

**Item: 5**

**Orkney Islands Area Licensing Board: 22 August 2024.**

**Gambling Act 2005.**

**Review of Statement of Gambling Policy.**

**Report by Clerk to the Board.**

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## **1. Overview**

- 1.1. The Gambling Act 2005 (the Act) requires every licensing board to produce a Statement of Gambling Policy. Statements have effect for 3 years and must be reviewed at the end of that period. They can also be reviewed, if necessary, during the 3-year period.
- 1.2. The Board's Statement of Gambling Policy for the period from February 2022 to February 2025 was adopted on 7 October 2021 and will expire on 28 February 2025. The current version is available from the Related Downloads section [here](#).
- 1.3. The Board is required to review the policy and indicate how the Board will carry out its licensing functions so as to promote the licensing objectives, which 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.
- 1.4. The Statement of Gambling Policy requires to set out the principles which will be applied by the Board in exercising its functions under the Act. In addition to the licensing objectives and its Statement of Gambling Policy, the Board must have regard to any relevant code of practice or guidance issued by the Gambling Commission.
- 1.5. On 9 May 2024, the Board approved a consultative draft. Having consulted during May and June 2024, the Board is now able to consider adopting an updated Statement of Gambling Policy.

## 2. Recommendations

2.1. It is recommended that members of the Board:

- i. approve the revised Statement of Gambling Policy, attached as Appendix 1 to this report.

## 3. Consultation

3.1. The Clerk undertook the statutory consultation process in respect of the Board's Statement of Gambling Policy during the period 14 May to 28 June 2024, with the outcome detailed in section 5 below.

3.2. When consulting upon its revised draft Statement of Gambling Policy, the Board required to consult:

- The Chief Constable.
- One or more persons who appear to the Board to represent the interests of persons carrying on gambling businesses in the Board's area.
- One or more persons who appear to the Board to represent the interests of persons who are likely to be affected by the exercise of the Board's functions under the Act.

3.3. In accordance with previous consultations on the review of the Board's Statement of Gambling Policy, the following parties were consulted:

- Citizens Advice Bureau (Orkney).
- Community councils.
- Council services in respect of planning, building standards, environmental health, education and learning, housing and homelessness and social work.
- Gambling Commission.
- HM Revenue and Customs.
- Holders of notices of automatic entitlement (gaming machines in pubs and clubs).
- Holders of club gaming machine permits.
- Local firms of solicitors.
- NHS Orkney.
- Orkney Local Licensing Forum.
- Orkney Partnership.
- Orkney Disability Forum.
- Orkney Health and Social Care Partnership.
- Police Scotland.

- Residents via a public notice on <https://www.orkney.gov.uk/>.
- Scottish Fire and Rescue Service.
- Voluntary Action Orkney.

## 4. Responses to Consultation

- 4.1. Police Scotland responded by email dated 28 May 2024 to advise that there were no adverse comments/representations or objections from Police Scotland in respect of the proposed Gambling Policy for 2025 – 2028.
- 4.2. The Convener of the Orkney Local Licensing Forum responded by email dated 18 June 2024 to advise that Forum members agreed with the review of Orkney Islands Area Licensing Board's Gambling Policy.
- 4.3. The Group Commander, North Service Delivery Area, Scottish Fire and Rescue Service (SFRS) advised by email on 28 June 2024 that, having read the proposed review, he could see no areas of objection. The Group Commander advised that SFRS would continue to provide support as appropriate in any areas relating to the document.
- 4.4. The Council's Service Manager (Environmental Health) responded via email on 14 June 2024 and that response is included at Appendix 2 to this report. The response was in the following terms:
  - i. It includes two notes of support (at points 1 and 3) together with an informative note (see point 5).
  - ii. Point 2 suggests changing the reference to "Environmental Health Officer" as one of the Designated Officers in Appendix 4 to the proposed Gambling Policy 2025 – 2028 to "Licensing Standards Officer" in order to provide greater operational flexibility. There are circumstances where a Licensing Standards Officer (LSO) can be an authorised person for the purposes of the Gambling Act 2005. The Gambling Commission has, however, issued a specific Advice Note – *The Role of Authorised Persons – Scotland only* (see Appendix 3 to this report) on this point and it has been determined that the scope of the LSO's authorised functions would not meet the third limb of the test set out in paragraph 3.2.3 of the Advice Note and, as a result, this suggestion has not been incorporated in the revised Statement of Gambling Policy. If it is determined in the future that the scope of the LSO's authorised functions meet the third limb of the test set out in paragraph 3.2.3 of the Advice Note, then the Gambling Policy 2025 – 2028 could be updated accordingly.

- iii. Point 4 suggests that there may be merit in including a reference to the Council's General Enforcement Policy. This has not been incorporated in the revised Statement of Gambling Policy as, in its current form, the list of activities to which the General Enforcement Policy applies does not make reference to Gambling activities. If the General Enforcement Policy is amended in the future to include Gambling activities, then the Gambling Policy 2025 – 2028 could be updated accordingly.
- 4.5. The Council's Licensing Standards Officer responded via email on 14 June 2024 and that response is included at Appendix 4 to this report. The response contained two suggestions which raise similar points set out in sections 4.4(ii) and (iii) above. They have not been incorporated into the revised Statement of Gambling Policy for the same reasons.
- 4.6. The Director of Public Health, NHS Orkney, responded via email on 20 June 2024 and that response is included at Appendix 5 to this report. The response was in the following terms:
- i. It was suggested that a specific reference should be included to the UN Convention on the Rights of the Child (UNCRC). This has not been incorporated into the Statement of Gambling Policy as the UNCRC (Incorporation) (Scotland) Act 2024 (which incorporates the UNCRC into Scots Law) applies to functions within the competence of the Scottish Parliament to confer on the authority. It does not, therefore, apply to reserved matters under Schedule 5 of the Scotland Act 1998 such as betting and gambling.
  - ii. There was a suggestion that a definition of "e-government" is included and a recognition that non-electronic communications remain important for some groups. This suggestion has been incorporated into paragraph 1.4 of the revised Statement of Gambling Policy.
  - iii. It was suggested that a local area profile, although not required by the Gambling Commission, could be considered by the Licensing Board. This has not been incorporated into the revised Statement of Gambling Policy as any decision on this point would require further consideration by the Board.
  - iv. There was an assumption that the Licensing Board would move with any statutory changes following the review of the Gambling Act 2005. No changes have required to be made to the revised Statement of Gambling Policy as section 1.11 of the revised Statement of Gambling Policy ensures that a review can take place within the applicable three year publication period.

## 5. Next Steps

- 5.1. Statements of Gambling Policy must be published 4 weeks before they come into effect. The requirements include publication in a newspaper. If an updated Policy is adopted on 22 August 2024, notification can be published in a local newspaper early in 2025 and the updated Policy will come into effect on 28 February 2025.

### For Further Information please contact:

Gavin Mitchell, Clerk to the Board, extension 2233, email [gavin.mitchell@orkney.gov.uk](mailto:gavin.mitchell@orkney.gov.uk).

### Implications of Report

1. **Financial:** There are no direct financial implications to the Board arising from the recommendations of this report
2. **Legal:** The legal aspects are contained within the body of this report.
3. **Corporate Governance:** In terms of Section 2 of the Gambling Act 2005, the licensing authority for the purposes of the Act is the Licensing Board.
4. **Human Resources:** None.
5. **Equalities:** None.
6. **Island Communities Impact:** As the Policy document and updates thereto have been assessed as unlikely to have an effect on an island community which is significantly different from its effect on other communities (including other island communities) in Orkney, a full Island Communities Impact Assessment has not been undertaken.
7. **Links to Council Plan:** Not Applicable.
8. **Links to Local Outcomes Improvement Plan:** None.
9. **Environmental and Climate Risk:** None.
10. **Risk:** None.
11. **Procurement:** None.
12. **Health and Safety:** None.
13. **Property and Assets:** None.
14. **Information Technology:** None.
15. **Cost of Living:** In terms of Section 9 of the Gambling Policy, applicants and licensees are required to undertake local risk assessments, which should address a number of risks, including homelessness and debt.

### List of Background Papers

None.

## **Appendices**

Appendix 1: Revised Statement of Gambling Policy.

Appendix 2: Response from Service Manager (Environmental Health)

Appendix 3: Gambling Commission Advice Note – The Role of Authorised Persons –  
Scotland only

Appendix 4 – Response from Licensing Standards Officer

Appendix 5 - Response from Director of Public Health, NHS Orkney.

# **Statement of Gambling Policy**

**Orkney Islands Area Licensing Board**

**Gambling Act 2005**

**28 February 2025 to 27 February 2028**

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## Preamble

0.1.	<p>Definitions: In this Statement the following words shall have the meaning set out:</p> <ul style="list-style-type: none"><li>• “the Act” means the Gambling Act 2005.</li><li>• “the Board” means the Orkney Islands Area Licensing Board constituted in terms of section 5 and schedule 1 of the Licensing (Scotland) Act 2005.</li><li>• “the Council” means Orkney Islands Council constituted in terms of the Local Government etc. (Scotland) Act 1994 and subsequent legislation.</li><li>• “Guidance” means the Gambling Commission’s statutory Guidance for Licensing Authorities issued in terms of section 25 of the Act and published on the Commission’s website at <a href="https://www.gamblingcommission.gov.uk/guidance/guidance-to-licensing-authorities">https://www.gamblingcommission.gov.uk/guidance/guidance-to-licensing-authorities</a></li></ul>
0.2.	<p>In terms of section 2 of the Act, licensing authorities for the purposes of the Act are, in Scotland, licensing boards, constituted in terms of section 5 of the Licensing (Scotland) Act 2005.</p>
0.3.	<p>Section 349 of the Act requires licensing authorities to publish a statement of principles which will be applied in exercising their functions under the Act.</p>
0.4.	<p>In developing this policy, the Board has consulted widely and given due consideration to the views of all those who responded to that consultation process. Details of consultees are provided in section 1.12 below and Appendix 2 to this statement.</p>
0.5.	<p>In preparing this policy, the Board has had due regard to the Guidance. In particular, the Board has recognised its duty to promote the three licensing objectives set out at section 1 of the Act:</p> <ul style="list-style-type: none"><li>• preventing gambling from being a source of crime or disorder, being associated with crime or disorder or being used to support crime;</li><li>• ensuring that gambling is conducted in a fair and open way; and</li><li>• protecting children and other vulnerable persons from being harmed or exploited by gambling.</li></ul>
0.6.	<p>The Board welcomes the powers given to it by the Act and intends to use those powers in a socially responsible way. In so doing, the Board recognises that the interests of the public, residents, businesses and patrons require to be balanced. The three licensing objectives outlined in the Act will provide a starting point.</p>

