

A meeting of the **LICENSING COMMITTEE** will be held in **COUNCIL CHAMBER, PATHFINDER HOUSE, ST MARY'S STREET, HUNTINGDON PE29 3TN** on **THURSDAY, 19 JANUARY 2006** on the rising of the meeting of the Licensing and Protection Panel which will commence at 2.00pm. You are requested to attend for the transaction of the following business:-

**Contact
(01480)**

APOLOGIES

1. MINUTES (Pages 1 - 2)

To approve as a correct record the Minutes of the meeting held on 20th October 2005.

**Mrs H Lack
388006**

2. MEMBERS' INTERESTS

To receive from Members declarations as to personal and/or prejudicial interests and the nature of those interests in relation to any Agenda item. Please see Notes 1 and 2 below.

3. LICENSING ACT 2003: LICENSING OF GAMING (Pages 3 - 6)

To consider a report by the Head of Administration outlining the necessary delegations to enable applications to be determined pending the implementation of the Gambling Act.

**R Reeves
388003**

4. MEMORANDUM OF UNDERSTANDING AND JOINT ENFORCEMENT PROTOCOL (Pages 7 - 18)

To receive a report by the Licensing Officer on the Memorandum of Understanding and Joint Enforcement Protocol as recommended in the guidance for the Licensing Act 2003.

**G Peck
388010**

5. LICENSING ACT 2003: REVIEW OF DCMS GUIDANCE (Pages 19 - 22)

To consider a report by the Head of Administration on a review of the statutory guidance for the Licensing Act 2003 which had been initiated by the Department of Culture, Media and Sport.

**R Reeves
388003**

6. LICENSING APPEAL: LEL CLUB, ST IVES (Pages 23 - 24)

To receive a report by the Head of Administration outlining the outcome of the first appeal against a decision by a Licensing Sub Committee at a hearing under the Licensing Act 2003 and the guidance that can be derived in respect of future hearings.

**R Reeves
388003**

7. GAMBLING COMMISSION: STATEMENT OF PRINCIPLES (Pages

25 - 26)

To receive a report by the Head of Administration on the draft Statement of Principles issued by the Gambling Commission which will govern the way in which the Commission will regulate gambling in the future.

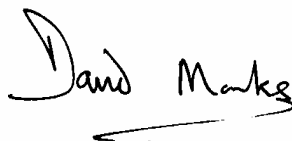
**R Reeves
388003**

8. GAMBLING ACT 2005: GUIDANCE CONSULTATION (Pages 27 - 30)

To consider a report by the Head of Administration outlining draft guidance issued by the Gambling Commission on the manner in which and the principles to be applied in exercising their functions under the Act.

**R Reeves
388003**

Dated this 12 day of January 2006

A handwritten signature in black ink that reads "David Monk". The signature is written in a cursive style with a long horizontal stroke at the end.

Chief Executive

Notes

1. *A personal interest exists where a decision on a matter would affect to a greater extent than other people in the District –*
 - (a) *the well-being, financial position, employment or business of the Councillor, a partner, relatives or close friends;*
 - (b) *a body employing those persons, any firm in which they are a partner and any company of which they are directors;*
 - (c) *any corporate body in which those persons have a beneficial interest in a class of securities exceeding the nominal value of £5,000; or*
 - (d) *the Councillor's registerable financial and other interests.*
2. *A personal interest becomes a prejudicial interest where a member of the public (who has knowledge of the circumstances) would reasonably regard the Member's personal interest as being so significant that it is likely to prejudice the Councillor's judgement of the public interest.*

Please contact Mrs H Lack, Democratic Services Officer, Tel No 01480 388006/e-mail: Helen.Lack@huntsdc.gov.uk if you have a general query on any Agenda Item, wish to tender your apologies for absence from the meeting, or would like information on any decision taken by the Committee/Panel.

Specific enquiries with regard to items on the Agenda should be directed towards the Contact Officer.

Members of the public are welcome to attend this meeting as observers except during consideration of confidential or exempt items of business.

Agenda and enclosures can be viewed on the District Council's website – www.huntingdonshire.gov.uk (*under Councils and Democracy*).

If you would like a translation of Agenda/Minutes/Reports or would like a large text version or an audio version please contact the Democratic Services Manager and we will try to accommodate your needs.

Emergency Procedure

In the event of the fire alarm being sounded and on the instruction of the Meeting Administrator, all attendees are requested to vacate the building via the closest emergency exit and to make their way to the base of the flagpole in the car park at the front of Pathfinder House.

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Agenda Item 1

HUNTINGDONSHIRE DISTRICT COUNCIL

MINUTES of the meeting of the LICENSING COMMITTEE held in the Council Chamber, Pathfinder House, St Mary's Street, Huntingdon PE29 3TN on Thursday, 20th October 2005.

PRESENT: Councillor J M Sadler – Chairman.

Councillors J T Bell, J D Fell,
Mrs K P Gregory, R Powell, R G Tuplin and
J S Watt.

APOLOGIES: Apologies for absence from the meeting were submitted on behalf of Councillors A Hansard, D Harty, I R Muir and J Taylor and Mrs M Wheeler.

12. MINUTES

The Minutes of the meeting of the Committee held on 21st June 2005 were approved as a correct record and signed by the Chairman.

13. MEMBERS' INTERESTS

No declarations were received.

14. LICENSING ACT 2003 – PROGRESS TOWARDS IMPLEMENTATION

The Committee received and noted a report by the Head of Administration (a copy of which is appended in the Minute Book) on progress to date with the implementation of the Licensing Act 2003 and the work still to be undertaken. Members were acquainted with the number of licences processed, the level of income received and the staffing implications, together with an assessment of the potential number of premises for which a licence had not yet been sought.

The Committee was also informed that with effect from 10th November 2005, the provisions of the Act relating to Temporary Events Notices would come into force and additional responsibilities would transfer to the Council concerning gaming machines in licensed premises. Finally, the Committee was informed of developments relating to an appeal by a licensee following a refusal by a sub-committee to grant a variation of a premises licence.

