

# **DRAFT**

## **DURHAM COUNCIL**

### **GAMBLING ACT 2005**

#### **STATEMENT OF PRINCIPLES**

**APRIL 2008**

If you require this policy in a different language or format please contact the Licensing Section on (0191) ?.

## CONTENTS

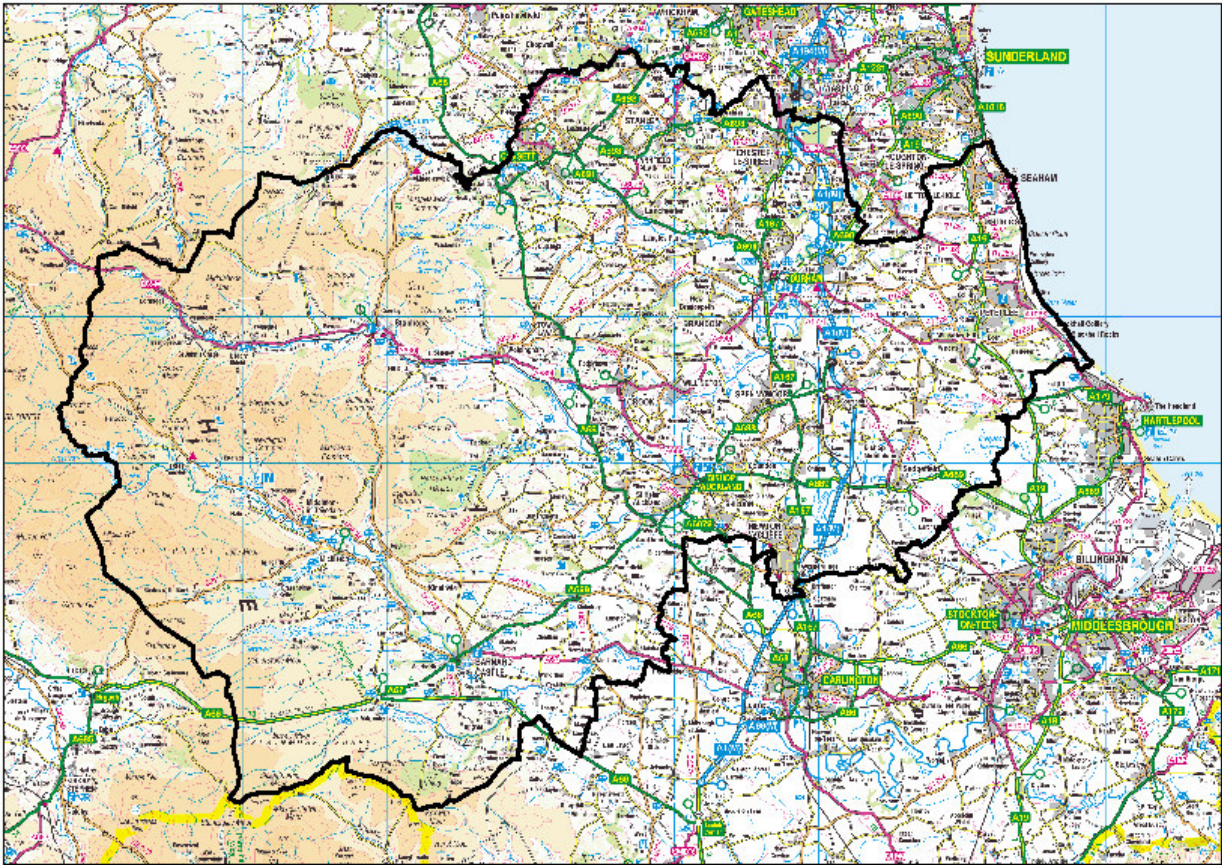
Section 1	County Durham	Page 2
Section 2	Legal Background and Licensing Objectives	Page 3
Section 3	Scope of Policy	Page 5
Section 4	Determination of Applications	Page 6
Section 5	Prevention of Crime	Page 8
Section 6	Ensuring Gambling is Conducted in a Fair and Open Way	Page 9
Section 7	Protection of Children and Other Vulnerable Persons	Page 10
Section 8	Location	Page 12
Section 9	(Alcohol) Licensed Premises	Page 13
Section 10	Enforcement	Page 14
Section 11	Delegation of Functions	Page 15
Section 12	Responsible Authorities	Page 16
Section 13	Other Useful Contacts	Page 17

## 1. DURHAM COUNTY

County Durham is at the heart of the North East of England, covering the Districts previously administered by seven different Licensing Authorities: Chester le Street, City of Durham, Derwentside, Easington, Sedgefield, Teesdale and Wear Valley.