0.7.	<p>You can contact the Licensing Board offices:</p> <ul style="list-style-type: none"> <li>• by email to: <a href="mailto:licensing@orkney.gov.uk">licensing@orkney.gov.uk</a>;</li> <li>• by telephone to: 01856 873535 extension 2229;</li> <li>• in writing to: Clerk to the Licensing Board, Strategy, Performance and Business Solutions, Orkney Islands Council, Council Offices, Kirkwall, Orkney KW15 1NY.</li> </ul>
0.8.	<p>Comments on this policy must be submitted in writing by email or letter. Paper and electronic copies of this statement are also available on request from the above email or postal addresses.</p>
0.9.	<p>Comments will be made public.</p>
0.10.	<p>If assistance is required, please discuss this with any member of staff, who will be glad to help.</p>
0.11.	<p>All our written information can be made available, on request, in a range of different formats and languages. If you would like this document in any other language or format, please contact us at the above telephone number or email or postal addresses.</p>
0.12.	<p>During the consultation period, this document will be published at <a href="https://www.orkney.gov.uk/Council/P/public-notices.htm">https://www.orkney.gov.uk/Council/P/public-notices.htm</a> and will be available for inspection at the Council Offices, Kirkwall, Orkney between 09:00 and 17:00 Mondays to Fridays.</p>
0.13.	<p>The final document, following adoption, will be published at <a href="https://www.orkney.gov.uk/Council/C/orkney-islands-area-licensing-board.htm">https://www.orkney.gov.uk/Council/C/orkney-islands-area-licensing-board.htm</a>.</p>
0.14.	<p>The consultation period will commence from 14 May 2024 and will run to 28 June 2024. The policy will be applied for the period of 3 years as required by section 349 of the Act. It will be kept under review and be subject to ongoing consultation with stakeholders and revised, if appropriate, by the issue of supplementary statements, during its currency.</p>

## Part A – General Principles

### 1. Introduction

1.1.	The Board is a licensing authority for the purposes of the Act and is responsible for regulating:
1.1.1.	Premises Licences: <ul style="list-style-type: none"><li>• Adult gaming centres.</li><li>• Betting premises.</li><li>• Bingo.</li><li>• Casinos.</li><li>• Licensed family entertainment centres.</li><li>• Provisional statements.</li><li>• Tracks.</li><li>• Travelling fairs.</li></ul>
1.1.2.	Permits and Temporary and Occasional Use Notices: <ul style="list-style-type: none"><li>• Club gaming and club machine permits.</li><li>• Gaming machines on alcohol licensed premises.</li><li>• Occasional use notices.</li><li>• Prize gaming.</li><li>• Small society lotteries.</li><li>• Temporary use notices.</li><li>• Unlicensed family entertainment centres.</li></ul>
1.2.	Orkney comprises 70 or so islands and skerries, of which up to 19 may be inhabited depending on the time of year. Based on National Records of Scotland mid-year population data for 2021, Orkney had an estimated population of 22,540, the majority of whom (around 19,740) lived on the main island called Mainland and the linked south isles, while approximately 2,800 people lived on the north and south ferry-linked isles. The main population centres are located on Mainland. They are: Kirkwall, with an estimated population of 8,400 (2021) and Stromness with an estimated population of 2,100 (2021). Mid-year population data for 2022 (the most recent available) indicates that Orkney had a population of 22,020 but does not provide updated estimates of the population of Kirkwall or Stromness.
1.3.	At the time of preparation of this statement of Policy, there were: <ul style="list-style-type: none"><li>• Club machine permits: 1.</li><li>• Notifications of automatic entitlement for gaming machines on alcohol licensed premises: 9.</li><li>• Small society lotteries: 127.</li></ul> in force within the Board's area.

1.4.	The Board is committed to the use of e-government technology (the use of information and communication technologies) and to applying its benefits so as to ensure continuous improvement of the Board's operation. The Board does, however, recognise that non-electronic communications remain important for some groups of people, especially when communicating the work of the Board.
1.5.	The Board publishes information about gambling requirements at <a href="https://www.orkney.gov.uk/Service-Directory/G/Gambling.htm">https://www.orkney.gov.uk/Service-Directory/G/Gambling.htm</a> .
1.6.	The Act requires the Board to publish Registers of specific information. The Board's Register of gaming machine authorisations is published in the Related Downloads section of the following webpage: <a href="https://www.orkney.gov.uk/Service-Directory/G/Gaming-Machines.htm">https://www.orkney.gov.uk/Service-Directory/G/Gaming-Machines.htm</a> .
1.7.	The Board's Register of small society lottery registrations is published in the Related Downloads section of the following webpage: <a href="https://www.orkney.gov.uk/Service-Directory/L/Lotteries_2.htm">https://www.orkney.gov.uk/Service-Directory/L/Lotteries_2.htm</a> .
1.8.	Information about the members of the Board, together with agendas, reports and Minutes relating to meetings of the Board, are published through links from the following webpage: <a href="https://www.orkney.gov.uk/Council/C/orkney-islands-area-licensing-board.htm">https://www.orkney.gov.uk/Council/C/orkney-islands-area-licensing-board.htm</a> .
1.9.	In exercising our functions under the Act, the Board, as a licensing authority, will have regard to the statutory licensing objectives, which are set out at section 1 of the Act: <ul style="list-style-type: none"> <li>• preventing gambling from being a source of crime or disorder, being associated with crime or disorder or being used to support crime;</li> <li>• ensuring that gambling is conducted in a fair and open way; and</li> <li>• protecting children and other vulnerable persons from being harmed or exploited by gambling.</li> </ul>
1.10.	Section 153 of the Act requires us, in making decisions concerning premises licences and temporary use notices, to aim to permit the use of premises for gambling in so far as we think it is: <ul style="list-style-type: none"> <li>• in accordance with any relevant code of practice issued by the Gambling Commission;</li> <li>• in accordance with any relevant guidance issued by the Gambling Commission;</li> <li>• reasonably consistent with the licensing objectives; and</li> <li>• in accordance with the Statement of Licensing Principles.</li> </ul>
1.11.	Section 349 of the Act requires licensing authorities to publish a statement of principles which will be applied in exercising their functions under the Act. This statement must be published at least every 3 years. The statement may also be reviewed from time to time and in the light of any such review, it may be revised. Any such

	revision will be subject to consultation and publication before it takes effect.
1.12.	The Board is required to have regard to the Guidance and to consult with: <ul style="list-style-type: none"> <li>• the Chief Constable of the relevant area;</li> <li>• one or more persons who appear to us to represent the interests of persons carrying on gambling businesses in the authority's area; and</li> <li>• one or more persons who appear to us to represent the interests of persons who are likely to be affected by the exercise of the authority's functions under the Act.</li> </ul>
1.13.	We consulted widely on the draft statement of principles before finalising and publishing it. A list of the persons we consulted is attached at Appendix 2 to this statement.
1.14.	This statement of principles has been prepared in accordance with the provisions of the Act and the Guidance. It will be applied during the 3-year period from 28 February 2025. It will be kept under review and revised if appropriate, during that 3-year period.
1.15.	This policy is subject to any amendments made to statutory regulations, operating and personal licence conditions, codes of practice and guidance outwith our control.
1.16.	We will carry out our role under the Act in a transparent manner and in the public interest.
1.17.	This document should be read in conjunction with the Act, regulations made under the Act and Guidance. This is designed to be a strategic gambling statement, not an operational guide.
1.18.	The contents of this document are not a full or authoritative statement of the law or statutory guidance and do not constitute professional or legal advice.
1.19.	This statement is published on the licensing authority's website at <a href="https://www.orkney.gov.uk/Council/C/orkney-islands-area-licensing-board.htm">https://www.orkney.gov.uk/Council/C/orkney-islands-area-licensing-board.htm</a> and is available at the offices of the licensing authority during normal working hours.
1.20.	Nothing in this statement will override the right of any person to make an application, make representations about an application, or apply for a review of a licence. Each application will be considered on its own merits and according to the statutory requirements of the Act.

## 2. Links to Other Policies, Strategies and Legislation and Declaration

2.1.	We are committed to avoid duplication with other legislation and regulatory regimes as far as possible. Legal requirements under other
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	legislation such as health and safety and fire precautions are not replicated in this statement.
2.2.	<p>The Human Rights Act 1998 incorporated the European Convention on Human Rights into United Kingdom law and makes it unlawful for a public authority to act in a way which is incompatible with a Convention Right. The Board will have particular regard to the following relevant provisions of the European Convention on Human Rights in respect of its licensing responsibilities:</p> <ul style="list-style-type: none"> <li>• Article 1 of the First Protocol: that every person is entitled to the peaceful enjoyment of their possessions, including for example the possession of a licence</li> <li>• Article 6: that in the determination of civil rights and obligations, everyone is entitled to a fair and public hearing within a reasonable time by an independent and impartial tribunal established by law and</li> <li>• Article 8: that everyone has the right to respect for their home and private life.</li> </ul>
2.3.	<p>The Freedom of Information (Scotland) Act 2002 requires licensing boards to publish information on the basic structure of the board, how it is administered, details of the type of information available to the public and how it can be accessed. The Board's publication scheme, setting out this information, is published in the Related Downloads section of the following webpage:  <a href="https://www.orkney.gov.uk/Council/C/orkney-islands-area-licensing-board.htm">https://www.orkney.gov.uk/Council/C/orkney-islands-area-licensing-board.htm</a>.</p>
2.4.	<p>The Board also has responsibility for alcohol licensing functions under the Licensing (Scotland) Act 2005. The Board's statement of policy in respect of the exercise of its functions under that Act is contained in a separate document published in the Related Downloads section of the following webpage: <a href="https://www.orkney.gov.uk/Council/C/orkney-islands-area-licensing-board.htm">https://www.orkney.gov.uk/Council/C/orkney-islands-area-licensing-board.htm</a>.</p>
2.5.	<p>The Board recognises its responsibilities under the Equality Act 2010 and related legislation. The Board's Equality data and outcomes are reported together with those of the Council and Education Authority. The reports and outcomes are published in the Related Downloads section of the following webpage:  <a href="https://www.orkney.gov.uk/Council/C/Equality-and-Diversity.htm">https://www.orkney.gov.uk/Council/C/Equality-and-Diversity.htm</a>.</p>
2.6.	<p>A Scheme of Delegation has been prepared in accordance with the Act and Guidance to ensure effective management of this authority's functions under the Act. The Scheme of Delegation is attached at Appendix 4.</p>
2.7.	<p>In producing the final licensing policy statement, the licensing authority declares that it has had regard to the licensing objectives of the Act, the Guidance and any responses received from those consulted on the policy statement.</p>

### 3. Responsible Authorities

3.1.	<p>We are required under section 157(h) of the Act to designate, in writing, a body competent to advise the licensing authority about the protection of children from harm. In such designation, the following principles are applied:</p> <ul style="list-style-type: none"> <li>• the need for the body to be responsible for an area covering the whole of the licensing authority’s area;</li> <li>• the need for the body to be answerable to democratically elected persons, rather than any particular vested interest group; and</li> <li>• whether the body has experience in relation to protection of children issues.</li> </ul>
3.2.	<p>We designate Orkney Health and Social Care Partnership or its appropriate successor body for the purpose of providing advice about protection of children from harm.</p>
3.3.	<p>The responsible authorities under the Act must be notified of applications in relation to premises licences and are entitled to make representations in relation to them. A list of the responsible authorities for our area is attached to this document at Appendix 3.</p>