RESOLVED

that the contents of the report be noted.

Chairman

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**LICENSING ACT 2003
LICENSING OF GAMING
(Report by Head of Administration)**

1. INTRODUCTION

- 1.1 The Licensing Act 2003 has amended certain aspects of the Gaming Act 1968 and the Lotteries and Amusements Act 1976 and transferred responsibility to the District Council from the courts for the licensing of gaming machines and prize gaming and for the playing of games on premises licensed for the sale of alcohol.
- 1.2 Pending the implementation of the Gambling Act 2005 which is anticipated with effect from September 2007, the Committee is required to have in place the necessary delegations etc. to enable applications to be determined.

2. LICENSABLE ACTIVITIES

- 2.1 The Act transfers responsibility to the District Council with effect from 24th November 2005 for the licensing of the following activities in premises with a premises licence:-
- gaming machines
prize gaming permits (prize bingo)
the playing of certain games for the purpose of gaming.
- 2.2 The Council is currently responsible for licensing both gaming machines and prize bingo in premises without a justices on-licence, the former usually comprising cafes, take away food outlets, private hire waiting rooms etc. There are no premises currently licensed for prize bingo. The responsibility for licensing gaming machines in clubs will remain with the magistrates courts until such time as the Gambling Act is enacted.
- 2.3 DCMS Gambling Circular 13 explains the transitional arrangements for the transfer of responsibility to the Council. Existing permits will continue to operate for the remainder of any unexpired term of 3 years and any orders issued by the courts for the playing of games will remain valid. A report will be given to the Committee when it is clear how many permits and orders have been issued by the local magistrates and will transfer.
- 2.4 The 2003 Act also defines the licensing of the Council's responsibilities under the Gaming Act 1968 and the Lotteries and Amusements Act 1976 as licensing activities for the purposes of the Licensing Act 2003 which means that they fall within the remit of the Licensing Committee and not the Licensing and Protection Panel.

3. DELEGATIONS

- 3.1 The DCMS circular expects that the majority of decisions to be made in determining applications for the grant or renewal of permits and in making orders will be delegated to officers, although there will need to be a mechanism for hearing representations and to afford an applicant an

opportunity to appear before a Sub Committee in the event of officers being minded to refuse an application.

- 3.2 Statutory fees apply to the licensing of gaming machines and prize gaming permits and there is no fee payable for applications for orders for the playing of certain games. The Council does not have any enforcement responsibilities under the Acts which are matters for the Police and the Gaming Board. For this reason, the Council's officers have no powers of entry under the legislation.

4. CONCLUSION

- 4.1 The arrangements for gambling in this country will be changed substantially by the Gambling Act in 2007 but in the interim, the Council will become the licensing authority for all gaming machines in the District (with the exception of those in clubs), for prize gaming and for making orders for gaming on licensed premises. Although the transfer is likely to be time consuming in terms of the transfer of records from the courts, it will be possible to absorb the grant and renewal of permits within existing resources funded by the permit fees.
- 4.2 New delegations are also required both for the new licensing functions and for the existing ones transferred from the Licensing and Protection Panel.

5. RECOMMENDATIONS

- 5.1 It is therefore

RECOMMENDED

- (a) that the Head of Administration (or in his absence the Central Services Manager) be authorised to determine applications for the grant and renewal of permits for gaming machines under section 34 of the Gaming Act 1968 and for prize gaming under section 16 of the Lotteries and Amusements Act 1976;
- (b) that, in the event of objections being received or in cases where the Head of Administration (or in his absence the Central Services Manager) is minded to refuse an application, the Licensing Sub Committee be authorised to determine applications for the grant or renewal of permits for gaming machines under section 34 of the Gaming Act 1968 and for prize gaming under section 16 of the Lotteries and Amusements Act 1976;
- (c) that the Head of Administration (or in his absence the Central Services Manager) be authorised to make and vary orders for the playing of certain games on premises with a premises licence under section 6 of the Gaming Act 1968; and
- (d) that, in the event of objections being received or in cases where the Head of Administration (or in his absence the Central Services Manager) is minded to refuse or vary an application or to revoke an order, the Licensing Sub Committee be authorised to hold a hearing and to determine the application or revoke the order for the playing of certain games on premises with a premises licence under section 6 of the Gaming Act 1968.

Background papers

DCMS Gambling Circular 13 dated 10th October 2005.

Contact Officer: Roy Reeves
Head of Administration
Tel: (01480) 388003

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LICENSING COMMITTEE

19TH JANUARY 2006

**LICENSING ACT 2003
MEMORANDUM OF UNDERSTANDING AND
JOINT ENFORCEMENT PROTOCOL
(Report by the Licensing Officer)**

1. INTRODUCTION

- 1.1 At the Licensing Committee meeting held on 19th January 2004 Members were advised of the requirement under the Licensing Act 2003 for licensing authorities and responsible authorities to agree a Memorandum of Understanding and Joint Enforcement Protocol. Members were invited to comment on the draft document.

2. INFORMATION

- 2.1 Agreement has now been reached between licensing authorities within Cambridgeshire, their respective legal departments and all responsible authorities. The Protocol, a copy of which is attached as an Appendix, covers such matters as the sharing of intelligence, communication, data protection, exchange of information, investigation of offences and prosecution.

3. RECOMMENDATION

- 3.1 It is recommended

that the Members approve the contents of the Protocol and authorise the Chief Executive to sign the document on behalf of the licensing authority.