The area features a rich diversity in lifestyle and culture including a historic city with a World Heritage Site, Beamish and Bowes Museums, Durham, Lumley and Lambton Castles, designated Areas of Outstanding Natural Beauty, and historic villages and market towns.

County Durham has a resident population of 493,500. The ethnic minority population of the area accounts for ?% of the total population (2001 census). Durham University has 12,700 students and the area attracts approximately 4 million visitors per year.



## **2. LEGAL BACKGROUND AND LICENSING OBJECTIVES**

Under the **Gambling Act 2005**, a new regime for regulating gambling and betting was introduced in the UK on 1st September 2007.

The Act repealed the Betting, Gaming and Lotteries Act 1963, the Gaming Act 1968 and the Lotteries and Amusements Act 1976. Responsibility for gaming licensing previously carried out by the Magistrates' Court (Licensing Justices) was transferred to the Gambling Commission and Licensing Authorities.

Apart from spread betting and the National Lottery, all commercial gambling is now regulated by the Gambling Commission, whose duties include licensing the operators and individuals involved in providing gambling and betting facilities.

Licensing Authorities licence premises where gambling takes place, and also licence some other activities such as registering small societies' lotteries. The Gambling Act 2005 also provides for a system of temporary use notices, to authorise premises not licensed generally for gambling purposes to be used for certain types of gambling for limited periods.

In carrying out its licensing functions the Licensing Authority will promote the key Licensing Objectives set out in the Act. These 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.**

### **Policy 1**

**The Council will prepare and regularly review a Statement of Licensing Policy, in accordance with the Gambling Act 2005, which will serve as a basis for determining licence applications.**

This Licensing Policy was approved at a meeting of the Full Council on ? 2008 and was published on the Council website [www.durham.gov.uk](http://www.durham.gov.uk) (?) on ? 2008. Copies are also available in all Council Offices.

It should be noted that this policy statement does not override the right of any person to make an application, make representations about an application, or apply for the review of a licence, as each will be considered on its own merits and according to the statutory requirements of the Act.

### **Policy 2**

**The Statement of Licensing Policy has 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 policy statement.**

This policy statement has taken full account of the current guidance issued by the Gambling Commission. The Licensing Authority may deviate from the guidance only if there is appropriate justification.

The Licensing Authority will act in accordance with the provisions of the Act in its exchange of information with the Gambling Commission, which includes the provision that the **Data Protection Act 1998** will not be contravened.

Details of applications and representations referred to a Licensing Sub-Committee for determination will be published in reports that are made publicly available in accordance with the **Local Government Act 1972** and the **Freedom of Information Act 2000**. Personal details of people making representations will be disclosed to applicants and only be withheld from publication on the grounds of personal safety where the Licensing Authority is asked to do so.

In addition, in formulating this policy document the Council has had regard to the provisions of the **European Convention on Human Rights** that everyone has the right to respect for their home and private life and that every person is entitled to the peaceful enjoyment of their possessions (including a licence).

As a consequence of the **Human Rights Act 1998** the Council will ensure that in exercising its licensing functions there is no breach of a convention right.

The Council has also taken into account the provisions of the **Crime and Disorder Act 1998**. This requires local authorities to have regard to the likely effect of the exercise of their functions on crime and disorder in their area and to take all reasonable steps to prevent such crime and disorder.

The Council will also recognise the **Race Relations Act 1976**, as amended by the **Race Relations (Amendment) Act 2000**, and eliminate unlawful discrimination and promote racial equality of opportunity and good relations.