### 4. Interested Parties

4.1.	<p>The Act identifies interested parties in relation to an application for or in respect of a premises licence and who can make representations about licence applications or apply for a review of an existing licence, namely a person who in the opinion of the licensing authority:</p> <ul style="list-style-type: none"> <li>• lives sufficiently close to the premises to be likely to be affected by the authorised activities;</li> <li>• has business interests that might be affected by the authorised activities; or</li> <li>• represents persons who satisfy either of the two sub-paragraphs above.</li> </ul>
4.2.	<p>The licensing authority will apply various principles to determine whether a person is an interested party.</p>
4.3.	<p>The licensing authority will consider each case on its merits.</p>
4.4.	<p>In determining whether a person lives “sufficiently close to the premises”, the licensing authority may have regard to such of the following factors as it considers appropriate to the circumstances:</p> <ul style="list-style-type: none"> <li>• the size of the premises;</li> <li>• the nature of the activities taking place;</li> <li>• the distance of the premises from the location of the person making the representation;</li> <li>• what might, in the opinion of the licensing authority, be reasonably regarded as a potential impact of the premises (this might for</li> </ul>



	<p>example be influenced by the anticipated number of customers, routes likely to be taken by those visiting the premises etc);</p> <ul style="list-style-type: none"> <li>• the nature of the complainant. This is not meant to cover the personal characteristics of the complainant, but the interest of the complainant where they may be relevant to the distance from the premises. For example, the licensing authority is likely to apply a wider interpretation to the meaning of “sufficiently close” where the complainant provides services attended by children or vulnerable adults; and</li> <li>• such other factors as it considers are relevant.</li> </ul>
4.5.	<p>In determining whether a party “has business interests that might be affected by the authorised activities” the licensing authority should be satisfied that the business of the party is likely to be affected. The licensing authority may have regard to such of the following factors as it considers appropriate to the circumstances:</p> <ul style="list-style-type: none"> <li>• the size of the premises;</li> <li>• the “catchment” area of the premises (i.e. how far people travel to visit);</li> <li>• the nature of the business that it is suggested is likely to be affected; and</li> <li>• such other factors as it considers relevant.</li> </ul>
4.6.	<p>In determining whether a person is regarded as representing a person in either of the other two interested party categories, the licensing authority in particular considers that the following may fall within this category:</p> <ul style="list-style-type: none"> <li>• Members of Parliament or elected councillors;</li> <li>• local authorities;</li> <li>• residents’ and tenants’ associations; and</li> <li>• trade unions and trade associations.</li> </ul>
4.7.	<p>The licensing authority will not necessarily consider a person as representing one of the categories of interested party unless the person can demonstrate:</p> <ul style="list-style-type: none"> <li>• that they have specifically been requested in writing to represent that person and / or business in relation to the submission of the representation; and / or</li> <li>• that, in the case of a body, it represents a significant number of persons that have made submission with regard to the representation.</li> </ul>
4.8.	<p>This authority will not generally consider residents’ or tenants’ associations or trade unions or trade associations to be interested parties unless they have a member who can be classed as one under the terms of the Act e.g. living sufficiently close to the premises to be likely to be affected by the activities being applied for.</p>

4.9.	Interested parties may also be represented by other persons such as councillors, MPs, etc. Care should be taken when approaching councillors that they are not part of the Licensing Board dealing with the licence application. If there are any doubts then please contact the Clerk to the Board on (01856) 873535 extension 2229 or email <a href="mailto:licensing@orkney.gov.uk">licensing@orkney.gov.uk</a> for advice. Information on Board membership is also published at <a href="https://www.orkney.gov.uk/Council/C/orkney-islands-area-licensing-board.htm">https://www.orkney.gov.uk/Council/C/orkney-islands-area-licensing-board.htm</a> .
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## 5. Responsible Authorities and Interested Parties: Representations

5.1.	Representation made by a responsible authority or interested party which is not withdrawn will normally result in a hearing taking place.
5.2.	In certain circumstances however, a hearing need not take place. For example, where the licensing authority considers that the representation: <ul style="list-style-type: none"> <li>• is vexatious;</li> <li>• is frivolous; or</li> <li>• will certainly not influence the authority's determination of the application.</li> </ul>

## 6. Disclosure / Exchange of Information

6.1.	In fulfilling its functions and obligations under the Act, the licensing authority will exchange relevant information with other regulatory bodies and will establish protocols as necessary. In exchanging such information, the licensing authority will conform to the requirements of the Act, data protection and freedom of information legislation as well as the Guidance.
6.2.	Contact details of those persons making representations and of their representations will be made available to applicants for a licence. Should a hearing take place, they will form part of a public document. Any party who lodges representations or applies for a review of a premises licence will be informed that these details will be disclosed.

## 7. Enforcement

7.1.	The Act provides various bodies including the licensing authority with power to authorise persons to undertake inspections for a variety of purposes. The licensing authority may refer cases where they believe there has been a breach of the Act to the Gambling Commission and / or Procurator Fiscal. Any proposal to refer a case will be considered on its own merits.
7.2.	In exercising our functions under the Act with regard to the inspection of premises we will be guided by the Guidance and our approach will be:

	<ul style="list-style-type: none"> <li>• proportionate;</li> <li>• accountable;</li> <li>• consistent;</li> <li>• transparent; and</li> <li>• targeted.</li> </ul>
7.3.	In carrying out our enforcement responsibilities, we will normally adopt a risk-based approach. We may undertake inspections of premises, the occurrence or frequency of which will be determined by the risks posed; those premises considered to pose the greatest risk will be subject to more frequent inspections than those presenting a lower risk.
7.4.	<p>Criteria which may normally contribute to an assessment to determine the level of risk that applies to premises may include:</p> <ul style="list-style-type: none"> <li>• the size of the premises;</li> <li>• the proximity of the premises to identified vulnerable persons;</li> <li>• whether any complaints are received in relation to the premises and, if so, the nature and number of complaints that are considered relevant;</li> <li>• information submitted from relevant persons or bodies; and</li> <li>• such other factors as the particular circumstances of the individual situation warrant.</li> </ul>
7.5.	The main enforcement and compliance role for this authority under the Act will be to ensure compliance with premises licences and other permissions which it authorises. According to the principle of transparency, this authority shall make available upon request copies of any enforcement and compliance protocols which it may adopt.

## 8. Licensing Authority Functions

8.1.	<p>This authority will make decisions upon applications or notifications made for:</p> <ul style="list-style-type: none"> <li>• premises licences,</li> <li>• provisional statements,</li> <li>• temporary use notices,</li> <li>• occasional use notices,</li> <li>• permits as required under the Act,</li> <li>• registrations required under the Act.</li> </ul>
8.2.	<p>This statement of principles relates to all those licensable premises, notices, permits and registrations identified as falling within the provisions of the Act, namely:</p> <ul style="list-style-type: none"> <li>• adult gaming centres,</li> <li>• betting premises,</li> <li>• bingo,</li> </ul>

	<ul style="list-style-type: none"> <li>• casinos,</li> <li>• club gaming and club machine permits,</li> <li>• licensed family entertainment centres,</li> <li>• unlicensed family entertainment centres,</li> <li>• permits for gaming machines on alcohol licensed premises,</li> <li>• prize gaming and prize gaming permits,</li> <li>• registration of small society lotteries,</li> <li>• tracks,</li> <li>• temporary and occasional use notices,</li> <li>• travelling fairs.</li> </ul>
8.3.	We will provide information to the Gambling Commission regarding details of licences issued and will maintain registers of the permits and licences that are issued under these functions.
8.4.	We will not be involved in licensing remote gambling – regulation will fall to the Gambling Commission through operator licences.

## Part B – Premises Licences

### 9. Premises Licences

9.1.	Premises licences will be subject to the requirements set out in the Act and regulations, as well as specific mandatory and default conditions, which will be detailed in regulations issued under the Act. We may also exclude default conditions and also attach other conditions where we believe it is appropriate.
9.2.	In considering an application for a premises licence no regard will be had to the expected demand for the facilities proposed to be provided in the premises for which a premises licence is sought.
9.3.	We will not consider unmet demand or moral objections to gambling when considering an application for a premises licence, as these do not relate to the licensing objectives and they are not criteria which we can consider under the Act or the Guidance. Therefore, we will consider any application in accordance with the Act on its own merits without regard to demand or moral objection to gambling in general.
9.4.	In exercising our functions in relation to premises licences, we will aim to permit the use of premises for gambling in so far as we think it is: <ul style="list-style-type: none"><li>• in accordance with any relevant Code of Practice issued by the Gambling Commission;</li><li>• in accordance with any relevant guidance issued by the Gambling Commission;</li><li>• reasonably consistent with the licensing objectives; and</li><li>• in accordance with this Statement.</li></ul>
9.5.	Premises are defined in the Act as “any place”, including vessels and vehicles and must be premises which are ready to be used i.e. not under construction. Different premises licences cannot apply in respect of single premises at different times. We will assess each case on its individual merits to decide as a matter of fact whether different parts of a building can properly be regarded as being separate premises and will note the Guidance in this area.
9.6.	In accordance with the Guidance, we will pay particular attention to the protection of children and vulnerable persons from harm or exploitation by gambling, as well as to issues of crime and disorder.
9.7.	This authority has not adopted any specific policy in relation to areas where gambling premises should not be located. Should any such policy be adopted, this statement will be updated and the policy will be publicly available.
9.8.	Any future policy would not preclude an application for a premises licence being made; the onus would be upon the applicant to show how any potential concerns could be overcome.

9.9.	In making a determination in respect of a premises licence, we shall have regard to section 210 of the Act and will not consider whether an application is likely to be awarded planning permission or building approval.
9.10.	We will seek to avoid duplication with other statutory/regulatory systems where possible. We will consider carefully any concerns about conditions which cannot be met by licensees due to planning restrictions, should such a situation arise.