BACKGROUND PAPERS

Licensing Act 2003
Guidance issued under Section 182 of the Act
Draft Memorandum attached

Contact Officer: G Peck, Licensing Officer
 (01480) 388010

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Licensing Act 2003

Memorandum of Understanding and Joint Enforcement Protocol signed between Huntingdonshire District Council (the Licensing Authority) and

- 1. Cambridgeshire Constabulary**
- 2. Cambridgeshire & Peterborough Fire & Rescue Authority**
- 3. Cambridgeshire County Council Trading Standards Service**
- 4. Cambridgeshire County Council Child Protection Service**
- 5. Huntingdonshire District Council Environmental Health and Planning Services.**

1. The above statutory organisations are the Parties to this Memorandum of Understanding and Joint Enforcement Protocol.
2. Huntingdonshire District Council and Cambridgeshire Constabulary, Cambridgeshire & Peterborough Fire & Rescue Authority and Cambridgeshire County Council aim to provide safe environments for the community of Cambridgeshire.
3. The Licensing Act 2003 introduces a new regime for the licensing of a variety of activities, including places where alcohol is sold and entertainment is provided. It sets out four equal licensing objectives which are to be promoted by licensing authorities, in conjunction with other “responsible authorities”, as defined by the Act, and the holders of licences. The Act also defines other bodies as responsible authorities, with rights of consultation and objection to applications, but it is not thought that formal agreements will be required with these bodies.

These are –

- (a) The prevention of crime and disorder.
 - (b) The promotion of public safety.
 - (c) The prevention of public nuisance.
 - (d) The protection of children from harm.
4. Each Party has enforcement responsibilities in relation to premises licensed under the Act and recognises the importance of effective co-operation and liaison to ensure that premises licence holders, designated premises supervisors, personal licence holders and club premises certificate holders understand and comply with the law.
 5. The Government has strongly recommended that protocols be set up between authorities and this document has been prepared with that in mind.

6. The purpose of this document is to ensure efficient and effective co-operation between agencies when dealing with areas of mutual interest, to secure -
- (a) High levels of open communication between agencies.
 - (b) Clear lines of responsibility regarding enforcement of the law.
 - (c) Sharing intelligence, where appropriate to enable effective enforcement of the law.

It sets out the steps that have been agreed to achieve that aim, in accordance with guidance issued by the Office of the Deputy Prime Minister (ODPM).

7. **Communication**

- 7.1 Good communication between agencies is vital to ensure that information of mutual interest is shared effectively and, in particular, where responses are required within a tight timescale to meet statutory periods for determination of applications, that deadlines can be met. It is important that each organisation has a reliable contact point, and will identify nominated officers and their deputies. There must be a clear understanding about when, where and how contact shall be made, including for emergencies.

8. **Sharing Intelligence**

- 8.1 The parties to this Memorandum of Understanding need to share information about premises and people currently licensed or proposed to be licensed, in such a way as to enable the effective operation of the licensing process. This agreement enables the sharing of information by all parties in compliance with the rules on Data Protection, Freedom of Information and Human Rights.

9. **Data Protection and Exchange of Information**

- 9.1 Section 185 of the Licensing Act 2003 states that the licensing authority and responsible authorities may share information for the purpose of “facilitating the exercise of the Authority’s functions under this Act”. Information should not be further disclosed except to a licensing authority or responsible authority and only for the purpose mentioned above.
- 9.2 Section 29 of the Data Protection Act 1998 allows for the exchange of information for the purposes of the prevention of crime or the apprehension of offenders.
- 9.3 Section 115 of the Crime and Disorder Act 1998 enables information to be exchanged between authorities.
- 9.4 Parties to this Protocol may disclose information to other Parties for these purposes providing that the local Protocols applicable to each organisation for data protection are observed. Every request for information under the Act must be made in writing giving reasons why disclosure is necessary.
- 9.5 Information supplied must only be used for the purpose for which it is obtained, must be securely retained whilst in the possession of the responsible authority that has requested it, and must be securely disposed of

when no longer required. It must not be further transmitted to a third party without the consent of the original authority that supplied the information.

- 9.6 This part of the Protocol may be supplemented by any Memorandum of Understanding on data exchange agreed either at a local or national level.

10. Indemnity

- 10.1 The signatories to this Memorandum of Understanding are all committed to the sharing of information to prevent and detect crime. As all signatories to this agreement are also signatories of the Cambridgeshire Partnership Information Exchange Protocol for Crime and Disorder, misuse of information provided within this Agreement will invoke the cover provided within the indemnity within the above protocol.

11. Enforcement Action

- 11.1 Enforcement action taken in respect of breaches of legislation will remain the responsibility of the agency designated for each piece of legislation, but the outcome of such action should be fed into the process for determining applications and reviewing the status of licences currently in force.
- 11.2 The Licensing Act does not transfer from any enforcement body, including the Police or the Fire Authority, powers of enforcement for any pieces of legislation. From time to time, however, it may be expedient for joint operations to be carried out in respect of licensed premises by officers from the licensing authority and officers from one or more of the relevant responsible authorities.
- 11.3 Joint operations will normally be conducted on the basis of a risk assessment applied to all licensed premises, or in response to specific complaints. Responsibility for seeking a joint operation will rest with the responsible authority with the expertise in dealing with the complaint in question (e.g. the Environmental Health Service for prevention of nuisance; the Fire & Rescue Service for fire risk issues).

12. Relevant Legislation

- (a) **Licensing Act 2003** – provides a clear focus on the promotion of the licensing objectives; introduces better and more proportionate regulation to give customers more choice, whilst providing the necessary protection for local residents and others.
- (b) **Police Act 1964** – imposes a primary responsibility on the Police Authority to maintain an adequate and effective Police Force.
- (c) **Fire & Rescue Services Act 2004** – places a duty on the Fire Authority to provide efficient arrangements for the giving, when requested, of advice in respect of buildings and other property as to fire prevention, restricting the spread of fires and means of escape in case of fire.
- (d) **Crime & Disorder Act 1998** – places a statutory requirement on Police Services, Local Authorities and other agencies to tackle crime and disorder by working in partnership.