The following were consulted in preparing this statement of licensing policy:

- All Responsible Authorities
- Persons representing the interests of persons carrying on gambling businesses in the County of Durham area
- Persons representing the interests of persons who are likely to be affected by the exercise of the authority's functions under the Gambling Act 2005:
  - All residents and businesses within the County Durham area (through ?), and all Councillors, Parish Councils, MPs and MEPs
  - Association of British Bookmakers
  - The Bingo Association
  - British Amusement Catering Trade Association
  - British Beer and Pub Association
  - Gamblers Anonymous, GamCare, The Gordon House Association, Responsibility in Gambling Trust

### 3. SCOPE OF POLICY

As well as Government legislation, the Statement of Licensing Policy is required to have regard to all relevant Council Policies.

#### **Policy 3**

**The Council's Statement of Licensing Policy will have regard to all relevant Council Policies that should be taken into account in preparing licence applications, but it will not duplicate other regulatory regimes wherever possible.**

For example, a range of general duties are imposed on the self-employed, employers and operators of gambling premises, both in respect of employees and of the general public, by legislation governing health and safety at work and fire safety. Therefore such requirements need not be included in the licensing policy statement.

The Gambling Act gives Licensing Authorities a number of important regulatory functions in relation to gambling. The main functions covered by this policy include:

- Licensing premises for gambling activities
- Considering notices given for the temporary use of premises for gambling
- Granting permits for gaming and gaming machines in clubs and miners' welfare institutes
- Regulating gaming and gaming machines in alcohol licensed premises
- Granting permits to family entertainment centres for the use of certain lower stake gaming machines
- Granting permits for prize giving
- Considering Occasional Use Notices for betting at tracks
- Registering small societies' lotteries.

The Act authorises Licensing Authorities to be responsible for the following:

- **Premises Licences** (casino premises, bingo premises, betting premises (including tracks), adult gaming centres, and family entertainment centres)
- **Temporary Use Notices**
- **Occasional Use Notices** (where there is to be betting on a track on eight days or less in a calendar year)
- **Permits** (for unlicensed family entertainment centres, prize gaming, gaming machines on alcohol-licensed premises, and club gaming and club gaming machines)



#### **4. DETERMINATION OF APPLICATIONS**

As an overriding principle the Licensing Authority will ensure that each application will be determined on its individual merits. Also, any person (“interested party”) may make representations on an application or seek a review of a licence where provision has been made for them to do so.

An interested party is someone who:

- Lives sufficiently close to the premises to be likely to be affected by the authorised activities, or
- Has business interests that might be affected by the authorised activities, or
- Represents persons in either of the two groups above (such as trade associations and trade unions, and residents’ associations).

In determining whether someone lives sufficiently close to a particular premises so as to be affected, the Licensing Authority will consider the size and nature of the premises, the distance of the premises from the person making the representation, the nature of the complaint, and the potential impact of the premises.

In determining whether a person has a business interest which could be affected, the Licensing Authority will consider the size and catchment area of the premises, and whether the person making the representation has business interests in the catchment area that might be affected.

The Licensing Authority would not consider a representation from an existing gambling business that it is going to be affected by another gambling business starting up in the area, unless other evidence was given, as this does not relate to the Licensing Objectives. Demand and competition may not be considered.

Representations must not be “frivolous or vexatious”. This will generally be a matter of fact given the circumstances of each individual case, but the Licensing Authority will consider who is making the representation and whether there is a history of making representations that are not relevant, whether it raises a relevant issue, and whether it raises issues specifically to do with the premises concerned.

Relevant representations will require applications to be determined by the Licensing Committee or one of its sub-committees, as will any application for the review of a licence.

#### **Policy 4**

**The Licensing Authority will consider whether any requirements relate to particular premises, but will balance such considerations against the Authority’s Objective to aim to permit the use of premises for gambling, and consideration of how an applicant has shown they may overcome Licensing Objective concerns. Non-mandatory conditions will only be imposed on a licence if deemed reasonable and necessary to meet the Licensing Objectives.**

Licence conditions will not be imposed where the Licensing Authority considers other regulatory regimes apply e.g. health and safety at work and fire safety legislation.