### Local Area Profile and Local Risk Assessments

9.11.	We note the advice from the Gambling Commission that we do not need a local area profile to set our expectations for local risk assessments. We may set out broad principles we expect operators to take into consideration when completing their local risk assessments.
9.12.	We note that applicants and licensees are required to assess the local risks to the licensing objectives posed by the provision of gambling facilities at each of their premises and have policies, procedures and control measures to mitigate those risks. In undertaking their risk assessments, they must take into account relevant matters identified in this policy statement.
9.13.	Applicants and licensees shall be required to undertake a local risk assessment when applying for a new premises licence. Risk assessments must also be updated: <ul style="list-style-type: none"> <li>• when applying for a variation of a premises licence;</li> <li>• to take account of significant changes in local circumstances, including those identified in this policy statement;</li> <li>• when there are significant changes at a licensee's premises that may affect their mitigation of local risks.</li> </ul>
9.14.	Applicants and licensees shall be required to share their risk assessment with us when applying for a premises licence or for a variation to existing licensed premises or otherwise at our request. Local risk assessments must be kept on the relevant premises and be available for inspection.
9.15.	We consider that local risk assessments provided by applicants or licensees should seek to address the following areas of concern as possible risks to the licensing objectives posed by the provision of gambling facilities at their premises and indicate the policies, procedures and control measures they would have in place to mitigate those risks: <ul style="list-style-type: none"> <li>• public health;</li> <li>• mental health;</li> <li>• addiction;</li> <li>• homelessness;</li> <li>• debt;</li> </ul>

	<ul style="list-style-type: none"> <li>• education;</li> <li>• location in relation to services for children, such as schools, playgrounds, leisure/community centres and other areas where children may gather;</li> <li>• location in relation to alcohol licensed premises;</li> <li>• location in relation to emergency accommodation;</li> <li>• location in relation to places of worship, including all religious or faith denominations;</li> <li>• location in relation to gambling or addiction support or treatment centres where children or vulnerable groups may be present;</li> <li>• interaction with community welfare groups and safety partnerships;</li> <li>• interaction with organisations such as Gamcare or equivalent local organisations;</li> <li>• interaction with Betwatch scheme or equivalent organisations;</li> <li>• supervision of operation of premises by management;</li> <li>• supervision of operation of gaming machines;</li> <li>• identification of vulnerable persons;</li> <li>• identification of under-age persons;</li> <li>• identification of problem gamblers;</li> <li>• staffing levels information;</li> <li>• staff training on intervention with vulnerable persons;</li> <li>• staff training on intervention with under-age persons;</li> <li>• staff training on intervention with problem gamblers;</li> <li>• self-exclusion policy;</li> <li>• self-exclusion records;</li> <li>• crime incidents;</li> <li>• anti-social behaviour incidents.</li> </ul>
9.16.	Risks could be current or potential.
9.17.	<p>The above list is not intended to be exhaustive. Depending on the particulars of any specific application, we may require applicants to work with us to provide further information in their local risk assessments. This policy can be reviewed and updated at any time, if information on local risk assessments and local area profiles develops. We will consult on any review or update.</p>

**Objective 1: Preventing gambling from being a source of crime or disorder, being associated with crime or disorder or being used to support crime.**

9.18.	The Gambling Commission takes a leading role in preventing gambling from being a source of crime. Its Guidance envisages that attention is paid to the proposed location of gambling premises in terms of this licensing objective. We recognise the Commission's distinction between disorder and nuisance, disorder meaning an activity that is more serious and disruptive than mere nuisance, which is not an objective of the Act. We will consider factors such as whether police assistance was required and how threatening the behaviour was to those who could see it, to assess a disturbance.
9.19.	In considering licence applications, we will have regard to the following: <ul style="list-style-type: none"> <li>• the design and layout of the premises;</li> <li>• the training given to staff in crime prevention measures appropriate to those premises;</li> <li>• physical security features installed in the premises, which may include matters such as the position of cash registers or the standard of CCTV that is installed;</li> <li>• where premises are subject to age-restrictions, the procedures in place to conduct age verification checks; and</li> <li>• the likelihood of any violence, public order or policing problem if the licence is granted.</li> </ul>

**Objective 2: Ensuring that gambling is conducted in a fair and open way.**

9.20.	The Gambling Commission has stated that it would generally not expect licensing authorities to be concerned with ensuring that gambling is conducted in a fair and open way as this will relate either to the management of the business, therefore subject to an operating licence, or to an individual and therefore subject to a personal licence. Both of these are the responsibility of the Gambling Commission.
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**Objective 3: Protecting children and other vulnerable persons from being harmed or exploited by gambling.**

9.21.	The Guidance states that “harmed or exploited by gambling” can mean preventing children and vulnerable people from taking part in or being in close proximity to gambling and controlling advertising so that gambling products are not aimed at vulnerable people or advertised in such a way that makes them particularly attractive to such people.
9.22.	We will consider whether specific measures are required at individual premises to promote this licensing objective. Appropriate measures may include supervision of access points or machines, segregation of areas or the delivery of training relating to vulnerable people.



9.23.	The term “vulnerable persons” is not defined but the Gambling Commission states that it will for regulatory reasons assume that this group includes people who gamble more than they want to, people who gamble beyond their means and people who may not be able to make informed or balanced decisions about gambling due to, for example, a mental impairment, alcohol or drugs.
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## Conditions

9.24.	Any conditions we attach to licences will be proportionate and will be: <ul style="list-style-type: none"> <li>• relevant to the need to make the premises suitable as a gambling facility;</li> <li>• directly related to the premises and the type of licence applied for;</li> <li>• fairly and consistently related to the scale and type of premises; and</li> <li>• reasonable in all other respects.</li> </ul>
9.25.	Decisions on individual conditions will be made on a case by case basis. The control measures which we may consider using include door supervisors, supervision of adult gaming machines and appropriate signage for adult only areas. We will expect licence applicants to offer their own suggestions as to ways in which the licensing objectives can be met effectively.
9.26.	We may consider specific measures for buildings which are subject to multiple premises licences. Such measures may include the supervision of entrances, segregation of gambling and non-gambling areas frequented by children, the supervision of gaming machines in non-adult gambling specific premises and the display of notices regarding age restrictions.
9.27.	It is noted that there are conditions the licensing authority cannot attach to premises licences which are: <ul style="list-style-type: none"> <li>• any condition on the premises licence which make it impossible to comply with an operating licence condition;</li> <li>• conditions relating to gaming machine categories, numbers, or method of operation;</li> <li>• conditions which provide that membership of a club or body be required (the Act specifically removes the membership requirement for casino and bingo clubs and this provision prevents it being reinstated); and</li> <li>• conditions in relation to stakes, fees, winning or prizes.</li> </ul>

9.28.	<p>Whilst each application will be considered on its merits, factors to which the licensing authority may in particular have regard when determining an application include:</p> <ul style="list-style-type: none"> <li>• proximity of gambling premises to properties regularly frequented by vulnerable persons;</li> <li>• the suitability of the premises for gambling in the context of the licensing objectives;</li> <li>• the type of gambling that is proposed at the premises;</li> <li>• any information provided by the applicant showing how it is proposed to overcome any licensing objective concerns; and</li> <li>• whether any relevant objections to an application could be addressed by the use of one or more conditions.</li> </ul>
9.29.	<p>In circumstances where the licensing authority proposes to attach or reject conditions as part of a decision it will give reasons as required by the Act. Reasons will also be given if the licensing authority determines to reject an application.</p>

### Door Supervisors

9.30.	<p>In accordance with the Guidance, this licensing authority may consider whether there is a need for door supervisors in terms of the licensing objectives relating to children and vulnerable persons and the prevention of crime.</p>
9.31.	<p>The Act amended the Private Security Industry Act 2001, so that in-house door supervisors at casinos or bingo premises do not need to be licensed by the Security Industry Authority.</p>
9.32.	<p>The Board may formulate a policy relating to registration with the licensing authority of all door supervisors working at casinos or bingo premises. This would be in recognition of the nature of the work which might include searching individuals, dealing with potentially aggressive and young and vulnerable persons. If so, the policy will be made available publicly.</p>

### 10. Adult Gaming Centres

10.1.	<p>An adult gaming centre consists of premises for which a premises licence is granted to make certain prescribed gaming machines available only to persons aged eighteen years and over. The following machines can be provided:</p> <ul style="list-style-type: none"> <li>• Category B3 or B4 gaming machines – a number not exceeding 20% of the total number of gaming machines which are available for use on the premises; and</li> <li>• Category C or D machines – any number.</li> </ul>
10.2.	<p>Premises in existence before 13 July 2011 are entitled to make available four category B3 or B4 gaming machines or 20% of the total number of gaming machines, whichever is the greater.</p>

10.3.	Regulations state that category B machines at bingo premises should be restricted to sub-category B3 and B4 machines, but not B3A lottery machines.
10.4.	See Appendix 1 for more information on gaming machine categories.
10.5.	<p>This licensing authority will particularly 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 persons under 18 years of age do not have access to the premises. Appropriate licence conditions may cover issues such as:</p> <ul style="list-style-type: none"> <li>• proof of age schemes,</li> <li>• CCTV,</li> <li>• door supervisors,</li> <li>• supervision of entrances / gaming machine areas,</li> <li>• physical separation of areas,</li> <li>• location of entry,</li> <li>• location of adult gaming machines,</li> <li>• notices / signage,</li> <li>• specific opening hours,</li> <li>• self-barring schemes,</li> <li>• provision of information leaflets / help line numbers for organisations such as GamCare, GambleAware or BeGambleAware.</li> </ul>
10.6.	The above list is indicative and not intended to exclude other conditions in appropriate cases.

## 11. Licensed Family Entertainment Centres

11.1.	A licensed family entertainment centre consists of premises for which a premises licence is granted to provide, subject to certain restrictions, gaming machines. Persons under 18 years old will not be permitted to use certain gaming machine categories that the premises licence might authorise and there will need to be segregation between the different gaming machine types.
11.2.	<p>This licensing authority will particularly 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 persons under 18 years of age do not have access to adult only gaming machine areas. Appropriate licence conditions may cover issues such as:</p> <ul style="list-style-type: none"> <li>• proof of age schemes,</li> <li>• CCTV,</li> <li>• door supervisors,</li> <li>• supervision of entrances / gaming machine areas,</li> </ul>

	<ul style="list-style-type: none"> <li>• physical separation of areas,</li> <li>• location of entry,</li> <li>• location of adult gaming machines, notices / signage,</li> <li>• notices / signage,</li> <li>• specific opening hours,</li> <li>• self-barring schemes,</li> <li>• provision of information leaflets / help line numbers for organisations such as GamCare or GambleAware or BeGambleAware.</li> </ul>
11.3.	The above list is indicative and not intended to exclude other conditions in appropriate cases.
11.4.	In accordance with the Guidance, we will ensure that we are sufficiently aware of any conditions that apply to operating licences, for instance those covering the way in which the area containing the category C or higher machines should be delineated. We will also be aware of any mandatory or default conditions on premises licences. See Appendix 1 for more information on gaming machine categories.

## 12. Casinos

12.1.	This licensing authority has not passed a “no casino” resolution under section 166 of the Act but is aware that it has the power to do so. Should we decide in the future to pass such a resolution, we will update this policy statement with details of that resolution.
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## 13. Bingo Premises

13.1.	Bingo does not have a statutory definition.
13.2.	The holder of a bingo premises licence will be able to offer any type of bingo game, whether cash or prize.
13.3.	The following machines can be provided: <ul style="list-style-type: none"> <li>• Category B gaming machines – a number not exceeding 20% of the total number of gaming machines which are available for use on the premises; and</li> <li>• Category C or D machines – any number.</li> </ul>
13.4.	Premises in existence before 13 July 2011 are entitled to make available eight category B gaming machines or 20% of the total number of gaming machines, whichever is the greater.
13.5.	Regulations state that category B machines at bingo premises should be restricted to sub-category B3 and B4 machines, but not B3A lottery machines.
13.6.	See Appendix 1 for more information on gaming machine categories.