13. Offences

13.1 The Parties agree that the prime responsibility for enforcing the offences under the Act should lie as follows:

Note: Abbreviations as follows –

LA = Licensing Authority
 CPC = Club Premises Certificate
 DPS = Designated Premises Supervisor
 PLH = Premises Licence Holder
 AO = Authorised Officer

Section	Offence	Authority
33 (6)	Failure to notify LA of change of name or address PLH or DPS	LA
40 (2)	Failure to notify existing DPS of variation to premises licence to exclude them	LA
41 (5)	Failure to provide premises licence to LA upon removal of DPS	LA
46 (4)	Failure to notify DPS of application for transfer of premises licence	LA
49 (5)	Failure to notify DPS of grant of interim authority notice	LA
56 (3)	Failure to provide premises licence at request of LA for amendment	LA
57 (4)	Failure to keep or display premises licence on premises	LA
57 (7)	Failure to produce premises licence to an AO for examination	LA
59 (5)	Obstruction of an AO entering premises to inspect before grant of a licence, review or a statement	LA
82 (6)	Failure to notify of change of name or alteration of rules of a club	LA
83 (6)	Failure to notify of a change of registered address of club	LA
93 (3)	Failure to produce CPC for amendment within 14 days of LA request	LA
94 (5, 6, 9)	Duty to keep, display and produce club premises certificate at premises	LA
96 (6)	Inspection of premises before grant etc of club premises certificate	LA

108 (3)	Obstruction of an AO in inspecting temporary event premises	LA or Police
109 (4)	Failure to keep or display temporary event notice on premises	LA
109 (8)	Failure to produce temporary event notice to an AO	LA
123 (2)	Failure to notify LA of conviction for relevant offence during application or renewal period	LA
127 (4)	Failure to notify LA of change of name or address of personal licence holder	LA
128 (6)	Fail to notify court of personal licence or "notifiable event" when being dealt with for a relevant offence	Police or LA
132 (4)	Failure to notify LA of conviction for relevant or foreign offence	LA
134 (5)	Failure to produce personal licence within 14 days to LA for updating	LA
135 (4)	Failure to produce personal licence to an AO whilst on premises to sell or authorise sale of alcohol	LA or Police
136 (1)	Allowing licensable activities otherwise than in accordance with an authorisation	LA or Police
137 (1)	Unauthorised exposure for retail sale of alcohol	LA or Police
138 (1)	Unauthorised possession of alcohol with intent to sell or supply	LA or Police
140 (1)	Allowing disorderly conduct on licensed premises	Police or LA
141 (1)	Sale or supply of alcohol to person who is drunk	Police or LA
142 (1)	Obtaining alcohol for a person who is drunk	Police or LA
143 (1)	Failure to leave licensed premises following a request from a PC or AO	Police
144 (1)	Keeping unlawfully imported goods on relevant premises	Police or Customs and Excise
145 (1)	Allowing unaccompanied children under 16 on relevant premises when alcohol is being supplied	LA or Police

146 (1, 2, 3)	Sale or supply of alcohol to children under 18	LA, Police or Trading Standards
147 (1, 3)	Allowing sale or supply of alcohol to children under 18	LA, Police or Trading Standards
148 (1, 2)	Sale or supply of liqueur confectionery to children under 16	LA or Police
149 (1, 3, 4)	Purchase or supply of alcohol by or on behalf of children under 18	LA or Police
150 (1, 2)	Consumption on relevant premises of alcohol by children under 18, or knowingly allowing it to occur	LA or Police
151 (1, 2, 4)	Delivering or permitting others to deliver alcohol to children under 18	LA or Police
152 (1)	Sending a child under 18 to obtain alcohol for consumption	LA or Police
153 (1)	Permitting children under 18 to sell or supply alcohol children	LA or Police
156 (1)	Sale of alcohol in or from a moving vehicle	Police
158 (1)	False statement in connection with a licensing application	LA
160 (4)	Keeping premises open in contravention of an area closure order	Police or LA
161 (6)	Permitting premises to be open in contravention of a premises closure order	Police or LA
165 (7)	Permitting premises to be open in contravention of a Magistrates' closure order	Police or LA
179 (4)	Obstructing entry by a PC or an AO to premises to check on the carrying out of licensable activity	Relevant responsible authority

14. Investigation of Offences

14.1 When the licensing authority or a responsible authority has become aware of an offence and would like another more appropriate responsible authority (or the licensing authority) to take formal action, they will take the following steps:

- (a) early discussion with the appropriate authority, including (unless in cases of extreme urgency) the licensing authority's enforcement officer;
- (b) supply the relevant authority in a timely manner all of the relevant evidence (whether subsequently used or unused);

- (c) set out in writing details of the offence and request that the relevant authority take action.
- 14.2 Once in receipt of a written request to take action the appropriate authority will:
- (a) assess the facts and take appropriate action in accordance with its own enforcement policy. The appropriate authority will, unless immediate action is required, commence an investigation within a maximum of 15 working days of receipt of the complaint;
 - (b) inform the authority that initiated the complaint, and any other relevant authority, of the action taken, and reasons why.

15. Responsibility for Prosecutions

- 15.1 Section 186 of the Act provides that proceedings for offences under the Act may be instituted by:
- (a) the Licensing Authority;
 - (b) the Director of Public Prosecutions;
 - (c) for offences under Ss. 146 and 147, the Local Weights and Measures Authority
- 15.2 It is expected that the Police and the Weights & Measures Authority will normally bring proceedings, including the issue of formal cautions, as a result of offences which they have investigated, unless, in the case of some minor offences, it is specifically agreed that the Licensing Authority will do so. (This may, for example, be part of a prosecution which relates to a series of matters of which the offences form part).
- 15.3 In all other cases, the Licensing Authority will be the prosecuting authority.

