol-licensed premises holding gaming permits where authorities have discretion to specify the number of permitted gaming machines).

Section 235 of the Act sets out the definition of a gaming machine and details exemptions for equipment that is not to be considered a gaming machine even though gambling can be performed on it. It should be noted that there remains a distinction between skill machines and gaming machines in that skill machines are unregulated.

In determining whether a machine is a gaming machine or a skill machine, this licensing authority will apply BACTA's Code of Practice for Skill with Prize (SWP) Machines. Therefore a machine will be regarded as Skill with Prize Machine (SWP) if the following criteria are met:

- The game must not be a game of chance as defined by section 6 of the Gambling Act 2005
- In non-licensed premises where children have access, the machine should not exhibit casino style games or have the appearance of a gaming machine
- Descriptions associated with gaming machines such as "jackpot" should be avoided
- The maximum prize available in a single game must not exceed £50 in cash (or non monetary prize). This does not apply to tournament games
- All games should be designed and operated to be fair to customers and rules should be available for view prior to a game commencing.

Where a machine does not meet the above criteria to be an SWP machine, the licensing authority may utilise its powers under s317 Gambling Act 2005, to remove the machines from the premises and bring legal proceedings under s242 Gambling Act 2005.

2. Adult Gaming Centres

This Licensing Authority will specifically have regard to the need to protect children and vulnerable persons from harm or being exploited by gambling and will expect the applicant to satisfy the authority that there will be sufficient measures to ensure that under 18 year olds do not have access to the premises. Appropriate licence conditions may cover issues such as:

- Proof of age schemes
- CCTV
- Door supervisors
- Supervision of entrances / machine areas
- Physical separation of areas
- Location of entry

- Notices / signage
- Specific opening hours

This list is not exhaustive.

As regards the protection of vulnerable persons, this Licensing Authority will consider measures such as the use of provision of information leaflets / helpline numbers for organisations such as GamCare.

3. (Licensed) Family Entertainment Centres:

This licensing authority will specifically have regard to the need to protect children and vulnerable persons from harm or being exploited by gambling and will expect the applicant to satisfy the authority, for example, that there will be sufficient measures to ensure that under 18 year olds do not have access to the adult only gaming machine areas.

This licensing authority will expect applicants to offer their own measures to meet the licensing objectives however appropriate measures / licence conditions may cover issues such as:

- CCTV
- Supervision of entrances / machine areas
- Physical separation of areas
- Location of entry
- Notices / signage
- Specific opening hours
- Self-barring schemes
- Provision of information leaflets / helpline numbers for organisations such as GamCare.
- Measures / training for staff on how to deal with suspected truant school children on the premises

This list is not mandatory, nor exhaustive, and is merely indicative of example measures.

This licensing authority will, as per the Gambling Commission's guidance, refer to the Commission's website to see any conditions that apply to operating licences covering the way in which the area containing the category C machines should be delineated. This licensing authority will also make itself aware of any mandatory or default conditions on these premises licences, when they have been published.

4. Casinos

Potential licence applicants should note that a 'no-casino' resolution has been passed by this authority on 11th December 2006 and currently no applications for casino premises licences will be considered. It is proposed to continue this resolution and if approved the resolution will continue for a further three years from the date of approval².

5. Bingo premises

The licensing authority will need to be satisfied that bingo can be played in any bingo

² This wording will be amended when a determination on the reaffirmation on the resolution has been made.

premises for which they issue a premises licence. This is a particularly relevant consideration where the operator of an existing bingo premises licence applies to vary their licence to exclude an area of the existing premises from its ambit and then applies for a new premises licence, or multiple licence, for that or those excluded areas.

Children and young people are allowed into bingo premises; however they are not permitted to participate in the bingo and if any category B or C machines are made available for use these must be separated from areas where children and young people are allowed.

Where category C or above machines are available in premises to which children are admitted licensing authorities should ensure that:

- all such machines are located in an area of the premises separate from the remainder of the premises by a physical barrier which is effective to prevent access other than through a designated entrance;
- only adults are admitted to the area where the machines are located;
- access to the area where the machines are located is supervised;
- the area where the machines are located is arranged so that it can be observed by staff of the operator or the licence holder; and
- at the entrance to, and inside any such area there are prominently displayed notices indicating that access to the area is prohibited to persons under 18.

6. Betting premises

Whilst it is recognised that betting premises are permitted to offer gaming machines, including B2 gaming machines, betting should be the primary element of the gambling facilities being offered to customers in such premises. A betting premises licence authorises premises to be used for the 'provision of facilities for betting'. The ability to make up to four gaming machines within category B2 - D available is an additional authorisation conferred upon the holder of a betting premises licence; it is not a free standing right to make gaming machines available for use. It follows that unless a betting premises operator offers sufficient facilities for betting it should not be making gaming machines available on the premises in question.

7. Tracks

This licensing authority is aware that tracks may be subject to one or more than one premises licence, provided each licence relates to a specified area of the track. As per the Gambling Commission's Guidance, this licensing authority will especially consider the impact upon the third licensing objective (i.e. the protection of children and vulnerable persons from being harmed or exploited by gambling) and the need to ensure that entrances to each type of premises are distinct and that children are excluded from gambling areas where they are not permitted to enter.

This authority will therefore expect the premises licence applicant to demonstrate suitable measures to ensure that children do not have access to adult only gaming facilities. It is noted that children and young persons will be permitted to enter track areas where facilities for betting are provided on days when dog-racing and/or horse racing takes place, but that they are still prevented from entering areas where gaming machines (other than category D machines) are provided.