13.7.	<p>This licensing authority notes Guidance, which states that it is important that if children are allowed to enter premises licensed for bingo that they do not participate in gambling, other than on category D machines. Where category C or above machines are available in premises to which children are admitted, licensing authorities should ensure that:</p> <ul style="list-style-type: none"> <li>• all such machines are located in an area of the premises separated from the remainder of the premises by a physical barrier which is effective to prevent access other than through a designated entrance;</li> <li>• only adults are admitted to the area where these machines are located;</li> <li>• access to the area where the machines are located is supervised;</li> <li>• 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</li> <li>• 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.</li> </ul>
13.8.	<p>This licensing authority will particularly 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 persons under 18 years of age do not have access to adult only gaming machines. Appropriate licence conditions may cover issues such as:</p> <ul style="list-style-type: none"> <li>• proof of age schemes,</li> <li>• CCTV,</li> <li>• door supervisors,</li> <li>• supervision of entrances / gaming machine areas,</li> <li>• physical separation of areas,</li> <li>• location of entry,</li> <li>• location of adult gaming machines,</li> <li>• notices / signage,</li> <li>• specific opening hours,</li> <li>• self-barring schemes,</li> <li>• provision of information leaflets / help line numbers for organisations such as GamCare or GambleAware or BeGambleAware.</li> </ul>
13.9.	<p>The above list is indicative and not intended to exclude other conditions in appropriate cases.</p>
13.10.	<p>We will normally expect the applicant to identify the types of gaming machine which will be placed on the premises.</p>

13.11.	Whilst each application will be considered on its merits, factors to which we may in particular have regard when determining an application of this nature include the suitability and layout of bingo premises. We note that the Gambling Commission will issue further guidance on the particular issues that should be taken into account in relation to the suitability and layout of bingo premises and we will consider such guidance when it is published.
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## 14. Betting Premises

14.1.	The Act contains a single class of licence for betting premises. There will be different types of premises which require licensing, including betting offices on tracks, that have a separate premises licence from the track licence. The regional, large and small categories of new casinos permitted under the Act will be entitled to provide facilities for betting without a separate betting premises licence. Other than in the case of tracks, for which special rules apply, children and young persons will not be able to enter licensed betting premises. We note that in terms of the Act, a child means an individual who is less than 16 years old and a young person means an individual who is not a child but who is less than 18 years old.
14.2.	Licence holders may make available for use up to 4 gaming machines in categories B2 to D. Category B3A machines are not permitted. See Appendix 1 for more information on gaming machine categories.
14.3.	We note the Guidance, which states that section 181 [of the Act] contains an express power for licensing authorities to restrict the number of SSBTs (self-service betting terminals, formerly known as betting machines), their nature and the circumstances in which they are made available by attaching a licence condition to a betting premises licence or to a casino premises licence (where betting is permitted in the casino). We note that SSBTs are not classed by the Act as gaming machines. We further note that SSBTs accept bets on live events; they replicate and automate the process of making a bet with a human operator behind a counter. When considering whether to impose a condition to restrict the number of SSBTs in particular premises, we will take into account the size of the premises, the number of counter positions available for person-to-person transactions and the ability of staff to monitor the use of such machines by children and young people or by vulnerable persons.

## 15. Tracks

15.1.	Tracks are sites (including horse racecourses and dog tracks) where races or other sporting events take place.
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15.2.	The Act contains rules which apply to applicants for a premises licence in relation to a track. The applicant need not hold an operating licence because the betting that is provided upon the track will be provided by other operators, who come on-course. Since those people will require the necessary operating licence, the Act allows the track operator to obtain a premises licence without also having to hold an operating licence. This track premises licence then authorises anyone upon the premises with an operating licence to offer betting facilities.
15.3.	For betting to take place on a track a betting premises licence will be required unless an occasional use notice or temporary use notice is in place.
15.4.	Tracks are different from other premises in that there may be more than one premises licence in effect, each covering a specified area of the track.
15.5.	We note the Guidance that it would be preferable for all self-contained premises operated by off-course betting operators on track to be the subject of separate premises licences. This would ensure a clear division of responsibilities.
15.6.	There may be some specific considerations with regard to the protection of children and vulnerable persons from being harmed or exploited by gambling, the need to ensure entrances to each type of premises are distinct and that children are excluded from gambling or betting areas where they are not permitted to enter.
15.7.	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, although they are still prevented from entering areas where gaming machines (other than category D machines) are provided.
15.8.	<p>Premises licence applicants will have to demonstrate suitable measures to ensure that children do not have access to adult only gaming facilities. Appropriate licence conditions may cover issues such as:</p> <ul style="list-style-type: none"> <li>• proof of age schemes,</li> <li>• CCTV,</li> <li>• door supervisors,</li> <li>• supervision of entrances / gaming machine areas,</li> <li>• physical separation of areas,</li> <li>• location of entry,</li> <li>• location of adult gaming machines,</li> <li>• notices / signage,</li> <li>• specific opening hours,</li> <li>• self-barring schemes,</li> <li>• provision of information leaflets / help line numbers for organisations such as GamCare or GambleAware or BeGambleAware.</li> </ul>

15.9.	The above list is indicative and not intended to exclude other conditions in appropriate cases.
15.10.	We note the Guidance that licensing authorities need to consider the location of gaming machines at tracks and applicants for licences at tracks will need to demonstrate that, where the applicant holds a pool betting operating licence and is going to use the entitlement to four gaming machines, these machines will be located in areas from which children are excluded.
15.11.	We will follow Guidance addressing where gaming machines may be located on tracks and any special considerations that should apply to promote the licensing objectives and in particular the third objective.
15.12.	The Act enables us to restrict the number of SSBTs (self-service betting terminals, formerly known as betting machines), their nature and the circumstances in which they are made available by attaching a licence condition to a betting premises licence. In accordance with the Guidance in relation to betting premises away from tracks, we will take into account the size of the premises and the ability of staff to monitor the use of such machines by vulnerable people when determining the number and nature of machines permitted.
15.13.	We note that the Guidance that “licensing authorities should attach a condition to track premises licences requiring the track operator to ensure that the rules are prominently displayed in or near the betting areas, or that other measures are taken to ensure that they are made available to the public. For example, the rules could be printed in the race-card or made available in leaflet form from the track office.”
15.14.	We shall refer to any regulations setting out specific requirements for applications for premises licences. We accord with the Gambling Commission’s suggestions: “To ensure that licensing authorities gain a proper understanding of what they are being asked to license they should, in their licensing policies, set out the information they will require, which should include detailed plans for the racetrack itself and the area that will be used for temporary “on-course” betting facilities (also known as the “betting ring”) and in the case of dog tracks and horse racecourses fixed and mobile pool betting facilities operated by the Tote or track operator, as well as any other proposed gambling facilities” and that “Plans should make clear what is being sought for authorisation under the track betting premises licence and what, if any, other areas are to be subject to a separate application for a different type of premises licence.”

## 16. Travelling Fairs

16.1.	We will consider whether the applicant falls within the statutory definition of a travelling fair i.e. a travelling fair which “wholly or principally” provides amusements.
16.2.	A travelling fair must take place on a site that has been used for fairs for no more than 27 days per calendar year.



16.3.	Travelling fairs do not require a permit or licence to provide category D gaming machines or equal chance prize gaming. It will fall to this authority to decide whether the statutory requirement that the facilities for gambling amount to no more than an ancillary amusement at the fair is met.
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## 17. Provisional Statements

17.1.	A provisional statement may be applied for where we deem that premises have not been completed to our satisfaction.
17.2.	We note the Guidance which states 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” and that “Requiring the building to be complete ensures that the authority could, if necessary, inspect it fully”.
17.3.	In terms of representations about premises licence applications following the grant of a provisional statement, no further representations from relevant authorities or interested parties can be taken into account by this authority unless they concern matters which could not have been addressed at the provisional statement stage, or, in our opinion, they reflect a change in the applicant’s circumstances.
17.4.	Further, we may refuse the premises licence or grant it on terms different to those attached to the provisional statement only by reference to matters: <ul style="list-style-type: none"> <li>• which could not have been raised by objectors at the provisional statement stage; or</li> <li>• which in our opinion reflect a change in the operator’s circumstances.</li> </ul>
17.5.	This authority has noted the Guidance that licensing authorities should not take into account irrelevant matters such as the likelihood of the applicant obtaining planning or building consent for the proposal.

## 18. Reviews

18.1.	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: <ul style="list-style-type: none"> <li>• in accordance with any relevant code of practice issued by the Gambling Commission</li> <li>• in accordance with any relevant guidance issued by the Gambling Commission</li> <li>• reasonably consistent with the licensing objectives and</li> <li>• in accordance with the authority’s statement of licensing policy.</li> </ul>
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18.2.	Consideration will also be given to whether or not the request is frivolous, vexatious, is unlikely to cause the authority to wish to alter/revoke/suspend the licence or is substantially the same as previous representations or requests for review.
18.3.	We may also initiate a review of a licence on the basis of any reason which we think is appropriate.
18.4.	Whilst we recognise the importance of the right of 'responsible authorities' and 'interested parties' to request reviews of premises licences, we would expect a reasonable interval between hearings for the same premises, and unless exceptional and compelling circumstances existed, would not hold a repeat hearing in respect of the same grounds within 12 months.

## Part C – Permits / Temporary and Occasional Use Notices

### 19. Unlicensed Family Entertainment Centre Gaming Machine Permits

19.1.	Where premises are not the subject of a premises licence but they wish to provide gaming machines, the applicant may apply to the licensing authority for this permit. This permit authorises the provision of category D gaming machines only (see Appendix 1 for more information on gaming machine categories). The applicant must show that the premises will be wholly or mainly used for making gaming machines available for use. Permits cannot be issued in respect of vessels or vehicles.
19.2.	<p>In addition to the statutory requirements, as part of any application for an Unlicensed FEC gaming machine permit, the licensing authority will require the following in order to ensure that adequate information is provided to enable a proper assessment to be made:</p> <ul style="list-style-type: none"><li>• details of any permit granted to the applicant that has previously been refused, lapsed, surrendered or forfeited;</li><li>• details of any other permit held by the applicant in respect of other premises;</li><li>• the nature of the prizes;</li><li>• the proposed frequency of prize gaming at the premises;</li><li>• details of any training and training programme on the limits of stakes, prizes and permissible gambling relating to such permits; and</li><li>• details of any proposed precaution to secure the prevention of harm to persons under the age of eighteen and measures for implementing the same.</li></ul>
19.3.	<p>In considering any application the licensing authority will normally have regard to the following:</p> <ul style="list-style-type: none"><li>• each case will be considered on its merits</li><li>• any information received as part of the application process;</li><li>• the licensing objectives, any guidance and this statement, and will give particular weight to the protection of children and young persons; and</li><li>• such other factors as the licensing authority considers relevant.</li></ul>
19.4.	We note that the Act imposes mandatory conditions on Unlicensed FEC gaming machine permits. We cannot impose any other conditions.