Conditions should be fair, clearly related to the Council's service aims, policies, duties and responsibilities, transparently justifiable, and reasonable.

The Council's responsibilities include reference to Building Regulations, Environmental Protection and Town & Country Planning. The Licensing Authority will enter appropriate partnership arrangements, working closely with the Police, the Fire Authority, local businesses, community representatives and local people in meeting these Objectives.

Any information that the Licensing Authority has to exchange with responsible authorities such as the Police or Gambling Commission may be by electronic means or hard copy.

The Act does not entitle Licensing Authorities to consider whether a licence application is likely to be awarded Planning Permission or approval under the Building Regulations. However, the Authority will consider any concerns about conditions which are not able to be met by licensees due to Planning restrictions. The Authority will also consider any relevant representation from the local planning authority about the effect of the grant of a premises licence on an extant Planning Permission where this relates to the Licensing Objectives, a Commission Code of Practice or this licensing policy.

The Licensing Authority will give comprehensive reasons for its decisions on applications, addressing the extent to which the decision has been made with regard to the licensing policy, in anticipation of the right of appeal generally available to applicants and objectors.

**Reason:** The view of the Licensing Authority is that there should not be a list of standard conditions, some of which may be inappropriate to individual premises. Conditions should be tailored to the premises and activities concerned with a view to considering relevant representations and ensuring that the Licensing Objectives are achieved.



## **5. PREVENTION OF CRIME**

The Gambling Commission will play a leading role in preventing gambling from being a source of crime, and will maintain rigorous licensing procedures that aim to prevent criminals from providing facilities for gambling.

Anyone applying to the Licensing Authority for a Premises Licence will have to hold an Operating Licence from the Commission before a licence can be issued, so the Licensing Authority will not consider the suitability of the applicant. If concerns about a person's suitability do arise the Licensing Authority will bring these concerns to the attention of the Commission.

If an application for a licence or permit is received in relation to premises in an area noted for particular problems with organised crime, the Licensing Authority, in consultation with the Police and other relevant authorities, will consider whether specific controls need to be applied to prevent the premises from being a source of crime. This could include a requirement for door supervisors.

The Licensing Authority will not use the Act to address general nuisance issues such as anti-social behaviour or parking issues, as other legislation can deal with these issues. However, the Act will be used if the disorder amounts to activity which is more serious and disruptive than mere nuisance. A disturbance could be serious enough to constitute disorder if Police assistance is required to deal with it. The Licensing Authority would also consider factors, such as how threatening the behaviour was to those who could see or hear it, and whether those people live sufficiently close to be affected or have business interests that might be affected.

When making decisions in this regard the Licensing Authority will consider any comments made by the Police.

### **Policy 5**

**The Licensing Authority will only grant a licence application if it is satisfied that crime prevention has been adequately addressed.**

**Reason:** Preventing gambling from being a source of crime or disorder, being associated with crime or disorder, or being used to support crime is both an Objective of the Gambling Act 2005 and an important responsibility of the Council under the Crime and Disorder Act 1998.

## **6. ENSURING GAMBLING IS CONDUCTED IN A FAIR AND OPEN WAY**

The Gambling Commission would not normally expect Licensing Authorities to address this Objective, as it is a matter for the management of the gambling business and will therefore be addressed by the Operating Licences and Personal Licences issued by the Commission.

However, as required, the Licensing Authority will advise the Commission if there is evidence that this Objective is not being met.

The Objective also has to be considered by Licensing Authorities if licensing tracks, as track operators will not necessarily have an Operating Licence. In these circumstances, the Premises Licence may need to contain conditions to ensure that the environment in which betting takes place is suitable.