This licensing authority will expect applicants to offer their own measures to meet the

licensing objectives however appropriate measures / licence conditions may cover issues such as:

- Proof of age schemes
- CCTV
- Supervision of entrances / machine areas
- Physical separation of areas
- Location of entry
- Notices / signage
- Specific opening hours
- Self-baring schemes
- Provision of information leaflets / helpline numbers for organisations such as GamCare

This list is not mandatory, nor exhaustive, and is merely indicative of example measures.

8. Travelling Fairs

The Act defines a travelling fair as 'wholly or principally' providing amusements and they must be on a site that has been used for fairs no more than 27 days per calendar. The Act does not change the principles on which travelling fairs have been regulated under previous legislation.

It has been noted that the 27-day statutory maximum for the land being used as a fair, is per calendar year, and that it applies to the piece of land on which the fairs are held, regardless of whether it is the same or different travelling fairs occupying the land. This licensing authority will work with its neighbouring authorities to ensure that land which crosses our boundaries is monitored so that the statutory limits are not exceeded.

Travelling fairs do not require a permit to provide gaming machines and can provide an unlimited number of Category D gaming machines provided that:

- The machines are operated in compliance with all relevant legal requirements
- The facilities for gambling are no more than ancillary amusement at the fair

9. Provisional Statements

Applicants for premises licence must fulfil certain criteria – they must hold or have applied for an operating licence (except in the case of tracks) and they must have the right to occupy the premises in respect of which their premises licence application is made. However, these restrictions do not apply in relation to an application for a provisional statement.

Developers may wish to apply for provisional statements before they enter into a contract to buy or lease property or to judge whether a development is worth taking forward in light of the need to obtain a premises licence. It is also possible for an application for a provisional statement to be made for premises that already have a premises licence (either for a different type of gambling or the same type).

The process for considering an application for a provisional statement is the same as that for a premises licence application. Once the premises are constructed, altered or acquired the holder of a provisional statement may apply for the necessary premises licence. If a provisional statement has been granted, the licensing authority is

constrained in the matters is can consider when a premises licence application is made in respect of the same premises. No further representations from relevant authorities or interested parties can be taken into account unless they concern matters which could not have been addressed at the provisional statement stage, or they reflect a change in the applicant's circumstances. In addition, the Authority may refuse the premises licence (or grant it on terms different to those attached to the provisional statement) only by reference to matters:

- (a) which could not have been raised by objectors at the provisional licence stage
- (b) which is in the authority's opinion reflect a change in the operator's circumstances
- (c) where the premises has not been constructed in accordance with the plan and information submitted with the provisional statement application. This must be a substantial change to the plan and the licensing authority will discuss any concerns they have with the applicant before making a decision.

10. Reviews:

Requests for a review of a premises licence can be made by interested parties or responsible authorities, however, it is for the licensing authority to decide whether the review is to be carried-out. This will be on the basis of whether the request for the review is relevant to the matters listed below, as well as consideration as to whether the request is frivolous, vexatious, will certainly not cause this authority to wish alter/revoke/suspend the licence, or whether it is substantially the same as previous representations or requests for review.

- in accordance with any relevant code of practice issued by the Gambling Commission;
- in accordance with any relevant guidance issued by the Gambling Commission;
- reasonably consistent with the licensing objectives; and
- in accordance with the authority's statement of licensing policy.

The licensing authority can also initiate a review of a licence on the basis of any reason which it thinks is appropriate.

11. Appeals

There is a right of appeal by the applicant, should the Licensing Authority reject an application, similarly there is a right of appeal by a person who made representations or the applicant should the authority grant an application This appeal must be lodged within a period of 21 days from the day on which the applicant (i.e. person bringing the appeal) was notified by the Licensing Authority of the decision and must be made to the Magistrates' Court.

The Magistrates' Court may take into account the Licensing Authority's Licensing Policy, Gambling Commission's Guidance, any relevant Codes of Practice and the licensing objectives (after hearing the evidence).

PART C

Permits / Small Society Lotteries / Temporary & Occasional Use Notice

Permits are required when premises provide a gambling facility but either the stakes and

prizes are very low or gambling is no the main function of the premises. The permits regulate gambling and the use of gaming machines in specified premises.

There are four classes of gaming machines: Categories A, B, C and D with category B further divided into sub-categories B1, B2, B3, B3A and B4.

A machine is not a gaming machine if the winning of a prize is determined purely by the player's skill.

The Act introduces a range of permits for gambling which are granted by licensing authorities. Forms of authorisations other than Premises Licenses are as follows:

- Unlicensed Family Entertainment Centres
- Gaming machines on alcohol-licensed premises
- Club Gaming Machines
- Club Gaming
- Prize Gaming

The licensing authority may only grant or reject an application for a permit. No conditions may be attached to a permit.

In addition, licensing authorities are responsible for receiving, from holders of alcohol-licensed premises (under the Licensing Act 2003) notifications that they intend to exercise their automatic entitlement to two gaming machines in their premises under section 282 of the Act.

1. Unlicensed Family Entertainment Centre gaming machine permits (Statement of Principles on Permits – Schedule 10 Para 7)

Unlicensed Family Entertainment Centres (FECs) are able to offer only category D gaming machines in reliance on a gaming machine permit. Any number of category D machines can be made available with such a permit subject to other considerations such as fire regulations and health and safety. Permits cannot be issued in respect of vessels or vehicles.