16. Notification of Prosecutions and Cautions

- 16.1 Notwithstanding the duty of the court in section 131 (duty to notify the Licensing Authority of convictions) the appropriate prosecuting authority will inform the Licensing Authority within five working days of any conviction or caution under the Act.
- 16.2 The Licensing Authority for these purposes is the Licensing Authority that issued the personal licence, premises licence, club premises certificate or which received the temporary event notice, even if not a party to this Protocol.
- 16.3 The notification shall be in writing and shall state:
- (a) the name and address of the person convicted or cautioned;
 - (b) the nature and date of the conviction or caution; and
 - (c) the details of any conviction including any order under section 129 of the Act.

17. Register of Cautions

- 17.1 The Licensing Authority will maintain a register of formal cautions issued to holders of personal licences, premises licences, club premises certificates or persons issuing a temporary event notice.

18. Liaison between Parties to this Agreement

- 18.1 Liaison meetings will take normally place between the Licensing Authority and the Police on a monthly basis, depending on the nature and quantity of business and with other responsible authorities on a basis to be agreed, but not less than annually.
- 18.2 Responsible Authorities will determine the basis for liaising with each other, but this will be not less than annually.

19. Consultation on Applications

- 19.1 Applicants for licences have a duty to send copies of applications to the appropriate responsible authorities at the same time as the application is submitted to the Licensing Authority. If this is not done, the application may be returned, as not duly made.
- 19.2 The Licensing Authority will communicate with all responsible authorities on a regular basis, to check that all relevant copies of applications have been received.
- 19.3 Responsible Authorities have a maximum of 28 days to raise representations to licences, where they consider that the operating schedule does not address sufficiently one or more of the licensing objectives.
- 19.4 Representations should include suggestions for conditions which would overcome the perceived shortcomings of the application.
- 19.5 Responsible Authorities are encouraged to contact applicants to discuss areas of concern, so that the opportunity to amend applications in advance of the date set by the Licensing Authority for a hearing. If this is successfully achieved, **and the Licensing Authority receives written confirmation of the amendments from the applicant**, a representation can be withdrawn, and this may obviate the need for a hearing.

20. Applications for Review of a Licence

- 20.1 This document recognises the right of any responsible authority to apply to the Licensing Authority for a licence or club premises certificate to be reviewed at any time.
- 20.2 Except in extreme cases (where there has been a serious incident of crime and disorder, a serious risk to public safety, a serious incident of public nuisance or a serious incident related to the protection of children from harm) the responsible authority seeking a review will be expected to:
- (a) give an early indication to the Licensing Authority of the events requiring an application;

- (b) seek an informal resolution to the matter if possible or appropriate;
- (c) be able to demonstrate to the Licensing Committee hearing the application for a licence review that, where appropriate, alternative approaches to dealing with the situation leading to the application have first been attempted, in accordance with the authority's enforcement policy.

21. Procedural Review

21.1 All parties to this agreement shall periodically review this document to ensure that it maintains a suitable response and working arrangement for all licensing functions and achieves necessary feedback to assist in meeting the statutory objectives. It is suggested that the first review should take place not later than one year following the Second Appointed Day.

Signed:
 ‡David Monks
 Chief Executive
 Huntingdonshire District Council
 (Licensing Authority and Environmental Health & Planning Services)

Date:

Signed:
 ‡
 Cambridgeshire Constabulary

Date:

Signed:
 ‡
 Cambridgeshire & Peterborough Fire & Rescue Authority

Date:

Signed:
 ‡
 Cambridgeshire County Council (Trading Standards Service)

Date:

Signed:
‡
Cambridgeshire County Council (Child Protection Service)

Date:

LICENSING COMMITTEE

19TH JANUARY 2006

LICENSING ACT 2003 REVIEW OF DCMS GUIDANCE

(Report by Head of Administration)

1. Introduction

- 1.1 The Department of Culture, Media and Sport have begun a two stage review of the statutory guidance to licensing authorities that they are required to publish under the Licensing Act 2003. The initial review will be completed by March 2006 and will focus on providing clarification or additions to the Guidance on issues where there is a high degree of consensus among stakeholders, including matters raised during the transitional period. Views will only be invited from licensing authorities and other key stakeholders. It is intended that supplementary Guidance will be laid before Parliament in early spring, 2006.
- 1.2 In parallel with the initial review, the DCMS will be conducting a comprehensive formal review of the Guidance, including full public consultation, which will be completed by summer 2006. Following consideration of the responses, a revised version of the Guidance will be laid before Parliament by the end of 2006.
- 1.3 Comments are invited on the Guidance with a closing date of 17th February 2006.

2. The Guidance

- 2.1 The Committee will be familiar with some of the difficulties that were encountered in implementing the Licensing Act throughout the previous year. Some of those were unique to the transitional period but others are more fundamental. Some have emerged from the practicalities of situations that were not foreseen when the Guidance was originally published. Although some of these can be addressed by variations to the Guidance, others require changes to the Act itself or the secondary regulations.
- 2.2 Issues that can be addressed in revisions to the Guidance, a copy of which has been supplied previously to all members of the Committee, are summarised below.

3. Authorisation of Alcohol Supplies

- 3.1 It is a mandatory condition of a premises licence permitting the supply of alcohol that every supply of alcohol must be made or authorised by a person who holds a personal licence. The Guidance simply says that not every person retailing alcohol at premises licensed for that purpose needs to hold a personal licence but that every sale or supply must be at least authorised by such a personal licence holder.
- 3.2 Questions have arisen during the transitional period as to the extent to which a personal licence holder may 'authorise' a sale. For example, can an area manager of a supermarket group or pub chain personally authorise sales at various shops or pubs in the area? Can a designated premises supervisor authorise a sale if he is on an extended holiday elsewhere or, in the case of a

village hall, if the premises are let to a third party for a function? Amendments to the Guidance to address these issues would be welcome.