### 20. Alcohol Licensed Premises Gaming Machine Permits

20.1.	On notifying the licensing authority, premises licensed to sell alcohol for consumption on the premises can, subject to certain restrictions, have 2 gaming machines of categories C and/or D. See Appendix 1 for more information on gaming machine categories.
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20.2.	<p>We have the power to remove this automatic authorisation if:</p> <ul style="list-style-type: none"> <li>• provision of the machines is not reasonably consistent with the pursuit of the licensing objectives;</li> <li>• gaming has taken place on the premises in breach of section 282 of the Act;</li> <li>• the premises are mainly used for gaming; or</li> <li>• an offence under the Act has been committed on the premises.</li> </ul>
20.3.	<p>An alcohol licensed premises gaming machine permit is required if more than 2 gaming machines are sought. The issue of such a permit replaces the automatic entitlement identified above. We may issue licensed premises gaming machine permits for any number of category C or D machines.</p>
20.4.	<p>In addition to the statutory requirements, as part of any application for a permit, we will require the following in order to ensure that adequate information is provided to enable a proper assessment to be made:</p> <ul style="list-style-type: none"> <li>• a plan showing the location and category of gaming machine being sought; and</li> <li>• details of any proposed precaution for preventing persons under eighteen from using any category of gaming machine being sought and how it would be implemented.</li> </ul>
20.5.	<p>We will consider applications taking into account the licensing objectives, Guidance and such other matters as we consider relevant on a case by case basis.</p>
20.6.	<p>We may decide to grant an application with a smaller number of machines and/or a different category of machine but note that we cannot attach any other conditions.</p>

## 21. Prize Gaming Permits

21.1.	<p>A prize gaming permit is a permit issued by the licensing authority to authorise the provision of facilities for gaming with prizes on specified premises.</p>
21.2.	<p>In addition to the statutory requirements, as part of any application for a permit, we will require the following in writing in order to ensure that adequate information is provided to enable a proper assessment to be made:</p> <ul style="list-style-type: none"> <li>• details of any permit granted to the applicant that has previously been refused, lapsed, surrendered or forfeited;</li> <li>• details of any other permit held by the applicant in respect of other premises;</li> <li>• the nature of the prizes;</li> <li>• the proposed frequency of prize gaming at the premises;</li> <li>• details of any training and/or training programme on the limits of stakes, prizes and permissible gambling relating to such permits; and</li> </ul>

	<ul style="list-style-type: none"> <li>• details of any proposed precaution to secure the prevention of harm to persons under the age of eighteen and measures for implementing the same.</li> </ul>
21.3.	<p>In considering any application we will normally have regard to the following:</p> <ul style="list-style-type: none"> <li>• each case will be considered on its merits;</li> <li>• any information received as part of the application process;</li> <li>• the licensing objectives, any guidance and this statement, and will give particular weight to the protection of children and young persons; and</li> <li>• such other factors as we consider relevant.</li> </ul>
21.4.	<p>We note that the Act imposes mandatory conditions on prize gaming permits. We cannot impose any other conditions.</p>

## 22. Club Gaming and Club Machines Permits

22.1.	<p>A club gaming permit authorises members' clubs or miners' welfare institutes (but not commercial clubs as defined in the Act) to provide, subject to certain restrictions, equal chance gaming and other games of chance as prescribed in regulations, together with up to 3 gaming machines in total of categories B3A, B4, C or D, but only one machine of category B3A is permitted. See Appendix 1 for more information on gaming machine categories.</p>
22.2.	<p>Members' clubs and miners' welfare institutes who do not provide other forms of gaming referred to at 20.1 above may apply to us for a club machine permit. This will allow them to have up to 3 gaming machines in total of categories B3A, B4, C or D, but only one machine of category B3A is permitted. See Appendix 1 for more information on gaming machine categories.</p>
22.3.	<p>In the case of members' clubs or miners' welfare institutes, we must be satisfied that the premises meet the requirements of a members' club or miners' welfare institute and that the majority of members are over 18.</p>
22.4.	<p>Commercial clubs may apply to us for a club machine permit. This will allow them to have up to 3 gaming machines in total of categories B4, C or D. See Appendix 1 for more information on gaming machine categories.</p>

22.5.	<p>We note that we may only refuse an application on the grounds that:</p> <ul style="list-style-type: none"> <li>• the applicant does not fulfil the requirements of a members' club, miners' welfare institute or commercial club, as appropriate;</li> <li>• the applicant's premises are used wholly or mainly by persons under the age of 18;</li> <li>• an offence under the Act, or a breach of permit has been committed by the applicant while providing gaming facilities;</li> <li>• a permit held by the applicant has been cancelled in the previous 10 years; or</li> <li>• an objection to the application has been made by the Gambling Commission or the Police.</li> </ul>
22.6.	<p>Whilst we cannot attach conditions to either of these types of permit, we note that the Code of Practice on Gaming Machine Permits (available at <a href="https://www.gamblingcommission.gov.uk/authorities/print/codes-of-practice">https://www.gamblingcommission.gov.uk/authorities/print/codes-of-practice</a>) sets out conditions which attach to both types of permit. This document also contains best practice guidelines which the Commission considers should be implemented by permit holders. We shall expect all permits holders to adhere to both the conditions specified in the Code of Practice and to follow the best practice guidelines in that document.</p>
22.7.	<p>Under section 273 of the Act, permits shall be subject to the conditions that no child or young person may use a category B or C gaming machine on the premises and the holder shall comply with any relevant provision of a Code of Practice under section 24 of the Act about the location and operation of a gaming machine.</p>

### 23. Temporary Use Notices

23.1.	<p>Temporary use notices allow the use of premises for gambling where there is no premises licence but where a gambling operator wishes to use the premises temporarily for providing facilities for gambling. They may only be granted where a relevant operating licence has been granted.</p>
23.2.	<p>The same premises may not be the subject of a temporary use notice for more than 21 days in any 12-month period, but may be the subject of several notices provided the total does not exceed 21 days.</p>
23.3.	<p>It is for us to determine in each case what constitutes premises. We may consider ownership, occupation and control of the premises.</p>
23.4.	<p>An application for a temporary use notice must be submitted to us not less than 3 months and one day before the day on which the gambling event will begin. In addition, a copy of the notice must also be served on:</p> <ul style="list-style-type: none"> <li>• the Gambling Commission;</li> <li>• the Chief Constable of Police Scotland; and</li> <li>• HM Revenue and Customs.</li> </ul>

23.5.	The person who is giving the temporary use notice must ensure that the notice and the copies are with the recipients within 7 days of the date of the notice.
23.6.	In our consideration of temporary use notice applications, we will apply any regulations made under the provisions of the Act. Each application will be considered on its own merits.
23.7.	Where an objection has been received in relation to a temporary use notice, if we consider that it should not have effect or should have effect only with modification we may give a counter-notice.
23.8.	A counter notice providing that a temporary use notice will not take effect will be given where the notice would contravene the maximum number of days available for premises.
23.9.	The counter-notice can prevent the temporary use notice from having effect or may limit the temporary use notice in other various prescribed ways.
23.10.	The principles that we will apply in deciding whether to issue a counter-notice will be the same as those in determining premises licence applications.

## 24. Occasional Use Notices

24.1.	Where there is betting on a track on 8 days or less in a calendar year, betting may be permitted by an occasional use notice without the need for a premises licence. The calendar year will commence on 1 January.
24.2.	In considering an application for an occasional use notice we will consider the definition of a “track” and whether the applicant is permitted to avail him/herself of the notice.
24.3.	A notice must be given in writing to us and be copied to the Chief Constable of Police Scotland. The notice must be given only by a person who is responsible for the administration of events on the track, or by an occupier of the track.
24.4.	The notice must specify the day on which it has effect, and may be given in relation to consecutive days providing the overall statutory limit of 8 days is not exceeded in a calendar year.
24.5.	We will maintain a register of applications to ensure that the statutory limit of 8 days is not exceeded.

## 25. Small Society Lotteries

25.1.	Small society lotteries are non-commercial societies which are established and conducted: <ul style="list-style-type: none"><li>• for charitable purposes;</li><li>• for the purpose of enabling or participation in, or supporting, sport, athletics or a cultural activity; or</li><li>• for any other non-commercial purpose other than private gain.</li></ul>
25.2.	Small society lotteries whose principle office is located within Orkney must register with us.
25.3.	All applications for registration must be made in the form specified by Regulations and be accompanied by all necessary documents specified by Regulations or required by us – usually a copy of the society's constitution.



## Appendix 1

### Gaming Machine Categories

Category of Machine	Maximum Stake	Maximum Prize
A	Unlimited	Unlimited
No category A gaming machines are currently permitted by the Gambling Commission.		
B1	£5	£10,000*
B2	£2	£500
B3	£2	£500
B3A	£2	£500
B4	£2	£400
C	£1	£100
D (money prize)	10p	£5
D non-money prize (other than crane grab machine)	30p	£8
D non-money prize (crane grab machine)	£1	£50
D combined money and non-money prize (other than coin pusher or penny falls machine)	10p	£8 (of which no more than £5 may be a money prize)
D combined money and non-money prize (coin pusher or penny falls machines)	20p	£20 (of which no more than £10 may be a money prize)

\*With option of maximum £20,000 linked progressive jackpot on premises basis only.

The above limits are current as at the time of publishing this document. They are updated from time to time. Please refer to the Gambling Commission's website at <https://www.gamblingcommission.gov.uk/licensees-and-businesses/guide/gaming-machine-categories> for up to date information.

## Appendix 2

### Schedule of Consultees to this Statement of Principles

During the consultation period from 14 May to 28 June 2024, this document was published on our website at <https://www.orkney.gov.uk/Council/P/public-notices.htm> and all consultees listed below were notified.

Thereafter, all responses were considered and any appropriate adjustments were made to the text.

If anyone has any queries, please contact the Clerk to the Board via the contact details provided at section 0.7 of this document.

- Citizens Advice Bureau (Orkney).
- Community councils.
- Gambling Commission.
- HM Revenue and Customs.
- Holders of notices of automatic entitlement (gaming machines in pubs and clubs).
- Holders of club gaming machine permits.
- Local firms of solicitors.
- Local Licensing Forum.
- NHS Orkney.
- Officials of the Council in respect of planning, building standards, environmental health, education and learning, housing and homelessness and social work.
- Orkney Disability Forum.
- Orkney Partnership.
- Orkney Health and Social Care Partnership.
- Police Scotland.
- Residents via a public notice on [www.orkney.gov.uk](http://www.orkney.gov.uk).
- Scottish Fire and Rescue Service.
- Voluntary Action Orkney.