An application to this licensing authority should be accompanied by the appropriate fee, plan of the premises, premises' risk assessment, proof of applicant's date and place of birth and proof of address (if an individual) or if a company, the registered company's number and details.

This licensing authority will expect the applicant to show that there are policies and procedures in place to protect children from harm. Harm in this context is not limited to harm from gambling but includes wider child protection considerations. The efficiency of such policies and procedures will each be considered on their merits, however, they may include appropriate measures / training for staff as regards suspected truant school children on the premises, measures / training covering how staff would deal with unsupervised very young children being on the premises, or children causing perceived problems on / around the premises. This licensing authority will also expect, as per Gambling Commission Guidance, that applicants demonstrate:

- a full understanding of the maximum stakes and prizes of the gambling that is permissible in unlicensed FECs;
- that the applicant has no relevant convictions (those that are set out in Schedule

- 7 of the Act);
- that staff are trained to have a full understanding of the maximum stakes and prizes.

The licensing authority is not limited to these considerations and will determine each application on its merits.

2. (Alcohol) Licensed premises gaming machine permits - (Schedule 13 paragraph 4(1))

Premises licensed to sell alcohol for consumption on the premises have an automatic entitlement to make available for use up to two gaming machines of categories C or D. The premises merely need to notify the licensing authority of their intention to utilise their automatic entitlement; the licensing authority has no discretion to consider the notification or turn it down. However, the licensing authority can remove the automatic authorisation by making an order under section 284 of the Act in respect of any particular premises if:

- provision of the machines is not reasonably consistent with the pursuit of the licensing objectives;
- gaming has taken place on the premises that breaches a condition of section 282 of the Gambling Act (i.e. that written notice has been provided to the licensing authority, that a fee has been provided and that any relevant code of practice issued by the Gambling Commission about the location and operation of the machine has been complied with);
- the premises are mainly used for gaming; or
- an offence under the Gambling Act has been committed on the premises.

If a premises wishes to make available for use more than two gaming machines, a licensed premises gaming machine permit must be obtained from the licensing authority. An application can only be made by the holder of the 'on-premises' alcohol licence (under the Licensing Act 2003) for the premises for which the application is made.

The licensing authority must consider that application based upon the licensing objectives, any guidance issued by the Gambling Commission issued under Section 25 of the Gambling Act 2005, and "*such matters as they think relevant.*" This licensing authority considers that "such matters" will be decided on a case by case basis but generally there will be regard to the need to protect children and vulnerable persons from harm or being exploited by gambling and will expect the applicant to satisfy the authority that there will be sufficient measures to ensure that under 18 year olds do not have access to the adult only gaming machines. Measures which will satisfy the authority that there will be no access may include the adult machines being in sight of the bar, or in the sight of staff who will monitor that the machines are not being used by those under 18. Notices and signage may also be help. As regards the protection of vulnerable persons applicants may wish to consider the provision of information leaflets / helpline numbers for organisations such as GamCare.

It should be noted that the licensing authority can decide to grant the application with a smaller number of machines and/or a different category of machines than that applied for. Conditions (other than these) cannot be attached.

Holders of alcohol-licensed premises gaming machines permits are required to comply

with the Code of Practice drawn up by the Gambling Commission on the location and operation of machines.

With effect from 1st September 2007, all old 'section 34' permits issued under the Gaming Act 1968 were renamed 'alcohol-licensed premises gaming machine permits'. Where the holder of a premises licence under the Licensing Act 2003 applies to transfer that licence, he must also transfer any alcohol-licensed premises permit held in respect of the same premises. It is the new premises licence holder's responsibility to undertake this transfer. Failure to transfer the alcohol licensed gaming machine permit may result in prosecution under s242 Gambling Act 2005.

The licensing authority may cancel an alcohol-licensed premises permit in specified circumstances which include if the premises are used wholly or mainly by children or young persons or if an offence under the Act has been committed. Before it cancels a permit, the licensing authority will give the permit holder 21 days notice of intention to cancel, consider any representations made by the holder, hold a hearing if requested, and comply with any other prescribed requirements relating to the procedure to be followed. Where the authority cancels the permit, the cancellation does take effect until the period for appealing against that decision has elapsed or until the appeal is determined.

The authority may also cancel a permit if the holder fails to pay the annual fee unless failure is the result of an administrative error.

3. Prize Gaming Permits - (Statement of Principles on Permits - Schedule 14 paragraph 8 (3))

A prize gaming permit is issued by the licensing authority to authorise the provision of facilities for gaming with prizes on specified premises. An application for a prize gaming permit can only be made by a person who occupies or plans to occupy the relevant premises and if the applicant is an individual, he must be aged 18 or over. An application cannot be made if a premises licence or club gaming permit is in effect for the same premises.

An application to this licensing authority should be accompanied by the appropriate fee, plan of the premises, premises' risk assessment, proof of applicant's date and place of birth and proof of address (if an individual) or if a company, the registered company's number and details.

This licensing authority will also require the applicant to demonstrate that:

- that they understand the limits to stakes and prizes that are set out in Regulations;
- and that the gaming offered is within the law.

In making its decision on an application for this permit the licensing authority does not need to have regard to the licensing objectives but must have regard to any Gambling Commission guidance.

It should be noted that there are conditions in the Gambling Act 2005 by which the permit holder must comply, but that the licensing authority cannot attach conditions. The conditions in the Act are:

- the limits on participation fees, as set out in regulations, must be complied with;

- all chances to participate in the gaming must be allocated on the premises on which the gaming is taking place and on one day; the game must be played and completed on the day the chances are allocated; and the result of the game must be made public in the premises on the day that it is played;
- the prize for which the game is played must not exceed the amount set out in regulations (if a money prize), or the prescribed value (if non-monetary prize); and
- participation in the gaming must not entitle the player to take part in any other gambling.