### **Policy 6**

**The Licensing Authority will have regard to the Objective of ensuring gambling is conducted in a fair and open way.**

**Reason:** To achieve the Licensing Objective.

## **7. PROTECTION OF CHILDREN AND OTHER VULNERABLE PERSONS**

With limited exceptions, the intention of the Gambling Act is that children and young persons should not be permitted to gamble and should be prevented from entering those gambling premises which are adult-only environments. In practice, the Objective of protecting children often means preventing them from taking part in or being in close proximity to gambling, and for there to be restrictions on advertising so that gambling products are not aimed at children or advertised in such a way that makes them particularly attractive to children.

The Act does not seek to prohibit particular groups of adults from gambling in the same way that it prohibits children. "Vulnerable persons" has not been defined but indicates people with a gambling addiction, people who gamble 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. The Licensing Authority will consider whether any requirements relate to particular premises, but will balance such considerations against the Authority's Objective to aim to permit the use of premises for gambling, and consideration of how an applicant has shown they may overcome licensing Objective concerns.

The Licensing Authority will consider whether specific measures will be needed to protect children and other vulnerable persons on particular categories of premises. This may include requirements such as:

- Proof of age schemes
- CCTV
- Supervision of entrances
- Segregation of gambling from areas frequented by children
- Supervision of gaming machines in non-adult gambling specific premises
- Advertising sources of help for problem gamblers.

Regulations require the authority to state the principles it will apply in exercising its powers under the Act to designate a body which is competent in giving advice on matters relating to the protection of children and other vulnerable persons 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
- The need for the body to be answerable to democratically elected persons, rather than any particular vested interest group, etc.

In accordance with the Gambling Commission's Guidance to Licensing Authorities, the Licensing Authority recognises the Local Safeguarding Children's Board of the Social Services Department for this purpose.

### **Policy 7**

**The Licensing Authority will take appropriate measures to provide strict protection for children and vulnerable adults against harm.**

**Reason:** To ensure that appropriate licensed premises are “user friendly” for children and vulnerable persons, but also to ensure these people are adequately protected.

## **8. LOCATION**

Licensing Authorities must consider the location of premises in the context of the licensing Objective to prevent gambling being associated with crime and disorder. If an application for a licence or permit is received in relation to premises that are in an area noted for particular problems with organised crime, for example, the Licensing Authority will consider any appropriate controls to prevent the premises becoming a source of crime. These might include conditions being put on the licence, such as the requirement for door supervisors.

Location is also relevant to the Objective of protecting children and vulnerable persons from harm from gambling. The Licensing Authority will therefore consider if the gambling premises are very near to a school, residential area with a high concentration of families with children, or a centre for gambling addicts, together with the type of gambling that is proposed and how the applicant proposes to overcome any concerns regarding the Licensing Objectives.

### **Policy 8**

**The Licensing Authority will seek to strike a fair balance between the benefits to the community of a licensed venue and the risks of crime and disorder or harm from gambling.**

**Reason:** To fulfil two of the Licensing Objectives.

## **9. (ALCOHOL) LICENSED PREMISES**

The Act allows Premises Licensed to sell alcohol for consumption on the premises to automatically have two gaming machines, of categories C and/or D, by notifying the Licensing Authority. The Licensing Authority may only remove this automatic authorisation in respect of any particular premise 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 the Act, the premises are used mainly for gaming, or an offence under the Act has been committed on the premises.

If more than two machines are wanted, a permit must be applied for. In addition to considering the Licensing Objectives and Gambling Commission guidance, the Licensing Authority will expect the applicant to propose sufficient measures to ensure that under 18 year olds do not have access to the adult only gaming machines. Applicants may wish to consider such measures as machines being in sight of the bar and displaying notices. To protect vulnerable persons, applicants may wish to consider the provision of information leaflets with helpline numbers for organisations such as GamCare.

It is recognised that some alcohol licensed premises may apply for a Premises Licence for their non-alcohol licensed areas. Any such application would most likely need to be applied for and dealt with as an Adult Gaming Centre Premises Licence.

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.

## **10. ENFORCEMENT**

Where necessary, enforcement action will be taken in accordance with the principles of the Regulatory Compliance Code (previously known as the Enforcement Concordat) and the Council's Enforcement Policy.