## **Appendix 3**

### **Schedule of Responsible Authorities**

- Gambling Commission.
- HM Revenue and Customs.
- Orkney Health and Social Care Partnership.
- Orkney Islands Council – Neighbourhood Services and Infrastructure.
- Police Scotland.
- Scottish Fire and Rescue Service.

## Appendix 4

### Scheme of Delegation

This Scheme of Delegation covers the powers of the Licensing Board, in terms of the Gambling Act 2005 (the Act).

These delegations will be subject to any alterations made necessary due to amendments to legislation, Regulations, Codes of Practice or Government Circulars. In the event of a conflict between the terms of this Scheme of Delegation and the relevant legislation, the Scheme of Delegation shall be amended forthwith to accord with the provisions of the said relevant legislation.

#### 1. Designated Officers

The Board, as Licensing Authority for the purposes of the Act, designates the Clerk to the Board, Depute Clerks to the Board, any Environmental Health Officer and any Building Standards Officer of Orkney Islands Council as authorised persons for the purposes of section 304 of the Act.

#### 2. Reserved to the Licensing Board

Decisions on the following matters are not subject to delegation and shall only be discharged by the Licensing Board:

2.1.	Making a resolution not to issue casino licences under section 166 of the Act.
2.2.	Formulating Licensing Policy under section 349 of the Act.
2.3.	Determination of an application of a premises licence in respect of which representations have been made under section 161 of the Act and not withdrawn.
2.4.	Determination of an application for the variation of a premises licence in respect of which representations have been made under section 161 as applied by section 187 of the Act and not withdrawn.
2.5.	Determination of an application for transfer under sections 188 and 189 of the Act following representations by the Gambling Commission.
2.6.	Determination of whether an applicant falls within the statutory definition of a travelling fair where representations have been made and not withdrawn.
2.7.	Determination of an application for a provisional statement under section 204 in respect of which representations have been made under section 161 as applied by section 204 of the Act and not withdrawn.
2.8.	A review of a premises licence under section 201 of the Act.
2.9.	Determination of an application for an unlicensed family entertainment centre gaming machine permit where representations have been made and not withdrawn.

2.10.	Determination of an application for a gaming machine permit for 3 or more gaming machines for alcohol licensed premises under section 283 of the Act where representations have been made and not withdrawn.
2.11.	Determination of whether to cancel a gaming machine permit in respect of alcohol licensed premises.
2.12.	Determination of an application for a prize gaming permit under section 289 of the Act where representations have been made and not withdrawn.
2.13.	Determination of an application for a club gaming permit or club machine permit under sections 271 and 273 of the Act where representations have been made and not withdrawn.
2.14.	Determination of whether to cancel a club gaming permit or club machine permit.
2.15.	Determination of whether to issue a counter notice to a temporary use notice under section 224 of the Act.
2.16.	Determination of an occasional use notice application where representations have been made and not withdrawn.
2.17.	Determination of applications for registrations for the grant and renewal of registrations for the promotion of lotteries by small, non-profit making societies where representations have been made and not withdrawn.
2.18.	Determining whether a representation is vexatious, repetitious or one which will not influence the authority's determination of the application.

### **3. Delegation to the Clerk or Depute Clerks to the Licensing Board**

Decisions on the following matters are delegated to the Clerk or the Depute Clerks to the Licensing Board:

3.1.	To determine an application for a premises licence where no relevant representations have been made or where relevant representations have been made and then withdrawn.
3.2.	To determine an application for a variation of a premises licence where no relevant representations have been made or where relevant representations have been made and then withdrawn.
3.3.	To determine an application for transfer of a premises licence where no representations have been made by the Gambling Commission.
3.4.	To determine whether an applicant falls within the statutory definition of a travelling fair where no relevant representations have been made or where relevant representations have been made and then withdrawn.
3.5.	To determine an application for a provisional statement under section 204 of the Act where no relevant representations have been made or where relevant representations have been made and then withdrawn.

3.6.	To determine an application for an unlicensed family entertainment centre gaming machine permit where no relevant representations have been made or where relevant representations have been made and then withdrawn.
3.7.	To determine an application for a gaming machine permit for 3 or more machines in respect of alcohol licensed premises where no relevant representations have been made or where relevant representations have been made and then withdrawn.
3.8.	To determine an application for a prize gaming permit where no relevant representations have been made or where relevant representations have been made and then withdrawn.
3.9.	To determine an application for a club gaming permit or club machine permit where no relevant representations have been made or where relevant representations have been made and then withdrawn.
3.10.	To determine a temporary use notice application where no relevant representations have been made or, where relevant representations have been made and then withdrawn.
3.11.	To determine an occasional use notice application where no relevant representations have been made or where relevant representations have been made and then withdrawn.
3.12.	To issue registrations for the grant and renewal of registrations for the promotion of lotteries by small, non-profit making societies, where no relevant representations have been made or where relevant representations have been made and then withdrawn.
<b>Note:</b> The Clerk or Depute Clerks may elect not to use their delegated powers in a particular case, in which circumstances the matter will be referred to the Board.	

Version No.	Date:	Details:
1.	11/10/2018	Draft Policy for consultation.
2.	24/01/2019	Updated Policy for Adoption.
3.	08/07/2021	Updated draft Policy for consultation.
4.	07/10/2021	Updated Policy for Adoption.
5.	09/05/2024	Draft Policy for consultation.
6.	22/08/2024	Updated Policy for Adoption.

## NEIGHBOURHOOD SERVICES AND INFRASTRUCTURE

**Corporate Director:** Hayley Green, MBA (Public Service)  
Council Offices, Kirkwall, Orkney, KW15 1NY

Tel: (01856) 873535

Website: [www.orkney.gov.uk](http://www.orkney.gov.uk)

Email: [env.health@orkney.gov.uk](mailto:env.health@orkney.gov.uk)



**ORKNEY**  
ISLANDS COUNCIL

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### Memorandum

Date: 12 June 2024

From: Nick Long

To: Licensing

Re: Gambling Act 2005 – Consultation on policy

Thank you for the opportunity to provide comments on the draft Gambling Act policy. This is a response from Orkney Islands Council Environmental Health. A separate response is being made from the Licensing Standards Officer.

Having read through the draft policy and noted the proposed changes, environmental health make the following comments/observations which we hope will be of assistance.

1. We support the change to responsible authorities in appendix 3 to include the Council NSI Directorate presumably on the basis that the council's NSI Directorate more widely meets the definition of a Responsible Authority given in s157(g) of the Gambling Act 2005.
2. Regarding the list of Designated Officers in appendix 4 it would be preferable if the reference to "Environmental Health Officer" is changed to "Licensing Standards Officer" as this will provide us with greater operational flexibility. For completeness It is noted that an Environmental Health Officer of the Council is automatically an Authorised Person under the Gambling Act 2005 by virtue of s304(1)(3) and in relation to premises by virtue of their appointment under s19 of the Health and Safety at Work etc Act 1974 as per s305(4)(b) – so including the LSO would widen the pool of persons potentially available.
3. We support the concept of local risk assessments and the need for a local risk assessment to accompany an application.
4. In section 7 dealing with Enforcement there may be merit in providing a link to the Council's General Enforcement Policy which was adopted in 2023 and found at this link [General Enforcement Policy \(orkney.gov.uk\)](http://www.orkney.gov.uk) This policy sets out the principles adopted by the Council in relation to enforcement, including in relation to licensing.
5. In section 7.3 there is reference to inspections. We welcome the risk based approach, but would caution that if there is any expectation that Environmental Health will undertake these inspections, then the Board needs to be aware at present there is limited resource to support this. Therefore, any inspections would be reactive and in relation to a serious risk rather than on a proactive basis. There is no current risk based model for determining inspection frequencies for Gambling premises operated by environmental health, but in future this may be something that merits discussion if needed.

Thank you for the opportunity to comment

# GAMBLING COMMISSION

## Gambling Commission Advice Note

### The Role of Authorised Persons – Scotland only

#### 1 Introduction

- 1.1 The Gambling Act 2005 (the Act) introduced a new licensing regime with shared responsibilities between the national regulator, the Gambling Commission (the Commission), and other authorities<sup>1</sup> including licensing authorities (Licensing Boards in Scotland). The system has aspects in common with other areas requiring public protection such as health and safety.
- 1.2 The purpose of this advice note is to set out the Commission's understanding of the powers of authorised persons in Scotland and to provide guidance to licensing authorities and others about how they might contribute to effective co-regulation of the gambling industry in Scotland. The interpretation of the Act and powers of authorised persons is ultimately a matter for the courts but is hoped that this note will be helpful to authorities involved in the regulation of gambling activity in Scotland.
- 1.3 Authorised persons in Scotland have an important role to play in securing compliance with the Act and in promoting the licensing objectives set out in the Act. That role complements the work of the Commission and its officers in Scotland in permitting and regulating fair and open gambling, preventing criminal activity in connection with gambling and protecting children and the vulnerable.
- 1.4 A Licensing Standards Officer (LSO) of a Scottish local authority may be an 'authorised person' in terms of the Act, as for example may be an environmental

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<sup>1</sup> The reference to other authorities is an acknowledgement of section 304(4) which includes within the definition of authorised persons a number of other specific persons including health and safety inspectors and inspectors and surveyors of ships.



health officer. Where an LSO is an authorised person, the LSO can carry out formal enforcement activity using a range of powers set out in the Act. Those powers are quite separate from the powers conferred on LSOs in relation to alcohol licensing by the Licensing (Scotland) Act 2005. In addition to these formal powers, LSOs can help secure compliance with the Act and can educate, encourage and promote best practice through less formal engagement with licensed operators and others.

## **2 Licensing Standards Officers**

### ***Licensing (Scotland) Act 2005***

- 2.1 LSOs are appointed in Scotland under the Licensing (Scotland) Act 2005 (the Licensing Act) and have a range of functions under the Licensing Act.
- 2.2 For example, LSOs have a general duty to supervise compliance with the requirements of the Licensing Act and may enter and inspect licensed premises for that purpose. LSOs also have a range of general functions including providing information and guidance on the operation of the Licensing Act, supervising compliance with premises and occasional licences and seeking review of a premises licence where appropriate. Such a review may be sought where an LSO considers that illegal activity may be taking place on licensed premises, including illegal gambling activity, if that activity amounts to a breach of a licence condition or is relevant to one or more of the licensing objectives under the Licensing Act<sup>2</sup>.
- 2.3 Illegal gambling activity may, for example, be relevant to the licensing objectives of preventing crime and disorder or preventing harm to children<sup>3</sup>.

### ***Gambling Act 2005***

- 2.4 The Commission's understanding is that the enforcement powers contained in the Act cannot be exercised 'as of right' by an LSO.

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<sup>2</sup> Licensing (Scotland) Act 2005, section 36.

<sup>3</sup> The Commission is aware of the concerns which have been raised by the decision of the Court of Session in *Brightcrew v City of Glasgow Licensing Board* 2012 SC 67 and it is a matter for licensing authorities to take legal advice on how this decision impacts on the power to seek a review of a premises licence.