4. Club Gaming and Club Machines Permits

Members Clubs and Miners' welfare institutes may apply for a Club Gaming Permit or a Clubs Gaming machines permit. Commercial Clubs may only apply for a Club Machine permit.

A Club Gaming Permit will enable the premises to provide up to three gaming machines (categories B, C or D), equal chance gaming and games of chance as set out in the regulations issued by the Secretary of State. A Club Gaming machine permit will enable the premises to provide up to three gaming machines of category B, C or D.

The Guidance also makes it clear that before granting the permit the Authority will need to satisfy itself that the premises meet the requirements of a members' club and may grant the permit if the majority of members are over 18. In making an assessment on whether a club is a members' club, miners' welfare institute or a commercial club, the licensing authority will utilise the definitions of each as set out in the Licensing Act 2003.

An application to this licensing authority should be accompanied by the appropriate fee, plan of the premises, premises' risk assessment, proof of applicant's date and place of birth and proof of address (if an individual) or if a company, the registered company's number and details.

The Commission Guidance also notes that "licensing authorities may only refuse an application on the grounds that:

- the applicant does not fulfil the requirements for a members' or commercial club or miners' welfare institute and therefore is not entitled to receive the type of permit for which it has applied;
- the applicant's premises are used wholly or mainly by children and/or young persons;
- an offence under the Act or a breach of a permit has been committed by the applicant while providing gaming facilities;
- a permit held by the applicant has been cancelled in the previous ten years;
- an objection has been lodged by the Commission or the police.

There is also a 'fast-track' procedure available under the Act for premises which hold a Club Premises Certificate under the Licensing Act 2003 (Schedule 12 paragraph 10). As the Gambling Commission's Guidance for local authorities states: "Under the fast-track procedure there is no opportunity for objections to be made by the Commission or the police, and the grounds upon which an authority can refuse a permit are reduced" as the club or institute will already have been through a licensing process in relation to its club premises certificate under the Licensing Act 2003.

The grounds on which an application under this process may be refused are:

- that the club is established primarily for gaming, other than gaming prescribed by regulations under section 266 of the Act;
- that in addition to the prescribed gaming, the applicant provides facilities for other gaming; or
- that a club gaming permit or club machine permit issued to the applicant in the last ten years has been cancelled.

There are statutory conditions on club gaming permits that no child uses a category B or C machine on the premises and that the holder complies with the Gambling Commission's Code of Practice about the location and operation of gaming machines.

5. Small Society Lotteries

The Gambling Act 2005 repeals the Lotteries and Amusements Act 1976. Local Authorities are now responsible for registering societies to run small society lotteries. As the Act gives the same definition to 'local authority' and 'licensing authority', this policy will refer to the 'licensing authority' as per the Gambling Commission guidance.

Promoting or facilitating a lottery will fall within 2 categories, and unless it does so, will be illegal:

- (a) Licensed Lotteries (requiring an Operating Licence from the Gambling Commission)
- (b) Exempt Lotteries (registered by the Licensing Authority)

Exempt Lotteries are lotteries permitted to run without a licence from the Gambling Commission and these are:

- (a) Small Society Lotteries;
- (b) Incidental Non-Commercial Lotteries;
- (c) Private Lotteries;
- (d) Private Society Lotteries;
- (e) Work Lottery;
- (f) Residents' Lottery;
- (g) Customer Lotteries;

Societies may organise lotteries if they are licensed by the Gambling Commission or fall within the exempt category, and therefore registered by the Licensing Authority, because their proceeds are below specified levels.

Applicants seeking to register as a Small Society Lottery must apply to the Licensing Authority in the area where their principal office is located.

Lotteries are regulated through a licensing and registration scheme, conditions imposed on licences, Gambling Commission's Code of Practice and Guidance. In exercising its function with regard to small society and exempt lotteries, the Licensing Authority will have due regard to the Gambling Commission's Guidance.

The Licensing Authority will require applicants who seek to register as a Small Society Lottery to set out the purpose for which the Society is established and will ask the Society to declare that they represent a bona fide non-commercial society and have no relevant convictions. The Licensing Authority may, however, seek further information or confirmation from the Society.

6. Temporary Use Notices

There are a number of statutory limits as regards temporary use notices. Gambling Commission Guidance is noted that "The meaning of "premises" in part 8 of the Act is discussed in Part 7 of the Guidance. As with "premises", the definition of "a set of premises" will be a question of fact in the particular circumstances of each notice that is given. In the Act "premises" is defined as including "any place". In considering whether a place falls within the definition of "a set of premises", licensing authorities will need to look at, amongst other things, the ownership/occupation and control of the premises. This is a new permission and licensing authorities should be ready to object to notices where it appears that their effect would be to permit regular gambling in a place that could be described as one set of premises."

7. Occasional Use Notices:

The licensing authority has very little discretion as regards these notices aside from ensuring that the statutory limit of 8 days in a calendar year is not exceeded. This licensing authority will though consider the definition of a 'track' and whether the applicant is permitted to avail him/herself of the notice.

BLUES —
86 HIGH STREET
HARROW ON THE HILL

You may use this sheet to comment – Please feel free to use additional sheets if necessary:

1. Do you have views on proposal to continue with the existing "no-casino" resolution?

I am somewhat surprised at the 'no-casino' decision for Harrow. It strikes me that a properly run casino which has a complete record of its members would bring substantial revenue into the area. Casinos are child free + generally very well run. *

2. Do you have any views on the inclusion of BACTA's Code of Practice for Skill with Prizes machines?

RECEIVED AT
LICENSING OFFICE

24 JUL 2009

TIME.