4. Definition of Premises

- 4.1 The Act requires a premises licence to be granted for any premises used for a licensable activity. Premises are defined as any place, including a vehicle, vessel or moveable structure. Although the Guidance advises on sports stadia with closing roofs, vessels, airports, ports, vehicles, trains and aircraft, it is silent on the definition of 'place'. This can lead to problems in terms of activities in the open air, especially when this involves temporary events. If, for example, alcohol is sold in a beer tent at a larger function, is it the tent only that requires licensing or the larger event? How should an event such as a Christmas lights switch-on be dealt with when there are different licensable activities taking place at different parts of a town? How should the sale of wine at a continental market stall be dealt with when the numbers at the market may well exceed the limit for a temporary events notice? Again advice in the Guidance would be helpful.

5. Licensing of Public Land

- 5.1 The Guidance invites local authorities to establishing a policy of seeking premises licences from the licensing authority for public spaces within the community in their own name to ensure that cultural diversity thrives. This could include village greens, market squares and similar public areas. Similar questions arise here with the definition of place and how operating schedules can be prepared which can deal with future possible scenarios. Further and better guidance is required.

6. Carol Singing

- 6.1 Regulated entertainment is exempt at religious services and places of worship. The same exemption does not apply to carol singing and the playing of festive music. The DCMS have suggested that people who sing carols spontaneously or who go from door to door do not require a licence. However if a band or choir play carols in a supermarket entrance or shopping mall, this would be no different to any other form of musical entertainment and would require licensing or the service of a temporary events notice. This created some confusion and adverse comment prior to last Christmas and advice should be incorporated in the Guidance for clarity.

7. Conditions

- 7.1 The Guidance contains a pool of suggested licensing conditions to promote the licensing objectives. As conditions could only be attached to licences if they were offered in operating schedules or to address representations from responsible authorities and interested parties, few applicants chose voluntarily to include conditions in their operating schedules that might restrict their activities. As a result many of the conditions that were proposed by applicants were meaningless and unenforceable. As few representations were received from responsible authorities, there proved little opportunity to include any of the conditions from the guidance in the licences that were granted. If the legislation restricts the ability of a licensing authority to attach licence conditions, the Guidance should be clearer as to the risk assessment

that should be carried out by applicants before completing their application and the conditions to be volunteered to promote the licensing objectives.

8. Opening Times

- 8.1 A licence is required for the supply, not the consumption, of alcohol. However application forms require opening times of premises to be listed and the same information must be shown in the licences issued. The Guidance also requires an operating schedule to include a description of the style and character of the business to be conducted, including areas such as a garden where consumption will take place, even though this is not a licensable activity. Clarity is required as to the requirements for opening times to be shown and for areas to be defined where no licensable activities will take place.

9. Conclusion and Recommendation

- 9.1 The Guidance issued has been useful but the DCMS should use this opportunity to provide clarity both for licensing authorities and those involved in the industry on some of the more practical issues that have arisen during the course of the past twelve months since the first appointed day.
- 9.2 The Committee are therefore

RECOMMENDED

to endorse the comments contained in this report on the statutory Guidance, together with any other issues that Members may wish to raise.

BACKGROUND PAPERS

Statutory Guidance issued by the DCMS

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**LEL CLUB, ST IVES
LICENSING APPEAL**

(Report by Head of Administration)

1. Introduction

- 1.1 The Committee's attention is drawn to the outcome of the first appeal against a decision by a Licensing Sub Committee at a hearing under the Licensing Act 2003 and the guidance that can be derived in respect of future hearings

2. The Case

- 2.1 At a hearing held on 31st August 2005, a Sub Committee refused an application by the LEL Club in St Ives for an extension of hours until 4.00 a.m. on Thursdays to Sundays inclusive by way of a variation of a premises licence that was submitted at the same time as an application for conversion. The application had attracted representations from persons living in the vicinity of the premises but none had been received from the Police or any other responsible authority. The Sub Committee formed the conclusion that the evidence supported the genuine concern and nuisance experienced by the interested parties and that the applicant had failed to demonstrate measures that would alleviate the problems. An extension of the licensing hours would extend the period of nuisance and therefore failed to meet the licensing objective for the prevention of public nuisance.

- 2.2 The appeal against the Sub Committee's decision was based upon six grounds -

- the hearings procedure was unfair in that the fact that each party was allowed an equal time to present its case discriminated against the applicant;
- the Sub Committee failed to have proper regard to the nature of the application and the operating schedule;
- the Sub Committee failed to take proper account of the measures implemented by the licence holder to meet the licensing objectives
- the Sub Committee gave too much weight to the written representations;
- the Sub Committee gave too much weight to the oral representations at the hearing; and
- the Sub Committee failed to take account of the fact that no representations had been received from the Police and that the premises had remained open until 4.00 a.m. on bank holidays in previous years without representations by the Police or licensing justices.

3. The Appeal

- 3.1 The appeal was heard de novo by 3 Huntingdonshire Magistrates sitting at Peterborough Magistrates Court on 13th December 2005.
- 3.2 It was argued by the appellant's Solicitor that the Council had failed to implement the concept and implications of the legislation in the way in which the hearing had been conducted and a decision reached. Reference was made, at length, to the terminology used in the decision letter, notwithstanding that it was accepted that the proper course of action for the Council's procedures to be challenged was by way of judicial review.

3.3 The Council called two local residents to give evidence about the problems experienced by persons living in the vicinity of the premises. The licence holder and premises manager appeared as witnesses for the appellant.

4. The Decision

4.1 After hearing evidence and representations for almost 4 hours, the Magistrates retired for over 1 hour before announcing their decision to reject the appeal and uphold the decision of the Council. In their reasons, the Magistrates acknowledged that the premises were well run and that the management had taken what action they could to prevent any nuisance being caused to interested parties by customers of the Club. However, the Magistrates found evidence of public nuisance and described as basic common sense the fact that the problems were caused by customers of the LEL Club. They did not accept that a solution could be identified in the short term and that an extension of hours would only add to the major problems experienced by the interested parties. The Magistrates did not address the issues raised by the appellant's Solicitor in terms of the Council's procedures.