In particular, regard will be had to the fundamental principles recommended by the Better Regulation Executive for good enforcement:

- Proportionality
- Accountability
- Targeting
- Consistency
- Transparency

The Licensing Authority will work with the Gambling Commission and also establish protocols with the local Police and other enforcing authorities to avoid duplication and be efficient when inspecting licensed premises and enforcing licensing law.

The main enforcement and compliance role for the Licensing Authority in terms of the Gambling Act 2005 will be to ensure compliance with the Premises Licences and other permissions which it authorises.

The Licensing Authority will have a light touch inspection regime for well managed and maintained premises, with a targeted and graduated inspection and enforcement regime for problem and high-risk premises.

The Gambling Commission will lead on investigations and prosecutions relating to illegal gambling and unlicensed premises. Also, any concerns about the manufacture, supply or repair of gaming machines will not be dealt with by the Licensing Authority but will be notified to the Gambling Commission.



## 11. DELEGATION OF FUNCTIONS

The Licensing Authority will delegate its functions under the Gambling Act 2005 as follows:

Matter to be dealt with	Full Committee	Sub-Committee	Officers
Application for premises licences		Where representations have been received and not withdrawn	Where no representations received / have been withdrawn
Application for a variation to a licence		Where representations have been received and not withdrawn	Where no representations received / have been withdrawn
Application for a transfer of a licence		Where representations have been received from the Commission	Where no representations received from the Commission
Application for a provisional statement		Where representations have been received and not withdrawn	Where no representations received / have been withdrawn
Review of a premises licence		X	
Application for club gaming/club machine permits		Where objections have been made (and not withdrawn)	Where no objections made / have been withdrawn
Cancellation of club gaming/club machine permits		X	
Applications for other permits			X
Cancellation of licensed premises gaming machine permits			X
Consideration of temporary use notice			X
Decision to give a counter notice to a temporary use notice		X	

## 12. RESPONSIBLE AUTHORITIES

Responsible Authority	Name	Contact Details
Gambling Commission		Victoria Square House Victoria Square Birmingham B2 4BP Telephone: 0121 2306500 <a href="http://www.gamblingcommission.gov.uk">www.gamblingcommission.gov.uk</a>
Licensing Authority		Licensing Section <b>Durham Council</b> Telephone: 0191 ? e-mail: <a href="mailto:licensing@durham.gov.uk">licensing@durham.gov.uk</a> (?)
Durham Constabulary		Licensing Unit Police Office Newcastle Road Chester le Street DH3 3TY Telephone: 0191 3752351 e-mail: <a href="mailto:NALU@durham.pnn.Police.uk">NALU@durham.pnn.Police.uk</a>  <b>+ SALU details</b>
County Durham and Darlington Fire and Rescue Service		Fire and Rescue Service Headquarters Framwellgate Moor Durham DH1 5JR Telephone: 0191 3324303 e-mail: <a href="mailto:firesafety@ddfire.gov.uk">firesafety@ddfire.gov.uk</a>
Children	Local Safeguarding Children's Board	? Durham Council Telephone: 0191 ? e-mail:
Planning		? Durham Council Telephone: 0191 ? e-mail:
Environmental Health		Durham Council Telephone: 0191 ? e-mail:
Customs & Excise		HM Revenue & Customs National Registration Unit Portcullis House 21 India Street Glasgow G2 4PZ Telephone: 0141 5553633 e-mail: <a href="mailto:nru.betting&amp;gaming@hmrc.gsi.gov.uk">nru.betting&amp;gaming@hmrc.gsi.gov.uk</a>

### 13. OTHER USEFUL CONTACTS

<b>Useful Contacts</b>	<b>Name</b>	<b>Contact Details</b>
Policy issues	?	? Durham Council Telephone: 0191 ? e-mail:
Building Control	?	? Durham Council Telephone: 0191 ? e-mail:
CCTV	?	? Durham Council Telephone: 0191 ? e-mail:
Door Supervisors	Security Industry Authority	P O Box 9 Newcastle upon Tyne NE82 6YX Telephone: 08702 430100 e-mail: <a href="mailto:info@the-sia.org.uk">info@the-sia.org.uk</a>