#328304108

3. Do you have other comments on any other aspect of the proposed Gambling Policy?

I note the requirement to provide a separate room where there are children allowed on the premises (e.g. bingo). However under age children are often capable of accessing the gambling areas within such premises.

Would it not be a sensible consideration to bar all children under 18 from such venues, thereby preventing the possibility of any breach into the gambling zone.

Please send all replies before 7th August 2009 by freepost to: Licensing Department, Harrow Council, Freepost HA 4343, PO Box 18, Civic Centre, Station Road, Harrow, HA1 2UT.

* There is considerably less likelihood of a breach of regulations with regard to child protection + fair + open gambling of this type than other forms of licensed premises within this borough. 24
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You may use this sheet to comment – Please feel free to use additional sheets if necessary:

1. Do you have views on proposal to continue with the existing “no-casino” resolution?

2. Do you have any views on the inclusion of BACTA’s Code of Practice for Skill with Prizes machines?

3. Do you have other comments on any other aspect of the proposed Gambling Policy?

24/5/09
THANK YOU FOR GIVING ME THE CHANCE TO
COMMENT ON GAMBLING
MOST OF US KNOW GAMBLING IS A ILLNESS.
I DO NOT BELIEVE IT IS A ILLNESS,
I THINK IT IS AN ACT OF THE DEVIL
AND PLEASE HOW GIVE PERMISSION ARE
RESPONSIBLE FOR ILLNESS, IT IS GRAVE SIN
MAY GOD GUIDE US ALL TO THE RIGHT
PATH
Azedul

Please send all replies before 7th August 2009 by freepost to: Licensing Department, Harrow Council, Freepost HA 4343, PO Box 18, Civic Centre, Station Road, Harrow, HA1 2UT.

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Meeting:	Licensing and General Purposes Committee
Date:	7 September 2009
Subject:	Delegation of Functions to Officers
Responsible Officer:	Corporate Director of Community & Environment, Brendon Hills
Portfolio Holder:	Portfolio Holder for Environment and Community Safety, Councillor Susan Hall
Exempt:	No
Enclosures:	Appendix 1 - Legislative Reform Order

Section 1: Summary and Recommendations

This report sets out the changes made to the Licensing Act 2003 by The Legislative Reform (Minor Variations to Premises Licences and Club Premises Certificates) Order 2009.

Recommendations:

The Committee is requested to:

1. Authorise the Director for Community and Environment to be able to discharge the functions brought in by the Legislative Reform (Minor Variations to Premises Licences and Club Premises Certificates) Order 2009; and
2. Authorise the Director for Community and Environment to further delegate this power to officers in his department.

Reason (for recommendation):

So that officers of the Licensing authority can discharge the new statutory powers, under the Licensing Act 2003, as intended by the Guidance to the Act.

Section 2: Report

2.1 Background & why a change is needed

2.1.1 Under section 7 of the Licensing Act 2003, the Licensing Authority functions are delegated to the licensing committee of the authority (which is established by section 6 of the Act) to discharge.

2.1.2 To discharge the new statutory powers inserted in to the Licensing Act 2003 (the Act) by the Legislative Reform (Minor Variations to Premises Licences and Club Premises Certificates) Order 2009, this Authority needs to delegate the powers to officers to discharge as recommended in the Statutory Guidance issued by the Department for Culture Media & Sport (DCMS). If the recommendations are rejected the council may find it difficult to fulfil its statutory obligations as the time scales for determining applications under the new sections of the Act are short and it may not be possible to organise Licensing Panels at such short notice to determine the applications, leaving the authority possibly open to challenge.

2.1.3 The Legislative Reform (Minor Variations to Premises Licences and Club Premises Certificates) Order 2009 (referred to as 'the Order' from this point onwards) simplifies the variation process for minor amendments to existing licences. Removal or amendments of certain details to approved plans of premises, and removal of certain conditions with the authorisation of Responsible Authorities may now follow this new minor variations procedure.

2.1.4 The Licensing Authority may reject a minor variation application on the basis that the variation(s) could adversely affect the promotion of any of the licensing objectives. In such cases the applicant must apply for the variation under the full variation process as set out in section 34 of the Act.

2.1.5 The purpose of the Order is to save time, money and regulatory resources by allowing variations that could not impair the promotion of the licensing objectives to be made to premises licences and club premises certificates through a simplified and less costly procedure.

2.1.6 The holder of a premises licence or club premises certificate may apply to the relevant licensing authority for variation of the licence or certificate under the new provisions (the new sections 41A and 86A respectively). Applications will be subject to regulations made in the exercise of the Secretary of State's powers under sections 54, 55, 91 and 92 of the Act, to prescribe the form and manner of making applications, the information and documents that must accompany them, and the fee to be paid to the relevant licensing authority. Applications will also be subject to regulations made by the Secretary of State under sections 17(5)(a) and 71(6)(a) requiring the applicant to advertise the application.

2.1.7 In determining an application the authority must consult such of the responsible authorities, as it considers appropriate, if there is any doubt about the impact on the licensing objectives of the variation(s) proposed. The authority

must take into account any relevant representations made concerning the application by those authorities or any relevant representations from interested parties (as defined in the Act), provided in the case of the latter, that the representations are made in writing within ten working days following the date of receipt of the application by the licensing authority. Relevant representations must be about the likely effect of the grant of the application on the promotion of one or more of the licensing objectives.