5. Conclusion and Recommendation

5.1 It is clear that the Council's procedures were not questioned by the Magistrates, although care does need to be exercised in the wording of the reasons for a Sub Committee's decision and the notification letter to an applicant. Notwithstanding the standard of management of licensed premises, the Magistrates found that the behaviour of customers outside premises can be regarded as public nuisance and taken into consideration if there is evidence that this is causing problems for interested parties living in the vicinity.

5.2 The Committee are

RECOMMENDED

to note the content of this report and welcome the decision of the Magistrates.

Background Papers

LEL Club, St Ives file held under the Licensing Act 2003

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LICENSING COMMITTEE

19TH JANUARY 2006

GAMBLING COMMISSION STATEMENT OF PRINCIPLES

(Report by Head of Administration)

1. Introduction

- 1.1 Launched on 1st October 2005, the Gambling Commission is charged with implementing and overseeing a rigorous new regulatory regime for commercial gambling in this country. Shortly after its inception, the Commission published the first of their consultation documents, containing a draft Statement of Principles which will govern the way in which the Commission will regulate gambling in the future. Comments on the document (which can be found in full on the Commission's website at http://www.gamblingcommission.gov.uk/UploadDocs/Contents/Documents/Statement_of_%20principles.pdf) are invited with a closing date of 27th January 2006.

2. Statement of Principles

- 2.1 The high level principles contained in the Statement will serve as the Commission's main public statement of their approach to regulation. The majority of the draft Statement relates to the manner in which the Commission will fulfil its duty to pursue the three licensing objectives contained in the Gambling Act 2005 and the processes to be established for dealing with the licensing of operators and persons employed in the industry. Separate consultation exercises will be undertaken on the statutory guidance and codes of practice that the Commission will issue under the Act and these will be brought to the Committee's attention as they arise. To that extent, comments are not suggested on most aspects of the draft Statement
- 2.2 Those elements of the document that do relate specifically to licensing authorities and their role in the licensing of premises are referred to below.

3. Prevention of Disorder

- 3.1 The first of the licensing objectives in the Act is to prevent gambling from being a source of crime or disorder, being associated with crime or disorder or being used to support crime. The Commission suggest that issues arising from the prevention of disorder are likely to focus on premises. They do not think that it would be appropriate for the Commission to offer detailed guidance as to what should be taken into account by licensing authorities in this respect as authorities already are experienced in making judgements about the suitability of premises, particularly those licensed under the Licensing Act 2003. Authorities can impose licensing conditions, including a requirement for door supervision and for those supervisors to be registered with the Security Industry Authority. To some extent this may conflict with conditions imposed by the Commission in ensuring that operators carry out gambling in an orderly fashion.
- 3.2 The Commission have invited views on any other measures that they might take to prevent gambling from being a source of disorder and in giving guidance to licensing authorities on the requirements for door supervision in the interests of consistency and the dissemination of best practice. It is

suggested that the Commission's approach to leaving the prevention of disorder to licensing authorities should be supported. Although guidance on door supervision would be welcome in the interests of consistency, authorities should be able to depart from the guidance where there are considered to be sound reasons for doing so. The Commission should also ensure that in issuing guidance, there is a clear distinction between the respective roles of the Commission and authorities in the licensing of operators and premises and the conditions that can be imposed in the promotion of the licensing objective.

4. Protection of Children

- 4.1 The first element of the third licensing objective is the protection of children from being harmed or exploited by gambling. The Commission have indicated that they will issue guidance to licensing authorities about ensuring that gambling premises are planned in such a way that access by children can be prevented. Persons operating premises will be required to take appropriate measures to promote the objective by, for example, supervision of entrances, internal supervision, internal segregation of gambling areas and training of staff. It is suggested that the Commission's intention to issue guidance be welcomed but that the guidance should clarify the respective roles of the Commission and authorities in attaching conditions to licences to avoid potential duplication or conflict.

5. Partnership

- 5.1 The Commission aim to establish effective working relationships with licensing authorities, the gambling industry and others and have invited comments on the most effective means of engaging with authorities and obtaining feedback from them. It is suggested that the Commission's intention be supported and that there should be liaison meetings with representatives of licensing authorities, possibly on a regional basis, together with regular newsletters, updates and consultation.

6. Conclusion and Recommendation

- 6.1 Much of the draft Statement of Principles is of indirect relevance only to licensing authorities and the Commission's proposals with regard to authorities will be addressed in consultation on the issue of statutory guidance and codes of practice. Those elements of the Statement that do apply directly are referred to above and the Committee are

RECOMMENDED

to endorse the comments suggested in this report.

Background Papers

Gambling Commission Statement of Licensing Principles.

Contact Person

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GAMBLING ACT 2005

(Report by Head of Administration)

1. Introduction

- 1.1 The Gambling Act 2005, comprising 362 sections and 18 schedules received Royal Assent in April 2005. Current expectations are that the Act will be brought fully into effect on 1st September 2007 and that licensing authorities will begin to accept applications for licences from 31st January 2007.
- 1.2 The Act represents a further major transfer of functions to local authorities, with the Council becoming responsible for the licensing of various forms of gambling that currently are dealt with by the magistrates courts. Other aspects of gambling will be regulated by the Gambling Commission which in October 2006 superseded the Gaming Board. The Act requires the Gambling Commission to issue guidance to licensing authorities on the manner in which and the principles to be applied in exercising their functions under the Act.

2. Consultation

- 2.1 The guidance is being issued in three parts for consultation. The Commission have now published the first draft of the whole guidance but the document concentrates on matters that are primarily intended to assist licensing authorities on the development and preparation of local statements of premises licensing policy. A further document to be issued before Easter 2006 will concentrate on guidance on licensing authorities' responsibilities in relation to society lotteries. A third document to be published in summer 2006 will concentrate on the compliance and enforcement responsibilities of licensing authorities. A further version of the first two sections will be published by May 2006, incorporating any changes as a result of the consultation, to enable licensing authorities to finalise their statements of licensing policy.
- 2.2 Codes of practice will be issued by the Commission later in the year which will also be subject to consultation, as will a host of draft regulations to be issued by the Department for Culture, Media and Sport.