- 2.5 The enforcement powers conferred by the Act may be exercised (depending on the particular power) by police constables and/or by enforcement officers designated by the Commission and/or by ‘authorised persons’. The Act provides that ‘an officer of an authority other than a licensing authority’ is an ‘authorised person’ where the authority has statutory functions relating to minimising or preventing the risk of pollution of the environment or harm to human health, and the officer is authorised by the authority for the purpose of exercising any of those statutory functions (under section 304(3)). This provision does not require any positive action by authorities (including local authorities) to designate officers of the authority as authorised persons for the purposes of the Act.
- 2.6 It is the Commission’s view that any officers of authorities with the statutory functions described who have been authorised by the authority in connection with those functions will already, as a matter of law, be authorised persons in terms of the Act. Specifically, for example, environmental health officers authorised by local authorities will already be authorised persons. It is a matter for local authorities and Licensing Boards to consider how those officers are currently discharging their statutory functions under the Act.

### **3 LSOs as ‘Authorised Persons’**

- 3.1 An LSO in Scotland is not, by virtue simply of being an LSO, an ‘authorised person’ in the Act<sup>4</sup>, but LSOs may be authorised persons because they are as a matter of fact exercising other statutory powers on behalf of their local authority.
- 3.2 An LSO will be an authorised person for the purposes of particular premises if:
- 3.2.1 The authority he or she works for has statutory functions in relation to minimising or preventing the risk of pollution of the environment or of harm to human health;
  - 3.2.2 That authority has those functions for the area in which the premises are wholly or partly situated; and

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<sup>4</sup> Because the definition in section 304(2) refers to ‘officers’ of licensing authorities. Scottish Licensing Boards do not have employees or officers as such.

- 3.2.3 The LSO is authorised by that authority for the purpose of exercising any of those statutory functions<sup>5</sup>.
- 3.3 By way of example, an LSO may be authorised by their local authority by section 7 of the Smoking, Health and Social Care (Scotland) Act 2005 to enter premises and require identification in order to ascertain whether an offence (of permitting smoking, smoking or failing to display appropriate warning notices in no-smoking premises) has been or may have been committed. The Commission's view is that, by virtue of that authorisation, the LSO is also an authorised person under the Act.
- 3.4 No formal steps require to be taken to designate the LSO as authorised for the purposes of the Act. The authorisation arises as soon as the officer in question fulfils the requirements set out at paragraph 3.2. For convenience, authorities may wish to keep a central record of officers it considers are so authorised.
- 3.5 Provided the LSO is authorised as described above, the LSO is then entitled to:
- 3.5.1 Undertake activities for the purpose of assessing compliance with the Act and related legislation and for the purpose of assessing whether an offence is being committed under the Act (section 305).
  - 3.5.2 Enter premises for the purposes of discovering whether facilities for gambling have been, are being or may be provided, whether the premises are licensed for gambling and whether the terms and conditions of any licence are being complied with where the LSO has a reasonable suspicion that these activities are taking place, have taken place or are about to take place (section 307).
  - 3.5.3 Enter premises in respect of which an application for a premises licence has been made to assess, having regard to the licensing objectives, the likely effects of activity carried on in reliance on the premises licence and for a purpose connected with a review under

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<sup>5</sup> For completeness, the Act also specifically categorises as an 'authorised person': Enforcement officers appointed under section 61(3) of the Fire (Scotland) Act 2005; Inspectors appointed under section 19 of the Health and Safety at Work etc Act 1974; and Inspectors or surveyors of ships appointed under section 256 of the Merchant Shipping Act 1995.

section 201 of the Act in the case of premises where such a premises licence has been granted (section 313).

- 3.5.4 Enter premises in respect of which a temporary use notice has been given to assess, having regard to the licensing objectives, the likely effects of activity carried on in reliance on the temporary use notice and to determine whether there is activity which does not accord with the temporary use notice (section 315).
- 3.6 These various powers of entry also carry with them powers to inspect any part of the premises and any machine or other thing on the premises; to question any person on the premises; to require access to and copies of written or electronic records kept on the premises; to remove and retain items which may constitute or contain evidence of the commission of an offence under the Act or the breach of a term or condition of a licence issued under the Act; and to remove and retain items which may be or have been used in the commission of an offence under the Act (section 317).
- 3.7 It should be noted that this does not mean that LSOs would be exercising statutory functions in relation to health or the environment as a means of enforcing the provisions of the Act. No question arises, for example, of LSOs obtaining entry to premises under false pretences. Nor would LSOs require to be accompanied to premises by environmental health officers. Once authorised for health or prevention of pollution purposes, LSOs are also authorised under the Act and can (and should) rely on the enforcement powers in the Act to regulate gambling in their area.
- 3.8 The Commission encourages local authorities to deploy suitably trained authorised persons under the Act to ensure that gambling is regulated effectively and that citizens are afforded the protections set out in the three licensing objectives.

#### **4. Fees**

- 4.1 The costs of licensing and regulating gambling premises are met by gambling operators through fees for premises licences and permits. The policy in Scotland is that all fees for gambling licences and permits are set centrally by Scottish Ministers

with a flat rate for each premises/permit category, aimed at cost recovery and ensuring fairness and value for money for the gambling industry<sup>6</sup>.

- 4.2 The fees include the cost of administration (including hearings and appeals), inspection and enforcement<sup>7</sup>.
- 4.3 The effective management of local non-compliance and illegality in gambling has an important role to play within the wider local authority community safety agenda in protecting children, young people and the vulnerable from potential harm.

## **5. Additional Support from LSOs**

- 5.1 Where an LOS is not an authorised person for the purposes of the Act (because he or she is not exercising functions of the sort described in section 304(3)) that LSO can nevertheless make a positive contribution to ensuring compliance with the Act and the requirements of an effective system of shared regulation.
- 5.2 As mentioned above LSOs have a general duty to supervise compliance with the requirements of the Licensing Act and may enter and inspect alcohol licensed premises for that purpose. Where an LSO suspects that illegal activity may be taking place on premises licensed under the Licensing Act – including illegal gambling activity – an LSO may seek a review of the relevant licence if the activity amounts to a breach of a licence condition or is relevant to the licensing objectives<sup>8</sup>. An LSO may also inform the police of the suspected illegal activity – as of course can any member of the public.
- 5.3 As mentioned above, where an LSO becomes aware, in the course of exercising functions under the Licensing Act, that relatively minor and easily remedied breaches of the Gambling Act may be taking place the LSO can provide guidance to the operator or licence holder. The Commission encourages LSOs to engage with operators on this informal basis to help secure compliance with the Gambling Act.

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<sup>6</sup> The Gambling (Premises Licence Fees) (Scotland) Regulations 2007.

<sup>7</sup> See <http://www.scotland.gov.uk/Topics/Justice/law/Licensing/Gambling/Premises-Licensing>

<sup>8</sup> Licensing (Scotland) Act 2005, section 36.

For further information or to register your interest in the Commission please visit our website at: **[www.gamblingcommission.gov.uk](http://www.gamblingcommission.gov.uk)**

Copies of this document are available in alternative formats on request.

Gambling Commission  
Victoria Square House  
Victoria Square  
Birmingham B2 4BP

**T** 0121 230 6666 **F** 0121 230 6720 **E** [info@gamblingcommission.gov.uk](mailto:info@gamblingcommission.gov.uk)

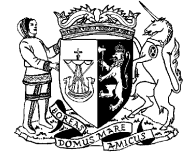
## NEIGHBOURHOOD SERVICES AND INFRASTRUCTURE

**Corporate Director:** Hayley Green, MBA (Public Service)  
Council Offices, Kirkwall, Orkney, KW15 1NY

Tel: (01856) 873535

Website: [www.orkney.gov.uk](http://www.orkney.gov.uk)

Email: [env.health@orkney.gov.uk](mailto:env.health@orkney.gov.uk)



**ORKNEY**  
ISLANDS COUNCIL

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## Memorandum

Date: 12 June 2024

From: Nick Long

To: Licensing

Re: Gambling Act 2005 – Consultation on policy

Thank you for the opportunity to provide comments on the draft Gambling Act policy. This is a response from Orkney Islands Council Licensing Standards Officer. A separate response is being made from the Environmental Health Team.

Having read through the draft policy and noted the proposed changes, I have the following comments/observations which we hope will be of assistance.

1. Appendix 4 contains a list of Designated Officers. The Board may consider it helpful to include "Licensing Standards Officer" as an addition to this list.
2. In section 7 dealing with Enforcement there may be merit in providing a link to the Council's General Enforcement Policy which was adopted in 2023 and found at this link [General Enforcement Policy \(orkney.gov.uk\)](http://orkney.gov.uk). This policy sets out the principles adopted by the Council in relation to enforcement, including in relation to licensing.

Thank you for the opportunity to comment.

## Director of Public Health

The Balfour  
Foreland Road  
Kirkwall  
Orkney  
KW15 1NZ  
[www.ohb.scot.nhs.uk](http://www.ohb.scot.nhs.uk)



Email sent: [licensing@orkney.gov.uk](mailto:licensing@orkney.gov.uk)

Date: 20 June 2024

Elaine Sinclair  
Legal Clerk to Licensing Board  
Strategy, Performance and Business  
Solutions  
Council Offices  
Kirkwall  
KW15 1NY

Tel: 01856 888150  
Enquiries to: Frederick Pretorius  
Email: [frederick.pretorius@nhs.scot](mailto:frederick.pretorius@nhs.scot)

Dear Elaine Sinclair,

Thank you for the opportunity to comment.

- Appreciate the greater emphasis on the Human Rights Act and the keenness to protect children and vulnerable persons. However, would be good to see a specific reference to UNCRC.
- Readers may require an explanation of what "e-government" means, and it should be recognised that non-electronic communications remain important for some groups of people especially when communicating the work of the board.
- Whilst it is appreciated that the Gambling Commission does not require the Licensing Board to have local area profile, this could be considered by the Licensing Board as potentially beneficial to support licensee risk assessment.
- In the light of the Gambling Act 2005 review, it is assumed that the Licensing Board will move with any statutory changes that come over the timeframe of this statement.

In general, it is understood that whilst most people who gamble do not experience significant harm from this, some people do experience significant harm relating to gambling. This harm can impact on not just the individuals themselves, but also their families and social networks and wider community and society. Gambling harms are a public health issue and, in the light of the Covid-19 pandemic, cost of living crisis and the changing nature of gambling opportunities, there could be an

Orkney NHS Board Headquarters: The Balfour, Foreland Road, Kirkwall, Orkney KW15 1NZ

Chair: Meghan McEwen Chief Executive: Laura Skaife-Knight

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increase in risk of harm related to gambling. We encourage the Licensing Board to continue to support the mitigation of harm and to develop its role in this wherever possible to continue to:

- 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.

[A public health approach to gambling harms | Scottish Parliament](#)

Yours sincerely



Louise Wilson  
**Director of Public Health**  
[louise.wilson2@nhs.scot](mailto:louise.wilson2@nhs.scot)