2.1.8 The licensing authority must grant an application under the new provisions if it considers that none of the variations proposed in the application could have an adverse effect on the promotion of any of the licensing objectives. In any other case the authority must reject the application.

2.1.9 This procedure is in contrast to the normal procedure for the variation of a premises licence or club premises certificate, where the applicant must give notice of the application to each responsible authority, and where the application must be referred to an oral hearing in the event that an authority or interested party makes a relevant representation.

2.2.0 An application may not be made under the new provisions if the effect of the variations proposed in it would be to extend the period for which a premises licence has effect; to vary substantially the premises to which a premises licence or club premises certificate relates; to specify (in a premises licence) an individual as the premises supervisor; to authorise the sale or supply of alcohol or to authorise the sale by retail or supply of alcohol at any time between 11pm and 7am or increase in the amount of time on any day during which alcohol may be sold by retail or otherwise supplied. Variations of these kinds must be made through the normal variation procedure set out in sections 34 to 40 (for premises licences), sections 84 to 86 (for club premises certificates), or section 41D (for community premises) of the 2003 Act.

2.2.1 If the relevant licensing authority grants an application under the new provisions it must notify the applicant in writing, specifying the variations which are to have effect as a result of the grant, and the time at which they are to take effect. If an application is refused, the authority must notify the applicant in writing, giving its reasons for the refusal. The authority is required to reach its determination within a period of fifteen working days starting on the first working day after the authority receives the application, otherwise the application is treated as rejected and the authority must return the application fee. The authority and the applicant may however agree to treat the application and the fee as a new application.

2.3 Legal Implications

The Legislative Reform (Minor Variations to Premises Licences and Club Premises Certificates) Order 2009 took effect from 29 July 2009 by inserting new sections in to the Licensing Act 2003, and the implications of this Licensing

Authority not delegating the exercise of the new powers to officers in the Licensing Team are set out in paragraph 2.1.2 above.

The time frame within which to determine applications under the new provisions is very short, especially given that the licensing authority will have to wait for any representations from interested parties (who have 10 working days from the day after the authority receives the application) and must determine the application, in any event, within 15 working days from the first working day after receiving it.

The authority may therefore struggle to meet the statutory timescales if the delegations are not made, leaving the possibility of the authority being challenged.

2.4 Financial Implications

None

2.5 Equalities Impact

An Equalities Impact Assessment is to be undertaken.

2.6 Risk Management Implications

As per the comments in paragraphs 2.1.2 and 2.3 above.

Section 3 – Statutory Officer Clearance

For Chief Finance Officer	<input checked="" type="checkbox"/>	Name: Sheela Thakrar
		Date: 24 Aug 09
On behalf of the Monitoring Officer	<input checked="" type="checkbox"/>	Name: Paresh Mehta
		Date: 24 Aug 09

Contact:

P Sivashankar, Licensing Service Manager, ext 6237;licensing@harrow.gov.uk

Background Papers:

Legislative Reform (Minor Variations to Premises Licences and Club Premises Certificates) Order 2009

1.	Consultation	N/a
2.	Corporate Priorities	YES

3.	Community Safety (s17 Crime & Disorder Act 1998)	YES
4.	Manifesto Pledge Reference Number	B2;D4;F2

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2009 No. 1772

LICENCES AND LICENSING

REGULATORY REFORM

**The Legislative Reform (Minor Variations to Premises Licences
and Club Premises Certificates) Order 2009**

Made - - - - *30 June 2009*

Coming into force in accordance with article 1(1)

The Secretary of State for Culture, Media and Sport makes the following Order in exercise of the powers conferred by section 1 of the Legislative and Regulatory Reform Act 2006(a) (“the Act”).

He considers that the conditions referred to in section 3(2) of the Act are, where relevant, satisfied in relation to each provision made in the Order.

He has consulted in accordance with section 13(1) of the Act.

He has laid a draft of the Order and an explanatory document before Parliament in accordance with section 14(1) of the Act.

Pursuant to section 15 of the Act, the super-affirmative resolution procedure (within the meaning of Part 1 of the Act) applies in relation to the making of the Order.

The period of 60 days referred to in section 18(2) of the Act has expired.

In accordance with section 18(2) of the Act he has had regard to any representations, resolutions and recommendations made during that period and in particular to the Second Report of Session 2008-09 of the Delegated Powers and Regulatory Reform Committee (published on 22 January 2009) and the Second Report of Session 2008-09 of the House of Commons Regulatory Reform Committee (published on 29 January 2009).

In accordance with section 18(7) of the Act he has laid a revised draft Order before Parliament together with a statement.

In accordance with section 18(8) of the Act, the revised draft Order has been approved by resolution of each House of Parliament.

(a) 2006 c. 51; section 1(6) was amended by SI 2007/1388.

Citation, commencement and extent

1.—(1) This Order may be cited as the Legislative Reform (Minor Variations to Premises Licences and Club Premises Certificates) Order 2009 and comes into force—

- (a) for the purpose of making regulations pursuant to section 17(5)(a) and 71(6)(a) of the Licensing Act 2003(a) (as applied by sections 41A(4) and 86A(4) of that Act), on the day after the day on which it is made;
- (b) for all other purposes on the twenty-eighth day after it comes into force as specified in subparagraph (a).

(2) This Order extends to England and Wales only.

Amendment of the Licensing Act 2003: premises licences

2.—(1) The Licensing Act 2003 is amended as follows.