3. Comparisons with the Licensing Act 2003

- 3.1 The Gambling Act applies many of the principles introduced by the Licensing Act but with some of the more problematic aspects of the latter legislation having been resolved. For example, under the Gambling Act, the licensing authority also becomes a responsible authority which allows more discretion in the way that applications are dealt with and licences reviewed. Annex A of the guidance lists the key differences between the two pieces of legislation and is attached for information.
- 3.2 Procedurally, the Gambling Act builds upon the concept of the Council as the licensing authority and, subject to a small number of functions that are reserved to full Council, the Licensing Committee (as opposed to the Licensing and Protection Panel) will become responsible for decisions to be

taken under the Act, with hearings by sub committees in appropriate circumstances.

4. Licensing Objectives

4.1 The Act contains three licensing objectives which underpin the functions that the Commission and licensing authorities will perform and which are central to the new regulatory regime created by the Act -

- preventing gambling from being a source of crime or disorder, being associated with crime or disorder, or being used to support crime;
- ensuring that gambling is conducted in a fair and open way; and
- protecting children and other vulnerable persons from being harmed or exploited by gambling.

4.2 The Act provides for licensing authorities to aim to permit the use of premises for gambling in so far as they think it reasonably consistent with the licensing objectives, in accordance with the Commission's guidance and any relevant code of practice and the authority's statement of licensing policy.

5. Licensing Responsibilities

5.1 The Act creates three elements for the licensing of gambling. The Commission will be responsible for the issue of operating and personal licences for commercial gambling operators and personnel working in the industry. Licensing authorities will have new powers to license gambling premises, as well as undertaking functions in relation to lower stake gaming machines. The Act also creates a new system of temporary use notices (not dissimilar to temporary events notices) for premises used for certain types of gambling for limited periods.

5.2 The Council's responsibilities as a licensing authority are summarised below -

- the licensing of premises for gambling activities, including casinos, bingo, betting including tracks and premises used by betting intermediaries, adult gaming centres (for category B3, C and D machines), and family entertainment centres (for category C and D machines or category D machines only);
- considering notices for the temporary use of premises for gambling;
- the grant of permits for gaming and gaming machines in clubs;
- regulating gaming and gaming machines in premises licensed for the supply of alcohol;
- granting permits for prize gaming;
- considering occasional use notices for betting at tracks;
- registering small societies' lotteries; and
- monitoring the gambling that occurs at travelling fairs within the area.

5.3 A table is attached (as Annex 2) showing the proposed maxima for gaming machines in licensed premises, together with the proposed maximum stake and prize for the different categories of machine (Annex 3). Comments are invited on the maxima proposed.

6. Statement of Licensing Policy

6.1 In preparing the statement of licensing policy which will last for 3 years unless changed within that time, the authority must have regard to the Commission's guidance upon which comments are invited. It is proposed that the following issues should be addressed and reflected in the statement -

- a statement of the three licensing objectives;
- the fact that applications must be determined on merit without regard to demand;
- a summary of the matters contained in the statement, the area to which it applies, and listing the persons consulted in preparing the statement;
- the principles to be applied in designating a competent body to advise on the protection of children from harm;
- the principles to be adopted in determining whether a person is an interested person in relation to a licence;
- the principles to be adopted in terms of inspections and the institution of criminal proceedings;
- factors to be taken into account in determining applications;
- a statement as to whether a resolution has been made not to issue casino licences;
- how information will be exchanged with other regulatory bodies;
- a statement of principles for applicant suitability for FEC permits or prize gaming permits; and
- a declaration that regard has been had to the statutory guidance in producing the statement.

6.2 Additional information also needs to be made available by the authority either in the statement or by other means as part of a communications strategy on the availability of public registers, fees, the application process, a list of responsible authorities and their contact details, how representations can be made, how application can be made for licences to be reviewed and how functions will be delegated by the authority. With regard to the latter, a table of suggested delegations is attached as Annex 4.

7. Funding

7.1 Money has been made available through the Revenue Support Grant in both 2004/05 and 2005/06 for the start up costs associated with gambling premises licensing. The Government envisages that these should address the cost of training for councillors and staff, staff and recruitment costs (where additional staff are required), additional hardware and software requirements, transfer of records from magistrates courts and the production of the statement of licensing policy.

7.2 The ongoing costs of the new responsibilities should be met by initial application and annual fees for premises licences and fees for permits and other permissions. Fees for premises licences will be set via a series of bands with a prescribed maximum in each. Licensing authorities will be free to set their own fees within the band maxima, limited to cost recovery. Certain high performing authorities (envisaged to be those with a CPA excellent rating) will be free to set their own fees, but again limited to cost recovery. Fees for permits and other services will be set by the Secretary of State.

8. Conclusion

- 8.1 The Act represents a further transfer of functions to the Council in its role as the licensing authority. Guidance, codes of practice and regulations will be issued throughout the forthcoming year for comment with the first applications expected in January 2007. Prior to that, the authority will need to consult on and publish the statement of licensing policy which is likely to have to take place in the forthcoming summer.
- 8.2 The Committee will be consulted where time and the schedule of meetings permit on the various documents to be issued. With regard to the guidance issued to date by the Commission, there are no particular issues upon which it is suggested that comment is made (other than clarification on the maximum stake for category B2 gaming machines), unless there are matters that the Committee wish to raise.
- 9 The Committee are

RECOMMENDED

to determine whether any comments should be made to the Gambling Commission on the first draft of their guidance to licensing authorities.

Background Papers

Gambling Commission Guidance to Licensing Authorities – Consultation Document, December 2005

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