(2) After section 41, insert—

“Variation of licences: minor variations

41A Application for minor variation of premises licence

(1) Subject to subsection (3), the holder of a premises licence may apply under this section (instead of under section 34) to the relevant licensing authority for variation of the licence.

(2) Subsection (1) is subject to regulations under—

- (a) section 54 (form etc. of applications etc.);
- (b) section 55 (fees to accompany applications etc.).

(3) An application may not be made under this section to vary a premises licence so as to—

- (a) extend the period for which it has effect,
- (b) vary substantially the premises to which it relates,
- (c) specify an individual as the premises supervisor,
- (d) add the supply of alcohol as an activity authorised by the licence,
- (e) authorise—
 - (i) the supply of alcohol at any time between 11pm and 7am, or
 - (ii) an increase in the amount of time on any day during which alcohol may be sold by retail or supplied, or
- (f) include the alternative licence condition referred to in section 41D(3).

(4) The duty to make regulations imposed on the Secretary of State by subsection (5)(a) of section 17 (advertisement etc. of application) applies in relation to applications under this section as it applies in relation to applications under that section.

41B Determination of application under section 41A

(1) This section applies where the relevant licensing authority receives an application made under section 41A.

(2) In determining the application the authority must—

- (a) consult such of the responsible authorities as it considers appropriate, and
- (b) take into account any relevant representations—
 - (i) made by those authorities, or

(a) 2003 c. 17. The Licensing Act 2003 has been amended, inter alia, by the Legislative Reform (Supervision of Alcohol Sales in Church and Village Halls &c.) Order 2009 (S.I. 2009/1724) which, inter alia, inserts section 41D into that Act.

- (ii) made by an interested party and received by the authority within ten working days beginning on the initial day.

(3) If the authority considers that—

- (a) the variation proposed in the application could not have an adverse effect on the promotion of any of the licensing objectives, or
- (b) if more than one variation is proposed, none of them, whether considered separately or together could have such an effect,

it must grant the application.

(4) In any other case the authority must reject the application.

(5) A determination under this section must be made within the period of fifteen working days beginning on the initial day.

(6) If at the expiry of the period referred to in subsection (5) the authority has not determined the application—

- (a) the application is rejected, and
- (b) the authority must forthwith return the fee that accompanied the application.

(7) But nothing in subsection (6) prevents the authority, with the agreement of the applicant, from treating—

- (a) an application rejected by virtue of that subsection (“the first application”) as a new application made under section 41A,
- (b) the prescribed fee that accompanied the first application as the prescribed fee accompanying a new application, or
- (c) both.

(8) A new application of the kind referred to in subsection (7)(a) is to be treated as having been made on the date of the agreement referred to in that provision, or on such other date as is specified in the agreement.

(9) Any fee owed to an applicant under subsection (6) may be recovered as a debt due to the applicant.

(10) For the purposes of this section—

“initial day” in relation to an application means the first working day after the day on which the authority receives the application;

“relevant representations” in relation to an application means representations which are about the likely effect of the grant of the application on the promotion of the licensing objectives.

41C Supplementary provision about determinations under section 41B

(1) Where an application is granted under section 41B, the relevant licensing authority must forthwith give a notice to that effect to the applicant.

(2) The notice under subsection (1) must specify—

- (a) any variation of the premises licence which is to have effect as a result of the grant of the application, and
- (b) the time at which that variation takes effect.

(3) The time referred to in subsection (2)(b) is the time specified in the application or, if that time is before the applicant is given the notice referred to in subsection (2), such later time as the authority specifies in the notice.

(4) Where an application is rejected under section 41B, the relevant licensing authority must forthwith give a notice to that effect to the applicant.

(5) The notice under subsection (4) must include a statement by the authority of the reasons for its decision.”.

Amendment of the Licensing Act 2003: club premises certificates

3.—(1) The Licensing Act 2003 is amended as follows.

(2) After section 86, insert—

“Variation of certificates: minor variations

86A Application for minor variation of club premises certificate

(1) Subject to subsection (3), a club which holds a club premises certificate may apply under this section (instead of under section 84) to the relevant licensing authority for variation of the certificate.

(2) Subsection (1) is subject to regulations under—

- (a) section 91 (form etc. of applications etc.);
- (b) section 92 (fees to accompany applications etc.).

(3) An application may not be made under this section to vary a club premises certificate so as to—

- (a) vary substantially the premises to which it relates,
- (b) add the supply of alcohol to members or guests as an activity authorised by the certificate, or
- (c) authorise—
 - (i) the supply of alcohol to members or guests at any time between 11pm and 7am, or
 - (ii) an increase in the amount of time on any day during which alcohol may be supplied to members or guests.

(4) The duty to make regulations imposed on the Secretary of State by subsection (6)(a) of section 71 (advertisement etc. of application) applies in relation to applications under this section as it applies in relation to applications under that section.

86B Determination of application under section 86A

(1) This section applies where the relevant licensing authority receives an application made under section 86A.

(2) In determining the application the authority must—

- (a) consult such of the responsible authorities as it considers appropriate, and
- (b) take into account any relevant representations—
 - (i) made by those authorities, or
 - (ii) made by an interested party and received by the authority within ten working days beginning on the initial day.

(3) If the authority considers that—

- (a) the variation proposed in the application could not have an adverse effect on the promotion of any of the licensing objectives, or
- (b) if more than one variation is proposed, none of them, whether considered separately or together could have such an effect,

it must grant the application.

(4) In any other case the authority must reject the application.

(5) A determination under this section must be made within the period of fifteen working days beginning on the initial day.

(6) If at the expiry of the period referred to in subsection (5) the authority has not determined the application—

- (a) the application is rejected, and

(b) the authority must forthwith return the fee that accompanied the application.

(7) But nothing in subsection (6) prevents the authority, with the agreement of the applicant, from treating—

(a) an application rejected by virtue of that subsection (“the first application”) as a new application made under section 86A,

(b) the prescribed fee that accompanied the first application as the prescribed fee accompanying a new application, or

(c) both.

(8) A new application of the kind referred to in subsection (7)(a) is to be treated as having been made on the date of the agreement referred to in that provision, or on such other date as is specified in the agreement.

(9) Any fee owed to an applicant under subsection (6) may be recovered as a debt due to the applicant.

(10) For the purposes of this section—

“initial day” in relation to an application means the first working day after the day on which the authority receives the application;

“relevant representations” in relation to an application means representations which are about the likely effect of the grant of the application on the promotion of the licensing objectives.

86C Supplementary provision about determinations under section 86B

(1) Where an application is granted under section 86B, the relevant licensing authority must forthwith give a notice to that effect to the applicant.

(2) The notice under subsection (1) must specify—

(a) any variation of the club premises certificate which is to have effect as a result of the grant of the application, and

(b) the time at which that variation takes effect.

(3) The time referred to in subsection (2)(b) is the time specified in the application or, if that time is before the applicant is given the notice referred to in subsection (2), such later time as the authority specifies in the notice.

(4) Where an application is rejected under section 86B, the relevant licensing authority must forthwith give a notice to that effect to the applicant.

(5) The notice under subsection (4) must include a statement by the authority of the reasons for its decision.”.

30 June 2009

Gerry Sutcliffe
Parliamentary Under Secretary of State
Department for Culture, Media and Sport

EXPLANATORY NOTE

(This note is not part of the Order)

This Order inserts new provisions into the Licensing Act 2003 (c. 17) in exercise of the powers conferred by section 1 of the Legislative and Regulatory Reform Act 2006 (c. 51).

The new provisions establish procedures for the variation of premises licences and club premises certificates in cases where the licensing authority considers that none of the variations proposed by the holder of the licence or certificate could have an adverse effect on the promotion of any of the licensing objectives set out in section 4(2) of the 2003 Act.

The purpose of the Order is to save time, money and regulatory resources by allowing variations that could not impair the promotion of the licensing objectives to be made to premises licences and club premises certificates through a simplified and less costly procedure.

The holder of a premises licence or club premises certificate may apply to the relevant licensing authority (as defined in section 12 or 68 of the 2003 Act) for variation of the licence or certificate under the new provisions (the new sections 41A and 86A respectively). Applications will be subject to regulations made in the exercise of the Secretary of State's powers under sections 54, 55, 91 and 92 to prescribe the form and manner of making applications, the information and documents that must accompany them, and the fee to be paid to the relevant licensing authority. They will also be subject to regulations made by the Secretary of State under sections 17(5)(a) and 71(6)(a) requiring the applicant to advertise the application.

In determining an application the authority must consult such of the responsible authorities mentioned in section 13 or 69 of the 2003 Act as it considers appropriate. The authority must take into account any relevant representations made concerning the application by those authorities or by an interested party (as defined in section 13(3) or 69(3) of the 2003 Act), provided in the case of the latter that the comments are made in writing within ten working days following the date of receipt of the application by the authority. Relevant representations must be about the likely effect of the grant of the application on the promotion of the licensing objectives.

The relevant licensing authority must grant an application under the new provisions only if it considers that none of the variations proposed in the application could have an adverse effect on the promotion of any of the licensing objectives in section 4(2) of the 2003 Act. In any other case the authority must reject the application.

This procedure is in contrast to the normal procedure for the variation of a premises licence or club premises certificate, where the applicant must give notice of the application to each responsible authority, and where the application must be referred to an oral hearing in the event that an authority or interested party makes a relevant representation (see sections 34 to 40 and 84 to 86 of the 2003 Act).

An application may not be made under the new provisions if the effect of the variations proposed in it would be to extend the period for which a premises licence has effect; to vary substantially the premises to which a premises licence or club premises certificate relates; to specify (in a premises licence) an individual as the premises supervisor; to authorise the sale or supply of alcohol or to authorise the sale by retail or supply of alcohol at any time between 11pm and 7am or increase in the amount of time on any day during which alcohol may be sold by retail or otherwise supplied; or to disapply the mandatory conditions concerning the supervision of alcohol sales by a personal licence holder and the need for a Designated Premises Supervisor who holds a personal licence at community premises. Variations of these kinds must be made through the normal variations procedure set out in sections 34 to 40 (premises licences), 84 to 86 (club premises certificates), or section 41D (community premises) of the 2003 Act.

If the relevant licensing authority grants an application under the new provisions it must notify the applicant in writing, specifying the variations which are to have effect as a result and the time when they are to have effect. If an application is refused, the authority must notify the applicant in writing, giving its reasons for the refusal. The authority is required to reach its determination

within a period of fifteen working days starting on the first working day after the authority receives the application, otherwise the application is rejected and the authority must return the application fee. The authority and the applicant may agree to treat the application or the fee or both as rejected, returned and resubmitted as a new application.

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STATUTORY INSTRUMENTS

2009 No. 1772

LICENCES AND LICENSING

REGULATORY REFORM

The Legislative Reform (Minor Variations to Premises Licences
and Club Premises Certificates) Order 2009

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